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Issued in Des Moines, Washington, on May 7, 2018.

**Michael Kaszycki,**

*Acting Director, System Oversight Division,  
Aircraft Certification Service.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 32

[Docket No.: OJP (BJA) 1722]

RIN 1121-AA85

### Public Safety Officers' Benefits Program

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule finalizes two proposed rules in order to update and improve the regulations of the Office of Justice Programs (OJP) implementing the Public Safety Officers' Benefits (PSOB) Program, in order to incorporate several statutory changes enacted in recent years, address some gaps in the regulations, and improve the efficiency of the PSOB Program claims process. After careful consideration and analysis of the public comments on both proposed rules, the final rule incorporates a number of changes as discussed below.

**DATES:** This rule is effective June 14, 2018, except for amendatory instructions 10 (amending 28 CFR 32.12), 17 (amending 28 CFR 32.22), and 32 (amending 28 CFR 32.53), which are effective June 14, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Hope Janke, Bureau of Justice Assistance; Telephone: (202) 514-6278, or toll-free at (888) 744-6513.

**SUPPLEMENTARY INFORMATION:** The Public Safety Officers' Benefits (PSOB)

Program provides a statutory death benefit to certain survivors of public safety officers who are fatally injured in the line of duty, disability benefits to public safety officers catastrophically injured in the line of duty, and education benefits to certain of the survivors and family members of the foregoing public safety officers. Under the Program, claims are filed with, and adjudicated by, the Office of Justice Programs (OJP) of the U.S. Department of Justice. The regulations for the PSOB Program are codified at 28 CFR part 32.

### I. Executive Summary

#### A. Purpose of the Regulatory Action

OJP published two proposed rules for the PSOB Program, one on July 15, 2016, 81 FR 46019 ("PSOB I"), and the other on August 22, 2016, 81 FR 57348 ("PSOB II"). PSOB I primarily focused on certain changes needed to implement statutory changes made by the Dale Long Act (affecting members of rescue squad and ambulance crews, as well as provisions related to certain heart attack/stroke/vascular rupture cases), and also to align the workings of the PSOB Program with certain provisions under the World Trade Center (WTC) Health Program, as well as with the September 11th Victim Compensation Fund (VCF). PSOB II was to implement recent statutory changes, address some gaps in the regulations, and to improve the efficiency of the PSOB Program claims process.

During the comment periods, OJP received comments on its proposed rules from various parties. After further review of the proposed rules and careful consideration and analysis of all comments on both proposed rules, OJP has made amendments that are incorporated into this final rule. In addition, the final rule includes a technical change necessitated by the newly-enacted provisions of the Public Safety Officers' Benefits Improvement Act of 2017, Public Law 115-36, 131 Stat. 841 (June 2, 2017). The final rule also includes (non-substantive) changes to myriad cross-references to statutory provisions, referred to in the regulations, that—effective September 1, 2017—were reclassified by the Law Revision Counsel of the House of Representatives from title 42 of the U.S. Code to title 34 of the U.S. Code.

During the comment period, OJP received comments on its proposed rules from a number of interested parties: Various national police-, fire-, and rescue associations and unions; a foundation supporting 9/11 responders; an organization that provides support and assistance to the survivors of fallen

law enforcement officers; a prosecutor and former claims attorney, and two members of Congress. OJP received input from a total of 7 commenters on the first proposed rule, and 8 commenters on the second rule.

After careful consideration and analysis of all comments received, OJP has made amendments that are incorporated into this consolidated final rule. The final rule also contains a few clarifying changes to provisions in the proposed rule where there were some previously unnoticed ambiguities, or where the language was more complex than necessary. A summary overview of the changes made by the final rule follows below, with a more complete discussion (below that) of the provisions of the rule, the public comments received on the proposed rule, the Department's response, and the final changes incorporated into the final rule.

Pursuant to 34 U.S.C. 10287, this final rule is intended (insofar as consistent with law) to be effective and applicable to all claims from and after the effective date hereof, whether pending (in any stage) as of that date or subsequently filed.

#### B. Summary of the Major Changes in the Final Rule

The final rule makes the following conforming changes required by the Dale Long Public Safety Officers' Benefits Improvement Act of 2012 (Dale Long Act), Public Law 112-239, which, among other things, added (as codified at 34 U.S.C. 10282(9)(D)) as a new category of public safety officer—"a member of a rescue squad or ambulance crew who, as authorized or licensed by law and by the applicable agency or entity, is engaging in rescue activity or in the provision of emergency medical services". The following changes implement the inclusion of the new category of public safety officer by the following revisions and additions to the PSOB regulations:

- Revise definition of *Employed by a public agency*;
- Revise definition of *Line of duty activity or action* to align with statutory inclusion of members of rescue squads and ambulance crews;
- Revise definition of *Officially recognized or designated public employee member of a squad or crew*;
- Add a definition for *Officially recognized or designated volunteer member of a squad or crew*;
- Revise definition of *Official training program of public agency*;
- Remove definition of *Public employee member of a squad or crew*, and

- Redesignate and revise definition for *Public safety agency*.

The Dale Long Act also amended some provisions in the PSOB Act relating to cases involving heart attacks, strokes, or vascular rupture cases. The following changes in the final rule implement those changes:

- Define *Competent medical evidence*, *Unrelated*, and *Something other than the mere presence of cardiovascular disease risk factors*; remove certain no-longer-needed definitions.

The Dale Long Act also amended provisions of the PSOB Act affecting the payment offset scheme for the PSOB Program relative to the September 11th VCF Program. The final rule makes the following changes in the regulations to implement these amendments, and also makes changes in order to align the PSOB Program with WTC Health Program and the VCF Program:

- Revise the definition of *Injury* to include *WTC-related health condition*;
- Add definition for *WTC-related health condition* =to enable the agency to use certain provisions of the WTCHP in determining whether a responder suffered an “injury” in connection with his response to the September 11, 2001, attacks;
- Add definition for *September 11, 2001, attacks*;
- Add definition for *WTC responder*; and
- Amend the *Payment and repayment* provision (28 CFR 32.6) to specify how the offset of PSOB benefits by September 11th VCF program will be calculated.

The final rule makes the following changes in response to identified ambiguities and gaps in existing regulations, as well as opportunities to simplify and improve the program’s administration:

- Amends the *Computation of time; filing* provision (§ 32.2) to make explicit agency authority to prescribe an online claim filing system;
- Amends *Time for filing a claim* provisions (§§ 32.12 and 32.22), and adds a suite of new definitions—*Claim*, *Claimant*, *Foundational evidence as to status and injury*, *Intention-notice filer*, *Notice of intention to file a claim*, *Supporting-evidence collection period*—to implement a revised version of the “completed application” notion proposed in PSOB II;
- Amends *Authorized commuting* to clarify that return travel from responding to a fire-, rescue-, or police emergency is included;
- Amends *Gross negligence* to allow for “reasonable excuse/objective justification” exceptions;

- Amends *Line of duty injury* to make explicit the inclusion of injuries sustained as result of retaliation for line-of-duty actions taken by an officer;

- Makes express the coverage of certain trainees by defining new terms (*Candidate-officer* and *Candidate-officer training*), and makes corresponding amendments to the definitions of *Firefighter*, *Involvement*, and *Rescue squad or ambulance crew*;

- Amends the definition of *Spouse* to reflect current jurisprudence, including the recent holding of the U.S. Court of Appeals for the Federal Circuit in *Hesson v. Department of Justice*, 664 Fed. App’x 932 (2016), a PSOB case;

- Makes express the circumstances under which officers engaging in public safety activity outside of their jurisdictions would be considered to be acting in the line of duty by adding a series of presumptions in the *Evidence* provision at § 32.5;

- Amends the *Evidence* provision at § 32.5 to create a legal presumption that certain legally licensed or -authorized volunteer fire departments satisfy various provisions the definition of *Instrumentality* and a revised version of the substance of the definition of *Volunteer fire department* proposed in PSOB II;

- Amends the *Evidence* provision at § 32.5(b) to include specific reference to the PSOB Act, in order to ensure proper application of the amendment made to the Act by the PSOB Improvement Act of 2017 relating to weight of evidence and factual findings;

- Amends the *Fees for representative services* provision (§ 32.7) to provide for a percentage-fee option; and
- Removes definitions for *Dependent*, *Eligible dependent*, and *Tax year* to conform to statutory amendments made by the Dale Long Act.

### C. Estimated Costs and Benefits

This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis. The rule is expect to lead to an increase in transfer payments. In addition, it will result in net cost savings of approximately \$24,723 per year to claimants and public safety agencies in substantiating claims. As set out in more detail below, this figure is based on the estimated annual cost savings to the public from changes to the Dale Long Act implementing provisions that will reduce the number of independent medical reviews required; and a variety of marginal efficiencies and burden reduction for claimants created by certain streamlined provisions and definitions.

## II. Discussion of the Provisions of the Final Rule and Responses to Public Comments on the Proposed Rules

### A. Section 32.2—Computation of time; filing.

This section sets forth the timeframes, means, and deadlines for filing a claim. The proposed rule sets forth some changes relating to specification of what would be considered “good cause” for purposes of waiver of filing deadlines. OJP received some comments on the PSOB I proposed rule expressing concern that “good cause” did not cover circumstances in which a claimant does not file a claim within time due to a lack of regulation or process such as 9/11 exposure claims, and in these comments OJP was asked to add to the proposed definition of “good cause” two provisions to address such circumstances. One commenter suggested that OJP create a three-year filing window for 9/11-health related death or disability claims similar to that provided in VCF regulations that runs from three years of the date of the regulation’s publication. Another commenter recommended that “good cause” also be extended to cases in which the claimant’s death or disability claim was not covered by the PSOB Program at the time of the officer’s death or disability or in cases where regulations permitting such a claim were not promulgated in time for a claim to be timely made.

OJP agrees that 9/11 exposure claimants should be provided with additional time to file claims for death and disability benefits. Rather than define “good cause,” OJP has decided that particular issues can be best addressed by establishing specific exceptions to the regulations that prescribe the time for filing death and disability claims. Accordingly, the final rule amends those sections. See discussion below on §§ 32.12 and 32.22—*Time for filing a claim*.

The final rule also makes minor technical changes for clarity at §§ 32.2(c) and 32.2(g) to make express reference to the Director of BJA’s authority to prescribe filing of claims by electronic means (§ 32.2(g)), in anticipation of the rollout of the new online PSOB claim system.

### B. Sections 32.3, 32.13, 32.23, and 32.33—Definitions.

The proposed rules presented various technical and substantive changes/additions to the definitions sections of the rule in order to implement certain statutory changes (in particular, the Dale Long Act), and also to align the PSOB program with the WTC Health Program.

The proposed rules also amended some definitions and added others to address gaps and remove ambiguities, and to implement improvements in claims processing. Considering all comments received, and upon further study of the regulatory and statutory scheme, OJP has revised some definitions as in the proposed rules, and declined to adopt others. These changes are discussed by topic below.

### 1. Definitions To Implement the Dale Long Act Amendments Applicable to Members of a Rescue Squad or Ambulance Crew

The Dale Long Act amended the PSOB Act to include a new category of public safety officer—“a member of a rescue squad or ambulance crew who, as authorized or licensed by law and by the applicable agency or entity, is engaging in rescue activity or in the provision of emergency medical services”. This amendment removed the requirement that an individual member of a rescue squad or ambulance crew be a “public employee”, and also established the requirement that employee- and volunteer members of public agency and nonprofit entity ambulance squads and rescue crews actually be engaging in rescue activity or providing emergency medical services in order to qualify as public safety officers under the Act.

The proposed rule provided revised definitions for *Line of duty activity or action* and *Officially recognized or designated public employee member of a squad or crew* and *Eligible public safety officer* to implement these changes. The agency did not receive any comments on this aspect of the proposed rule. After further analysis, the agency has determined that proper implementation of the statutory changes requires some additional definitions and slight changes to what was set forth in the proposed rule.

Accordingly, the final rule amends the program regulations in a more efficient way (with the same substantive result proposed to be reached in PSOB II)—*i.e.*, the final rule amends the program regulations by removing or amending the provisions that related to the former statutory requirement that members of a rescue squad or ambulance crew be “public employees” and adding provisions that reflect the new statutory requirements that replaced the former “public employee” requirement (see definitions of *Employed by a public agency*, *Line of duty activity or action*, *Officially recognized or designated employee member of a squad or crew*, *Officially recognized or designated volunteer*

*member of a squad or crew*, and *Public safety agency*).

### 2. Definitions To Implement Dale Long Act Amendments Relating to the Heart Attack-, Stroke- or Vascular Rupture Cases

The Dale Long Act amended the statutory presumption in the PSOB Act covering certain fatal heart attacks, strokes, and vascular ruptures (at 34 U.S.C. 10281(k)). Specifically, the new language provides that the presumption of coverage is overcome if “competent medical evidence establishes that the heart attack, stroke, or vascular rupture was unrelated to the engagement or participation or was directly and proximately caused by something other than the mere presence of cardiovascular-disease risk factors.”

PSOB I proposed to add definitions for *Unrelated*, *Competent medical evidence*, and *Something other than the mere presence of cardiovascular disease risk factor*. One commenter expressed approval that “PSOB is proposing to amend approved causes of death to include heart attacks, strokes, and vascular ruptures.” OJP appreciates the support for the proposed rule but notes that the commenter appears to misunderstand the operation of the legal presumption in the statute. The proposed rule would not have amended anything relating to “cause of death”—but rather would have implemented the statutory changes made to the presumption of a line-of-duty death for certain heart attack/stroke/vascular rupture cases by defining the new terms not defined in the statute itself.

Another commenter supported the proposed rule and stated that it would eliminate unnecessary medical evidence; another stated that the proposed rule would implement the Hometown Heroes Act as Congress intended. One commenter noted that the Dale Long Act did not define the phrase “something other than the mere presence of cardiovascular disease risk factors” and stated that the proposed definition did not support the intent of the Dale Long Act of ensuring that the families of officers who died or were permanently and totally disabled in the line of duty were provided benefits, and asked that the proposed definition be removed from the final rule. OJP appreciates these comments but does not agree, that the proposed definition is contrary to the intent of the Dale Long Act, or that it would limit the availability of benefits other than as the statute already has directed. The statutory term is key to determining when the presumption afforded by 34 U.S.C. 10281(k) is rebutted. In itself, the

phrase “something other than” is inherently ambiguous; to leave it undefined invites uncertainty. Accordingly, by defining the term in the regulation, OJP provides clarity and direction as to the circumstances under which the presumption would be rebutted, and the nature of the additional evidentiary development and medical review of the record that may be required in certain cases. Accordingly, the final rule adopts, with minor, non-substantive change, the language of the proposed rule, which implements the statutory changes by providing definitions of the statutory terms, so that claimants are informed under what circumstances the presumption provided at 34 U.S.C. 10281(k) may be overcome.

### 3. Provision Relating to the WTC Health Program and September 11th VCF Program

PSOB I proposed to amend the PSOB regulations in an effort to align the PSOB Program with the WTC Health Program and the VCF Program: Defining new terms—*September 11, 2001, terrorist attacks*, *List of WTC-related health conditions*, and *Physical harm* (and amending the *Evidence* provision of the regulation at 32.4 to include this latter term)—and amending the term *Injury* to include the notion of a health condition that is “*medically associated with a WTC-related health condition.*”

One commenter stated that although it was generally supportive of the regulatory changes proposed to address the unique circumstances of 9/11 claims, it noted that OJP relied on an outdated version of VCF’s definition of “physical harm” in 28 CFR 104.2. The commenter noted that the current rule, codified at 104.2(d) as published in the **Federal Register** on June 15, 2016, 81 FR 38936, 38941, added to the previous definition, “A WTC-Related Physical Health Condition,” which eliminated the requirements that a WTC-Related Physical Health Condition must have been treated by a medical professional within a reasonable period of time from the date such harm was discovered and be verifiable by contemporaneously created medical records. Another commenter noted the same issue and stated that the proposed rule should reflect the VCF’s amended definition. Based on the comments, OJP has determined that proposed incorporation of the term “physical harm” as a definition in the PSOB rule is not necessary, as the VCF regulations do not require such harm to establish a WTC-related physical health condition. Accordingly, OJP has omitted the definition from the final rule.

The proposed rule did not include a definition for “medically associated” (a term included in the proposed amendment of the definition of *Injury*), as OJP had anticipated that the analysis required for such determinations was better suited for the expertise of the WTC Health Program. Some commenters stated that the rule should include provisions that would enable the PSOB Program independently to identify as an injury those conditions “medically associated” with WTC-related health conditions. Other commenters pointed out that the law authorizing the Administrator of the WTC Health Program to certify a health condition as “WTC-related” also extends to conditions not on the List of WTC-Related Health Conditions, by virtue of the Administrator’s authority to require the WTC Health Program cover conditions that he finds to be “medically associated with a WTC-related health condition.”<sup>1</sup> As the WTC Health Program Administrator is authorized to make such certifications, the commenters suggest that the PSOB Program should also adopt this authority.

Although the proposed rule did not include “medically associated” conditions within its definition, after careful consideration, OJP recognizes that a condition certified by the Administrator of the WTC Health Program as “medically associated” with a WTC-related health condition could be an injury that directly and proximately causes a public safety officer’s death or permanent and total disability. Accordingly, the final rule replaces the definition of *List of WTC-related health conditions* with a definition of *WTC-related health condition*, a term that is broader than the one in the proposed rule.

OJP is not inclined, despite encouragement by one commenter, independently to determine when a condition is “medically associated,” because OJP has determined that it should rely on the expertise of the WTC Health Program in these matters. As revised in the final rule, the definition of a “WTC-related health condition” allows the agency to use certain provisions of the WTCHP in determining whether a responder suffered an “injury” in connection with his response to the September 11, 2001, attacks. To further this alignment of the PSOB Program with the WTC Health Program, the final rule also defines the terms *September 11, 2001, attacks* and *WTC responder* (which relates to the definition of *Injury*) to tie them to the

WTC Health Program statute and implementing regulations at 42 CFR part 88.

#### 4. Definitions Relating to Trainees, Suppression of Fire, Onsite Hazard Management, and Officers Acting Outside of Jurisdiction

OJP had attempted, in its proposed rule, to expand coverage under the PSOB Program to include trainees (and certain others) as “public safety officers” under circumstances in which they have no authority to engage in public safety activity, and also to expand coverage to officers responding outside of their jurisdiction where no law authorized such response. A number of commenters understandably applauded these proposed provisions, strictly on policy grounds, rather than on the basis of anything authorized by the law. Regarding the proposed addition of trainees (and others) as public safety officers and coverage of officers acting outside of their jurisdictions where no law authorized such action, however, one commenter forcefully pointed out that the provision was contrary to the language of the PSOB Act and to the legislative history of the Dale Long Act, and that a provision covering injuries sustained by law enforcement trainees with no authority to enforce the law was at odds with *Hawkins v. United States*, 469 F.3d 993 (Fed. Cir. 2006), providing that a law enforcement officer’s “actual responsibilities and obligations” determine whether an individual is in fact a law enforcement officer.

Upon further reflection, careful review of PSOB rulings by the federal courts, *see, e.g., Howard v. United States*, 229 Ct. Cl. 507 (1981); *Budd v. United States*, 225 Ct. Cl. 725 (1980); *Tafoya v. United States*, 8 Cl. Ct. 256 (1985); *Yanco v. United States*, 45 Fed. Cl. 782 (2000); and *Amber-Messick ex rel. Kangas v. United States*, 483 F.3d 1316 (Fed. Cir. 2007); and close consideration of the lengthy discussion in H.R. Rep. 112–548 (accompanying the Dale Long Act), OJP has determined these proposed expansions of coverage may not lawfully be made by regulation, as such expansions would be *ultra vires* under the PSOB Act. The discussion in the House Report on the Dale Long Act refers specifically to the authority requirement under the PSOB Act:

[U]nder the PSOBA as currently in effect, police academy trainees are considered “law enforcement officers” only after they acquire the legal authority and responsibility to go out and enforce the law by making arrests and detaining real or suspected criminals, because, under the PSOBA and related statutes, one cannot be a “law enforcement

officer” unless one actually has the legal duty to enforce the criminal law; and the same goes for fire-fighter trainees, who are not considered “firefighters” until they actually acquire the legal authority and responsibility to go out and protect the public by fighting fires, because one is not a “firefighter” under the PSOBA and related statutes if one is not under the duty to fight fires. Mere authority to engage in training activities has never been enough to make someone a public safety officer, and when the dangers inherent in some academy or other training exercises lead to fatal or catastrophic injury, only those trainees who coincidentally happen already to have that outside legal authority and responsibility are covered under current law.

H. Rep. No. 112–548 (2012).

OJP has concluded that the specific expansions that were proposed to cover trainees and officers acting outside their jurisdictions, however desirable, may be accomplished only through legislation. For this reason, the final rule does not include the specific expansions proposed. Nonetheless, the final rule does modify the current regulations to make express that trainee officers *are* covered, where those trainee-officers *do* have legal authority. To this end, the final rule adds the following new definitions: *Candidate officer* and *Candidate-officer training*, and amends the definitions of *Firefighter*, *Involvement*, and *Member of a rescue squad or ambulance crew* to include the terms “candidate-officer” and “candidate-officer training”. As a result of these revisions, the final rule makes clear that a trainee public safety officer who possesses requisite authority would be covered as a “public safety officer” under the PSOB Act.

Similarly, for an officer acting outside of his jurisdiction, the final rule clarifies the circumstances when such an officer would be covered, through the mechanism of certain evidentiary presumptions. (See discussion below of *Evidence* at § 32.5.)

#### 5. Amendment of Definition of “Child of a Public Safety Officer”

The Dale Long Act amended the definition of “child” under the PSOB Act by tying the term, for the first time, specifically to “*the time of the public safety officer’s fatal or catastrophic injury.*” 34 U.S.C. 10284(3) (Emphasis added.) Pursuant to this statutory amendment, the final rule makes conforming changes to the regulatory definition of *Child of a public safety officer*.

#### 6. Provisions Relating to Claims Processing

In OJP’s current practice, when it receives an application for benefits that lacks the basic required documents

<sup>1</sup> 42 U.S.C. 300mm–22(b)(2)(A)–(B).

needed to render a determination, it assigns it a claim number, processes it as a *claim* from the moment a claim form is received, and thereafter conducts biweekly outreach efforts to obtain from the applicant and the officer's public agency information required to establish eligibility for benefits. Claims lacking the basic required documents are currently treated as part of the backlog, even though those claims are not ready for adjudication.

In an effort to improve the efficiency of claims processing, PSOB II proposed to add a new provision, at § 32.9, setting forth a new notion, called "*completed application*" for benefits. Under the proposed rule, the PSOB Office would maintain and publish on the PSOB Program website a list of basic required documents that claimants would be required to file with applications for PSOB Program death, disability, and education benefits—which would be the absolute minimum documentation that the PSOB Program would require before treating an application as a *claim*, and devoting resources to processing it as such.

OJP did not receive specific comments about the proposed § 32.9. As discussed below, however, at *Time for filing a claim* under §§ 32.12 and 32.22, the final rule implements the substance of the proposed mechanism in a somewhat different way, and with largely the same effect. Accordingly, the final rule does not include a new § 32.9, but, instead, provides new definitions for the following terms: *Claim*, *Claimant*, *Foundational evidence as to status and injury*, *Intention-notice filer*, *Notice of intention to file a claim*, and *Supporting-evidence collection period*. Under the final rule, an individual may elect (instead of filing a claim) to file a "notice of intention to file"—which essentially stops the clock for a year (called the *Supporting-evidence period*), while the individual and the involved agencies gather *Foundational evidence* (which was what the proposed rule had intended to refer to by a list on the PSOB website.) At any time during this period, an individual may opt to submit a claim. In line with the proposed rule, this mechanism is designed to assist individuals who intend to file claims by affording them time to gather the information necessary for the claim, as well as provide transparency regarding the progress of the process so that they better understand what foundational evidence is required for their claims. In addition, the mechanism set out in the final rule will assist OJP in improving efficiencies in claims review.

#### 7. Provisions Relating to Statutory Limitations on Payment (34 U.S.C. 10282)

PSOB II proposed changes to the existing definitions of *Voluntary intoxication at the time of death or catastrophic injury* and *Gross negligence*, which implement statutory limitations in the PSOB Act found at 34 U.S.C. 10282. The preamble to the proposed rule explained that the aim of these changes was OJP's effort to "focus its inquiry" with regard to the issues arising under this provision, and "to streamline" and "to simplify the application of this statutory bar to payment and limit its application." The proposed rule also amended the term defined in the existing regulation (*Voluntary intoxication at the time of death or catastrophic injury*) to reflect a statutory amendment that changed the statutory reference to voluntary intoxication at "the time of the officer's fatal or catastrophic injury."

Since the proposed rule was published, however, the legal landscape with regard to the limitations provision in the PSOB Act has changed significantly. Enacted on June 2, 2017, the PSOB Improvements Act of 2017 amended 34 U.S.C. 10282 to provide that when determining a PSOB claim, OJP "shall presume that none of limitations" in 34 U.S.C. 10282(a) applies, and that it "shall not determine that a limitation . . . applies, absent clear and convincing evidence." Public Law 115–36.

This statutory amendment alters how the agency must apply 34 U.S.C. 10282. OJP has determined that most of the proposed changes to the definition of *Voluntary intoxication at the time of death or catastrophic injury* are not necessary. Consonant with the thrust of the proposed rule, however, and with the positive commentary received in connection with the proposed changes, the final rule does (1) replace the existing definition of *Voluntary intoxication at the time of death or catastrophic injury* with a new definition of *Voluntary intoxication at the time of fatal or catastrophic injury* that largely restates the substance of the existing one, but is framed using much more "streamlined" and "simplified" language that is tied to analogous changes to the existing regulatory definition of the statutory term *Drugs and other substances*; and (2) amend the definition of *Gross negligence* to allow for reasonable excuse- and objective justification exceptions from the departure from standard of care.

#### 8. Authorized Commuting

A few commenters commented on the proposed amendment of the definition of *authorized commuting* in PSOB II. One commenter supported the clarification in the proposed rule that *return* travel from public safety is a line of duty activity and recommended that OJP revise paragraph (2)(ii) of the definition of authorized commuting in the proposed rule to cover travel in a vehicle not issued by the officer's agency pursuant to an authorization by the agency that the officer use such vehicle for work. Another commenter, while supporting the proposed revision of the rule to cover return travel from public safety activity, recommended that OJP revise paragraph (2) of the proposed rule to cover all travel to and from work as in the line of duty.

OJP declines to expand the definition of "authorized commuting" to include all travel to and from work, as this would be inconsistent with the rationale and legal basis for the current rule. The current rule is based on well-established exceptions to the "coming and going" rule and covers three categories of work-related travel situations that indicate a connection between the officer's employment and the circumstances of the officer's injury such that the injury can be said to have been sustained in the line of duty.<sup>2</sup> As described in OJP's 2006 rulemaking, these exceptions are: "(1) the officer is responding to a particular fire, police or rescue emergency; (2) the officer is commuting to or from work in an agency vehicle; or (3) the officer is commuting to or from work in a personal vehicle that [the officer] is required to use for work."<sup>3</sup>

The final rule amends the definition in a slightly different way from the proposed rule, but with substantially the same result of including as *authorized commuting* travel to and from work in those circumstances where: (1) The officer is responding to a particular fire, police or rescue emergency (or returning from such response); (2) the officer is commuting to or from work in an agency vehicle; or (3) the officer is commuting to or from work in a personal vehicle that the officer is required to use for work.

#### 9. Line of Duty Injury

Two commenters supported the proposed rule's revision of the term "line of duty injury" to include those injuries sustained as a result of retaliation for actions taken in the line of duty by an officer. Consistent with

<sup>2</sup> See *Russell v. Law Enforcement Assistance Admin.*, 637 F.2d 1255, 1263–64 (9th Cir. 1980).

<sup>3</sup> 71 FR 46028, 46033 (Aug. 10, 2006).

the thrust of PSOB II, the final rule amends the term to include those injuries sustained as a result of retaliation for actions taken in the line of duty by an officer.

#### 10. Instrumentality

With respect to non-profit volunteer fire departments, the proposed rule introduced a new definition of *volunteer fire department* in an attempt to include those volunteer fire departments that would not otherwise meet the definition of *public agency* because the particular arrangements they have with their jurisdictions. One commenter generally supported the proposed definition of a volunteer fire department, but expressed concern about the third condition in the proposed rule, to require that a VFD provide “fire protection to the public without preference or subscription.” Noting that some VFDs provide services to all members of the public but are funded through subscriptions, the commenter recommended that the term “subscription” be deleted from the rule. A second commenter disagreed with the proposed definition of volunteer fire department, asserting that the proposed regulation would revise the definition to permit VFDs to qualify as instrumentalities “even when they are not instrumentalities” and, in so doing, impermissibly “writes the words out of the law.” The commenter recommended that OJP should consider amending its own definition of instrumentality “to better reflect the realities of volunteer fire departments.” The final rule establishes an evidentiary presumption, in lieu of the definitional change that had been proposed in PSOB II, with substantially the same result and which addresses the concerns raised by the commenters. (See discussion below of § 32.5.)

#### 11. Spouse

The definition is modified to reflect current jurisprudence, including the holding of the U.S. Court of Appeals for the Federal Circuit in a PSOB case decided only last year, *Hesson v. Department of Justice*, 664 Fed. App'x 932 (2016). The final rule makes clear that the regulatory definition does not refer to the injured or deceased public safety officer.

#### 12. Proposed Definitional Changes That Are Not Included in Final Rule

PSOB II proposed various other changes to the definitions (not otherwise discussed above), which are not adopted in the final rule:

- *Injury*—PSOB II proposed to amend the definition of *Injury* to make certain changes, including some changes

relating to stress and strain (including mental stress and strain) and some changes that would have added a series of examples of types of injuries. After considering comments that criticized the proposed amendments on the grounds that they may be misleading and could be interpreted as not including other, similar injuries, and after reflecting further on certain relevant judicial holdings in several PSOB cases,<sup>4</sup> OJP declines, in this final rule, to make the amendments to this definition that were proposed. Unrelated to this, however, OJP does amend the definition of *Injury* with regard to WTC-related health conditions, discussed above in B.3.

- *PSOB Counsel*—PSOB II proposed to add a new section 32.10 (*PSOB Counsel*) that, among other things, would have severely limited the internal, administrative review of factual findings in PSOB claims. Some favorable comments were received (mostly on grounds of preventing unnecessary delay by counsel). Notwithstanding the opinion reflected in these comments, in this connection, OJP notes that the Office of the Inspector General’s “Audit of the Office of Justice Programs’ Processing of Public Safety Officers’ Benefit Programs Claims” (Audit Division Report No. 15–21; July, 2015) determined that the chronic delays in processing of PSOB claims had various causes, none of which was attributable to actions taken

<sup>4</sup> *Juneau v. Dep’t of Justice*, 583 F.3d 777 (Fed. Cir. 2009) (“conditions caused by ‘stress or strain’” not covered under PSOB); *Yanco v. United States*, 258 F.3d 1356 (Fed. Cir. 2001) (“ . . . Congress’s intent in enacting the Benefits Act was to provide a death benefit for the survivor or survivors of a law enforcement officer who dies as the result of what one would understand to be some kind of a physical assault or trauma to the body. . . . In short, the legislative history points away from an intent on the part of Congress to have the statutory term ‘personal injury’ include mental strain.”); *aff’g* 45 Fed. Cl. 782 (2000); *Greeley ex rel. Greeley v. United States*, 50 F.3d 1009 (Fed. Cir. 1995); *Russell v. United States*, 231 Ct. Cl. 1022; *Smykowski v. United States*, 647 F.2d 1103 (Ct. Cl. 1981) (“exclu[sion of] stress [and] strain . . . from the coverage of the Act [is] amply justified by the statutory language, legislative history, and medical statistics.”); *Morrow v. United States*, 647 F.2d 1099 (Ct. Cl. 1981); *Curtis v. Dep’t of Justice*, 342 Fed. App’x 610 (Fed. Cir. 2009) (“the PSOB Act does not provide compensation for” such conditions as “mental strains such as PTSD and depression”); *Canfield v. United States*, No. 339–79 (Fed. Cir. Dec. 29, 1982) (non-coverage of strain “is well within the purposes and intent of the statute”); *Porter v. United States*, 64 Fed. Cl. 143 (2005), *aff’d mem.*, 176 Fed. App’x 111 (Fed. Cir. 2006); *Durco v. United States*, 14 Cl. Ct. 424 (1988); *North v. United States*, 555 F. Supp. 382 (Cl. Ct. 1982); *Cook v. United States*, No. 05–1050C (Fed. Cl. Jun. 15, 2006); *Davison v. United States*, No. 99–361C (Fed. Cl. Apr. 19, 2002); *Askev v. United States*, No. 542–83C (Cl. Ct. Aug. 27, 1984); see also *Harrison v. Dep’t of Justice*, No. 14–8006 (Fed. Cir. Oct. 16, 2015).

by the OJP Office of the General Counsel, or the PSOB Legal Counsel. Another commenter (currently a prosecutor—and thus a public safety officer under the PSOB Act—and formerly a claims attorney) expressed strenuous opposition to the proposal, citing both a very-detailed and sharply-critical, recent determination by the Department of Justice’s Inspector General (Oversight and Review Division Report #16–03 (May 3016)) “that the Director of the Bureau [of Justice Assistance], in a PSOB Act case, made factual findings that were not supported by any evidence in the record and actually paid the claim against the law” and the House Judiciary Committee Report that accompanied the Dale Long Act (H.R. Rep. No. 112–548). The House Report does include discussion that runs counter to the thrust of the proposal:

When it approves claims for the benefits payable under the PSOBA and related statutes, the Bureau of Justice Assistance of the Justice Department’s Office of Justice Programs has a legal duty to do so judiciously. The Bureau has the concurrent duty to be both the impartial administrator of the PSOBA according to the law and the impartial guardian of the public treasury with respect to it. Failure to administer the PSOBA program in keeping with these two principles could jeopardize the program’s continued existence. It is just as problematic for the program if the Department of Justice pays a PSOBA claim when payment is not unequivocally warranted by the PSOBA program statutes and implementing regulations, or is not supported by the evidence, as it is for the Department to deny payment when payment is clearly required.

Under 31 U.S.C. 3528, every Department official who determines PSOBA claims and/or certifies payments is personally “responsible for . . . repaying a payment [that is] illegal, improper, or incorrect because of an inaccurate or misleading certificate; [that is] prohibited by law; or . . . that does not represent a legal obligation under the appropriation . . . involved” unless the determination “was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information.” Under 31 U.S.C. 3528, every Department official who determines PSOBA claims and/or certifies payments is personally “responsible for . . . repaying a payment [that is] illegal, improper, or incorrect because of an inaccurate or misleading certificate; [that is] prohibited by law; or . . . that does not represent a legal obligation under the appropriation . . . involved” unless the determination “was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information.”

Moreover, under 31 U.S.C. 1301(a), a payment pursuant to a legally unwarranted PSOBA determination would appear to be a

violation of 31 U.S.C. 1341(a)(1)(A), the Anti-Deficiency Act, which is a felony statute in addition to carrying civil and administrative penalties, 31 U.S.C. 1350, 1349(a).

\* \* \* \* \*

Every PSOBA case is a legal claim against the Treasury, and the [PSOB] regulations and consistent administrative precedents have helped to ensure that the Federal Government, which is in the midst of its greatest debt crisis since the Founding, decides these claims strictly in accordance with the PSOBA and the underlying law governing legal gratuities, in a generally consistent and orderly manner over time, and based on real, objective, and legally sufficient evidence that objectively meets the standards of proof set forth in the law, rather than speculation, fancied legislative intent, uncorroborated assertions, biased evidence, a slanted record, incomplete information, or sympathy, however understandable or deeply felt.

H.R. Rep. No. 112–548 (2012). Given all the foregoing, OJP declines, in this final rule, to add the proposed § 32.10.

• *Miscellaneous proposed changes*—PSOB II proposed to amend the PSOB regulatory definitions of *Beneficiary of life insurance policy of public safety officer*, *Engagement in a situation*, *Gainful work*, *Medical certainty*, *Non-routine strenuous physical activity*, *Non-routine stressful physical activity*, *Permanently disabled*, and *Totally disabled*. After reflecting further on the text of the PSOB Act itself, and on the discussion about the Department's responsibilities in adjudicating PSOB claims, quoted immediately above, from the House Judiciary Committee Report that accompanied the Dale Long Act (H.R. Rep. No. 112–548), OJP declines, in this final rule, to make proposed amendments to these definitions.

#### C. Section 32.4—Terms; construction; severability.

The final rule makes a change to this section to make it parallel to a provision of the PSOB Act (at 34 U.S.C. 10285(d)), so that the same rule regarding the operation of the legal doctrine of incorporation applies both in the PSOB Act and in the PSOB regulations.

#### D. Section 32.5—Evidence.

As discussed in Section B.4 above, the PSOB II rule proposed, *ultra vires*, to expand coverage under the PSOB Program to certain law enforcement officers and firefighters who respond to public safety events outside of their respective jurisdictions even where no law authorized such response.

After reconsidering the regulatory and statutory schemes, OJP is adopting amendments to § 32.5 in this final rule, to establish certain evidentiary presumptions that will accomplish as

much of the substance of the rule proposed as may be accomplished without statutory change. The new paragraphs (j), (k) and (l) in § 32.5 operate as a suite of presumptions designed to cover public safety activity performed by a law enforcement officer or firefighter as *Line of duty activity or action* under certain circumstances.

• Section 32.5(j) provides that public safety activity performed by a law enforcement officer or firefighter is presumed to be activity or action that he is obligated or authorized to perform under the auspices of the public agency he serves if—(1) the public safety activity is not forbidden (by law, rule, regulation, condition of employment, etc.); and (2) the officer performs the public safety activity either (a) within his jurisdiction (*i.e.*, within the jurisdiction where he normally is authorized to act in the line of his duty); or (b) within a jurisdiction (not his own) that provides authority for law enforcement officers or firefighters from outside the jurisdiction to perform the public safety activity he performed.

• Section 32.5(k) establishes that the requirements of § 32.5(j) generally will be presumed to be satisfied if full line-of-duty death or disability benefits have been paid in the ordinary course.

• Section 32.5(l) provides that if the presumption established by § 32.5(j) arises under circumstances where the public safety activity is performed outside the jurisdiction where the law enforcement officer or the firefighter normally is authorized to act in the line of his duty, then the law enforcement officer or the firefighter shall be deemed to serving that jurisdiction “in an official capacity” when he performed the public safety activity (which an element required under the PSOB Act's definition of “public safety officer” at 34 U.S.C. 10284(9)). To be eligible as a “public safety officer” under the Act, a firefighter must be serving “a public agency in an official capacity.” 34 U.S.C. 10284(9)(A); the statutory definition of “public agency” includes an “instrumentality” of a government.

In PSOB II, OJP proposed a new definition of *Volunteer fire department* to address the status of volunteer fire departments as “public agencies” under the PSOB Act. (See discussion under B.10. above.) After further analysis and study, and following somewhat upon the suggestion of one commenter on the proposed rule (who recommended that the proposed change be accomplished—if at all—through amendment of the definition of *Instrumentality*), OJP has determined that a better approach is to create a legal presumption that certain legally licensed or -authorized volunteer

fire departments satisfy various provisions of the definition of *Instrumentality*.

PSOB II proposed to make certain amendments to § 32.5, including amendments relating to the presumption at 34 U.S.C. 10281(k) (affecting heart attack/stroke/vascular rupture cases) (§ 32.5(i), to general evidentiary rules (§§ 32.5(b) and (c); 32.5(k)), and to WTC-related health conditions. Although these proposals garnered some comments favoring the policy, the proposals also were the object of very forceful negative commentary (which included citation to H.R. Rep. 112–548 (accompanying the Dale Long Act))—almost entirely of a legal nature—opining that the several proposals variously would “write[] the very meaning of [certain language] out of the PSOB statute,” would “swallow” exceptions established in the PSOB Act, appeared to involve “overreach by DOJ to get around statutory language in order to pay claims,” and would produce “case after case in litigation.”

After further reflection on the comments received, and after close consideration of the stern admonition in H.R. Rep. 112–548 to the effect that the PSOB Act's “requirements [are] firmly established in the law and therefore [are] to be given full effect, rather than minimized, ignored, or interpreted away, judicially or administratively,” H. Rep. No. 112–548 (2012), OJP agrees largely with the negative commentary it received. Accordingly—with one partial exception involving WTC-related health conditions—the final rule does not include the proposed changes to § 32.5. In the final rule, the substance of the change proposed to be made to § 32.5 involving WTC-related health conditions is being implemented, instead, through a direct amendment to the definition of *Injury* under § 32.3.

#### E. Section 32.6—Payment and repayment

OJP proposed to amend this provision to specify how the PSOB Program will calculate the offset of PSOB death or disability benefits based on the actual net amount of compensation paid to or on behalf of a public safety officer under the September 11th VCF program after all VCF-mandated offsets have been subtracted. No comments were received on the proposal, which is included in the final rule without substantive change.

#### F. Section 32.7—Fees for representative services

Various changes were proposed to the fee provisions in the current regulations to establish the maximum fees that may

be charged for services performed in connection with a claim, to eliminate restrictions on types of fee arrangements, and to establish fee amounts that are presumptively reasonable in claims determined at the PSOB Office level, at the Hearing Officer level, or at the BJA Director level. The agency did not receive comments on the proposed rule.

The final rule provides for a percentage-fee arrangement as an option that may be used in appropriate circumstances to determine attorneys' fees. That is, claimants may choose the new percentage-fee approach in lieu of the traditional fee petition process (entailing submission of itemized specifics of fees) that is in place under the current rule. Petitions for authorization to receive fees in amounts greater than those specified in the percentage-fee provision (or under circumstances not covered by that provision) otherwise will be continue to be considered as they are at present under this section of the regulations.

*G. Sections 32.12 and 32.22—Time for filing a claim.*

In response to the comments on the proposed rule's changes to § 32.2 *Computation of time* (see discussion at II.A. above), the final rule revises the provisions prescribing when claims for PSOB Program death and disability must be filed: For ordinary claims, claimants must file a claim before the later of three years from the date of the officer's death or injury, or one year from the date of a final public agency decision of eligibility to receive or denial of death (or disability) benefits based on the officer's service. For claims based on an injury resulting from the September 11, 2001, attacks, claimants must file such claims before the latter of two years from the effective date of this final rule, two years from the date the WTC-related health condition upon which the claim is based is added to the List of WTC-Related Health Conditions, or two years from the date such condition is certified by the Administrator of the WTC Health Program as medically associated with a WTC-related health condition.

Much of the proposed rule, and of the public comments, concerned circumstances under which OJP may consider a claim abandoned, and what to do when a claim cannot be properly processed because evidence is lacking (at times through no fault of the claimant), and the mechanics of a contemplated "complete applications" scheme. Consistent with the thrust of the proposed rule (but not its precise terminology and mechanics), the final

rule provides an optional pre-claim evidence collection period mechanism that stops the filing-deadline clock so that individuals are given time to gather the basic foundational evidence without the looming prospect of a claim's being deemed abandoned. Individuals will have the option of filing a "notice of intent to file", rather than filing a claim directly, in order to afford them time to gather the "foundational evidence" needed to establish a claim. This approach, together with the new, online PSOB application system currently in beta-testing, will improve clarity and transparency throughout the process regarding the status of filings and claims, and avoid delays occasioned by miscommunication and misunderstandings regarding claim requirements and status. Throughout this period and the claim process period, the PSOB Office will continue to assist individuals in obtaining information needed to move a claim forward, using its subpoena authority wherever and whenever appropriate and necessary.

*H. Section 32.14—PSOB Office determination.*

The final rule makes conforming changes largely related to the modified claims processing procedures described in B.6, above, and to the phrasing in the rest of the rule.

*I. Section 32.15—Prerequisite certification.*

The final rule makes conforming changes related to the Dale Long Act amendment adding a new category of public safety officer, described in B.1, above.

*J. Section 32.16—Payment.*

The final rule makes conforming changes related to the Dale Long Act amendment related to distribution of benefits under 34 U.S.C. 10281(a).

*K. Section 32.24—PSOB Office determination.*

The final rule makes conforming changes related to the modified claims processing procedures described in B.6, above, and to the phrasing in the rest of the rule.

*L. Section 32.25—Prerequisite certification.*

The final rule makes conforming changes related to the Dale Long Act amendment adding a new category of public safety officer, described in B.1, above.

*M. Section 32.26—Payment.*

The final rule removes and reserves this section to conform to the Dale Long Act amendment related to distribution of benefits under 34 U.S.C. 10281(a).

*N. Section 32.32—Time for filing a claim.*

The final rule makes a grammatical correction.

*O. Section 32.44—Hearing Officer determination.*

The final rule makes non-substantive, stylistic changes, to conform the phrasing to the rest of the rule.

*P. Section 32.45—Hearings.*

The final rule adds language that is substantively the same as language proposed in PSOB II, relating to who may examine claimants during hearings.

*Q. Section 32.52—Time for filing Director appeal.*

The final rule makes a grammatical correction.

*R. Section 32.53(a)—Review.*

In keeping with the proposed rule, the final rule amends this section to allow reconsideration of certain denied claims where the public safety officer was WTC responder.

*S. Section 32.54—Director determination.*

The final rule makes stylistic, conforming changes related to the modified claims processing procedures described in B.6, above, and to the phrasing in the rest of the rule.

*T. Section 32.55—Judicial Appeal.*

The final rule removes language that unnecessarily repeats the substance of language in 34 U.S.C. 10287.

### III. Regulatory Requirements

*Executive Order 12866 and 13563—Regulatory Planning and Review; Executive Order 13771—Reducing Regulation and Controlling Cost*

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. The Office of Justice Programs has determined that this rule is a "significant regulatory action" (though not an "economically significant" action) under section 3(f) of the Executive Order 12866, and accordingly this rule has been reviewed



by the Office of Management and Budget (OMB).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As explained below, the agency has assessed the costs and benefits of this rule as required by Executive Order 12866 and 13563 and has determined that the benefits of the rule justify the costs.

The final rule may result in a *de minimis*—approximately one percent of BJA’s annual outlays for the PSOB Program—increase in transfer payments going forward, which BJA estimates at approximately 3 claims, or \$1,032,000 per year.<sup>5</sup> The rule provisions relating to 9/11 claims will permit BJA to pay certain claims more quickly, by clarifying BJA’s authority to apply the WTC Health Program standards, but it would be speculative to assume that this would create additional transfer payments or that these payments would be attributable to this rule (see discussion below). In any event, BJA estimates that its current appropriation levels are sufficient to cover the annual costs of transfer payments *potentially* associated with this aspect of the rule, which (based on pending cases) BJA estimates to be approximately \$8.8M in currently pending claims, plus \$450,000 in associated educational benefits payments. The amount would be significantly less on an annual basis going forward because the bulk of 9/11 claims have likely already been submitted.

OMB’s April 5, 2017, guidance on E.O. 13771 (M–17–21), explains, with regard to transfer payments, that—

Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries (for example, regulations associated with . . . Medicare spending) are considered ‘transfer rules’ and are not covered by E.O. 13771. . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than *de minimis* costs. Examples of ancillary requirements that may require offsets include new reporting or recordkeeping requirements.

<sup>5</sup> This estimate is based on the changes related to *Line of duty injury* to cover retaliation for actions taken in the line of duty; to *Evidence* related to out of jurisdiction activity; and to the presumption relating to volunteer fire departments and certain elements of the definition of *Instrumentality*. The amount is based on the FY17 death benefit amount.

In accordance with OMB’s guidance, BJA has determined that this final rule is a transfer rule. Aside from these potential transfer payments, the rule reduces the burden on claimants in substantiating certain claims under the applicable statutory requirements. The rule provisions affecting matters other than the transfer payments are deregulatory (*i.e.*, they reduce costs and burdens) by a value estimated to be approximately \$24,723 per year, which amounts to \$210,892 in present value over ten years.<sup>6</sup> This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found below. Consistent with the principles above, BJA discusses below the costs and benefits of each substantive change to the existing rule.

#### A. Section 32.2—Computation of time; filing.

BJA amends this provision to authorize BJA to require that claimants file claims electronically. In October 2017, BJA deployed its online filing system, PSOB 2.0, which standardizes submission of electronic forms. Since that time, PSOB has required and only received electronic submissions. This provision codifies the requirement that claims be submitted electronically. The electronic filing system typically saves claimants one hour per form, because the system automatically prompts users for missing items, hides irrelevant fields, and eliminates form version control problems. PSOB 2.0 allows claimants to review the contents of their claim files online and retrieve documents as needed from their submissions without the need to call or request that BJA copy and send such documents by mail, thus reducing printing and mailing costs, and the administrative time BJA staff spend handling these issues. The changes do not change the substance of the required forms, or create any new procedural or evidentiary requirements, and thus impose no new burdens on claimants.

<sup>6</sup> As set out in more detail below, this figure is based on the estimated annual cost savings to the public from changes to the Dale Long Act implementing provisions that will reduce the number of independent medical reviews required (\$24,723); and a variety of marginal efficiencies and burden reduction for claimants created by certain streamlined provisions and definitions. BJA estimated the present day value of these cost savings over ten years using a discount rate of 3 percent.

B. Sections 32.3, 32.13, 32.23, and 32.33—Definitions.

#### 1. Implementation of Dale Long Act Amendments Applicable to Certain Members of a Rescue Squad or Ambulance Crew

BJA makes conforming changes to address the Dale Long Act provisions that expanded the types of rescue squad and ambulance crew members covered under the PSOB Act to include non-public employee members of such squads or crews, under certain circumstances. Any potential costs for additional payable claims are created by the Dale Long Act, which has been in effect and implemented by BJA since 2013, and not by the conforming changes made by this rule. The changes will marginally reduce burdens on BJA and claimants by making the text of the PSOB rule conform to the statute.

#### 2. Implementation of Dale Long Act Amendments Relating to Heart Attacks, Strokes, and Vascular Ruptures

BJA makes conforming and interpretive changes to address the Dale Long Act provisions that amend the PSOB Act standards at 34 U.S.C. 10281(k), for cases involving heart attacks, strokes, or vascular ruptures. The PSOB Act, as amended by the Hometown Heroes Survivors’ Benefits Act of 2003, but prior to the Dale Long Act amendment in 2013, contained a presumption allowing payment of death benefits under certain circumstances to public safety officers who died of heart attacks or strokes, unless the presumption was overcome by “competent medical evidence to the contrary.” The Dale Long Act, among other things, added vascular ruptures to the presumption (in addition to heart attacks and strokes), and elaborated on what evidence would overcome the presumption—*i.e.*, where competent medical evidence establishes either that the heart attack, stroke, or vascular rupture was “unrelated” to the officer’s engagement or participation in a qualifying activity; or that the heart attack, stroke, or vascular rupture “was directly and proximately caused by something other than the mere presence of cardiovascular-disease risk factors.”

BJA makes conforming changes to the rule to include vascular ruptures, consistent with 34 U.S.C. 10281(k)(3), to define more precisely the circumstances under which the statutory presumption relating to heart attacks, strokes, and vascular ruptures would be overcome. This will create no costs beyond those created by the Dale Long Act. In short, BJA defines *Competent medical evidence* to rely upon the existing

definition of *Medical probability*, which may be established pursuant to a medical assessment based on the preponderance of the available evidence. BJA defines the first rebuttal factor, where an officer's heart attack, stroke, or vascular rupture is *Unrelated* to the engagement or participation in qualifying activity, in a common-sense way: requiring a finding that "an independent event or occurrence" (e.g., an off-duty officer's accident) was a "substantial contributing factor" (a term defined in the existing regulation) in bringing the heart attack, stroke, or vascular rupture about. BJA defines the second rebuttal factor, where *Something other than the mere presence of cardiovascular disease risk factors* caused the heart attack, stroke, or vascular rupture, consistent with its current interpretation, to require a finding that the heart attack, stroke, or vascular rupture was caused by the ingestion of Schedule I drugs, or abuse of Schedule II, III, IV, or V drugs.

These interpretive amendments conform the rule to the statutory provision, and impose no costs beyond those additional transfer payments created by the statute itself. The rules should reduce the number of claims sent to an independent medical review, and the associated costs. BJA estimates that these changes will eliminate the need for approximately 41 medical reviews each year, saving BJA approximately \$67,732 annually in medical review costs,<sup>7</sup> which amounts to \$577,768 in present costs over a ten-year period, and saving claimants (in aggregate) approximately \$24,723 annually, which amounts to \$210,892 in present costs over a ten-year period.<sup>8</sup>

<sup>7</sup> This estimate is based on an average of 92 relevant claims per year that BJA processes, of which, approximately 46 required medical review under the previous regulatory interpretation. BJA estimates it will need to conduct medical reviews for only 5 of those 92 claims under the revised rule, resulting in 41 fewer medical reviews per year. Each medical review costs BJA an average of \$1652 (based on 2009–2015 death benefit data). Present costs calculated at a 3% discount rate.

<sup>8</sup> This estimate is based on 41 medical reviews, and the maximum fees permitted by law, which vary by state, though here BJA assumed \$.67/page, and an average of 900 pages of medical records in claims for PSOB Program death benefits, as determined in a random sampling of claims involving medical issues that require a claimant to provide such records. See, e.g., Joy Pritts, et al., *Privacy and Security Solutions for Interoperable Health Information Exchange: Report on State Medical Record Access Laws*, <https://www.healthit.gov/sites/default/files/290-05-0015-state-law-access-report-1.pdf>; Table A–5, *Overview of State Law: Maximum Fees Doctors and Hospitals May Charge Patients for Copies of Medical Records* <https://www.healthit.gov/sites/default/files/appa5-1.pdf> (accessed June 16, 2016). BJA estimated the present day value of these cost savings over ten years using a discount rate of 3 percent.

3. Provision Relating to the WTC Health Program and September 11th VCF Program

BJA makes changes to provisions affecting the PSOB payments related to the September 11, 2001, attacks.

First, it provides that OJP will rely on the expertise of the WTC Health Program in making a determination as to whether a condition resulted from a WTC responder's 9/11 exposures, and thus an *Injury* under the PSOB Program. Currently, 28 CFR 32.5 expressly provides that BJA may rely upon a public agency's factual finding (e.g., a certification by the WTC Health Program regarding an officer's condition, or a VCF eligibility finding) to determine that an officer sustained a qualifying injury, or it may evaluate the evidence submitted by a claimant to determine whether the injury qualifies. This rule expressly provides a third approach (that could be used in the absence of a public agency finding regarding that specific officer's condition, and in lieu of independently creating standards and evaluating whether the officer's condition resulted from 9/11 exposures) under which BJA could apply the WTC Health Program's standards for when a condition is related to a WTC responder's 9/11 exposures, when determining whether an officer's condition is an injury for purposes of the PSOB Program.<sup>9</sup> This express approach thus would reduce costs for BJA and claimants, who would not have to replicate the scientific and medical analysis already performed by the WTC Health Program. BJA expects this would benefit those 9/11 claimants who will not obtain a public agency finding regarding the officer's exposure (e.g., a claimant for a deceased officer who never sought a certification of eligibility for treatment by the WTC Health Program before dying). Attributing these transfer payments to this rule, is difficult, however, because some of these claimants may be able to substantiate their claims under the current rule, albeit at a greater cost and time burden to everyone involved, and some may eventually obtain a public agency finding from the VCF or WTC Health Program. Estimating the amount of the transfer payments also is difficult because PSOB likely will receive additional claims based on 9/11 as conditions manifest over time, conditions may be added to the List of WTC-Related Health Conditions by the

<sup>9</sup> See the discussion of the James Zadroga 9/11 Health and Compensation Act of 2010, describing the analysis performed by the WTC Health Program, at 81 FR 46019, 46020 (PSOB I Notice of Proposed Rulemaking).

WTC Health Program, and many payments are likely to be offset by VCF payments. BJA estimates that this provision would affect approximately 29 claims (27 death, 2 disability) based on WTC-related health conditions that are pending with BJA and for which BJA would, under the final rule, independently apply the WTC Health Program standards to determine an injury for purposes of the PSOB Program. (This is of 158 pending 9/11 exposure claims.) This would potentially increase transfer payments by a maximum of \$8.8M total, plus approximately \$450,000 in educational benefits associated with those 29 claims. Additional transfer payments would be significantly less than this amount on an annual basis going forward because the bulk of 9/11 claims have likely already been submitted.<sup>10</sup> Cost savings from this change are difficult to forecast, because it is uncertain how claimants would pursue their claims in the absence of the final rule, but BJA expects this to save at least several thousand dollars in BJA processing costs and claimant costs associated with establishing that a condition is related to 9/11.

Second, it specifies how offset of PSOB benefits by September 11th VCF benefits (a requirement of the Dale Long Act) will be calculated. Offset is required by statute, which the rule merely implements—thus, it creates no new costs.

Third, it clarifies that PSOB claimants whose payments are offset are still eligible for PSOB educational assistance. This change reflects BJA's current practice and the statutory framework; *i.e.*, that there is no required offset of educational assistance under the statute (as amended by Dale Long), thus it makes the rule more transparent and creates no new costs.

Fourth, it provides additional time for 9/11 exposure claimants to file their

<sup>10</sup> As of July 17, 2017, there were 158 total PSOB death and disability claims pending with assertions of injuries based on some kind of 9/11-related exposure. Of these, BJA estimates that approximately 29 would be determined much sooner if BJA uses the authority in the final rule to independently apply the WTC Health Program standards, instead of waiting for the claimant to obtain a WTC Health Program certification or VCF equivalent or requiring additional evidence. Some of those claimants may be able to substantiate their claims without the rule change, though only with additional documentation, and it is likely that some payments would be offset for VCF benefits. For this subset of pending claims based on 9/11-related exposure, BJA estimates that if all 29 claims are approved, up to 49 additional people may qualify for educational assistance at some point in the future. BJA estimated the annual educational assistance benefit increase using the FY 2017 maximum monthly payment rate of \$1024 per month based on those 49 additional people each claiming 9 months of educational assistance.

claims (see *Time for filing a claim* provisions at 32.12 and 32.22), and allows reconsideration of certain denied claims for WTC responders (see 32.53(a)). These equitable procedural rule changes prevent unfairness to claimants whose claims would be approved under the WTC Health Program standards, or who would have filed had they been able to take advantage of those standards. This may cause BJA to make some transfer payments that it would not have done under the current rule, but BJA does not expect this to alter its overall cost estimate for 9/11 claims that take advantage of BJA's reliance upon the WTC Health Program standards (see above).

#### 4. Trainees

BJA makes express the coverage of certain public safety officer trainees by adding new terms, *Candidate officer* and *Candidate-officer training*, and amending the terms *Firefighter*, *Involvement*, and *Member of a rescue squad or ambulance crew* to include the new terms. This change will not impose any new costs, but it will marginally reduce the burden for program staff and claimants in understanding the conditions under which trainees are covered.

#### 5. Child of a Public Safety Officer

BJA makes a conforming change to this definition related to the Dale Long Act. It creates no new costs.

#### 6. Provisions Related to Claims Processing

This rule creates a pre-claim process by which claimants may stay the claim filing deadline while they continue to gather necessary evidence, and BJA may more expeditiously issue a final determination on claims that patently lack necessary evidence. BJA anticipates that this procedure will allow it to better allocate resources to reviewing completed files, and will clarify for reporting purposes which files are "ripe" and should be counted as claims pending with BJA versus those where the claimant is still gathering evidence. BJA expects that this will preempt the need for hearing officer proceedings in several claims each year, and marginally reduce the burden on program staff. Hearing officer proceedings can cost several thousand dollars (or more when claimant attorneys' fees are factored in), thus BJA expects this provision to save several thousand dollars each year for BJA and claimants.

#### 7. Gross Negligence

BJA amends the definition of *Gross negligence* to make patent in the rule that actions that otherwise would be gross negligence, and thus a statutory bar to payment, are not considered gross negligence when reasonably excused or objectively justified. BJA expects the revised provision will create no new costs, but will be easier for program staff and claimants to understand and apply, thus marginally reducing the burden associated with claims involving actions potentially implicating this disentiing factor.

#### 8. Authorized Commuting Clarification

BJA amends the definition of *Authorized commuting* to clarify that return travel by a public safety officer from certain activities constitutes "authorized commuting" and, therefore, injuries sustained in the course of such travel are compensable as line of duty injuries. This clarification merely makes patent BJA's existing interpretation related to injuries sustained by public safety officers while commuting, thus imposes no new costs. It will, however, marginally reduce the burden on claimants by clarifying an aspect of authorized commuting that may have caused confusion among claimants and program staff, thus facilitating the collection of relevant documentation, reducing delays associated with resolving factual questions, and preempting potential litigation.

#### 9. Line of Duty Injury—Retaliation for Action in the Line of Duty

BJA amends the term *Line of duty injury* so as expressly to include those injuries sustained as a result of retaliation for actions taken in the line of duty by an officer. This adds to the existing regulations, which provide that a *Line of duty injury* includes an injury resulting from the injured party's status as a public safety officer. Very few PSOB claims received to date have involved retaliation. Accordingly, BJA anticipates—at most (perhaps one claim per year, if that)—a negligible increase in transfer payments as a result of this provision.

#### 10. Volunteer Fire Departments as Instrumentalities

BJA adds a legal presumption that volunteer fire departments meeting specified criteria satisfy certain elements of the definition of *Instrumentality* of a public agency. BJA anticipates that this change may marginally (by perhaps one claim per year) increase the transfer payments under the program. The change would marginally reduce the burden for

program staff in determining, and of claimants in showing, that a volunteer fire department qualifies under the program.

#### 11. Spouse

BJA amends the definition of *Spouse* to update the rule to reflect current jurisprudence. This does not create any new costs.

#### C. Section 32.4—Terms; construction; severability.

BJA makes a technical change conforming the rule to the PSOB Act. This change creates no new costs.

#### D. Section 32.5—Evidence.

BJA makes express the circumstances under which officers engaging in public safety activity outside of their jurisdictions would be considered to be acting in the line of duty, by adding a series of presumptions in the *Evidence* provision at 32.5. BJA anticipates that this change may marginally (by an estimated one claim per year) increase the transfer payments under the program, because it may make it easier for officers injured outside of their jurisdiction to establish that they were engaging in a line of duty activity or action when injured. The change will marginally reduce the burden for program staff and claimants of understanding the circumstances under which such officers are covered.

BJA makes a conforming change to *Evidence* at 32.5(b) related to the PSOB Improvement Act of 2017, to ensure that those reading the rule do not overlook a relevant statutory provision. The change creates no new costs, but may marginally reduce burdens by preventing confusion.

#### E. Section 32.6—Payment and repayment.

BJA amends this provision to implement offset of PSOB death and disability benefits by September 11th VCF program compensation. The amendments reflect BJA's current practice and create no new costs.

#### F. Section 32.7—Fees for representative services.

BJA amends this section to provide a percentage-fee option, which offers a simplified and more transparent way for attorneys to determine how much they can charge for representing PSOB claimants in their PSOB claims, and eliminates the need for BJA to review fee petitions in such cases. BJA anticipates the change will not result in increased payment of attorneys' fees, but will reduce BJA's administrative burden by 2.5 hours of GS-14 time for

each fee petition, saving an estimated \$1391 worth of staff time annually.

G. Sections 32.12 and 32.22—Time for filing a claim; 32.53(a)—Review.

BJA makes certain changes to filing deadlines for 9/11 claimants—see costs-benefit discussion above in paragraph III.B.3.

H. Non-Substantive Changes To Conform the Rule to the Statute or Other Provisions of the Rule, or To Make Technical Corrections.

BJA makes conforming or technical changes to sections 32.14, 32.15, 32.16, 32.24, 32.25, 32.26, 32.32, 32.44, 32.45, 32.52, 32.54, and 32.55, and removes the definitions of *Dependent*, *Eligible dependent*, and *Tax year*. These changes do not create costs beyond those addressed above.

#### *Executive Order 13132—Federalism*

This rule would not have substantial direct effects on the States, on the relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. The PSOB program statutes provide benefits to individuals and do not impose any special or unique requirements on States or localities. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12988—Civil Justice Reform*

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

#### *Regulatory Flexibility Act*

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule addresses federal agency procedures; furthermore, this rule makes amendments to clarify existing regulations and agency practice concerning public safety officers' death, disability, and education benefits and

does nothing to increase the financial burden on any small entities. Therefore, an analysis of the impact of this rule on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Paperwork Reduction Act of 1995*

The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. 44 U.S.C. 3507.

This rule would not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. OMB has approved the collection of information for the PSOB Program under the following: Report of Public Safety Officers' Permanent and Total Disability, OMB Control No. 1121–0166, approved July 27, 2016; Report of Public Safety Officers' Death, OMB Control No. 1121–0025, approved July 27, 2016; Claim for Death Benefits, OMB Control No. 1121–0024, approved August 18, 2016. OJP will comply with the PRA by revising its collection of information to reflect modified reporting requirements when it implements electronic filing as provided in the newly added 28 CFR 32.2(g).

#### *Unfunded Mandates Reform Act of 1995*

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

#### **List of Subjects in 28 CFR Part 32**

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

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

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

■ 1. The authority citation for 28 CFR Part 32 is revised to read as follows:

**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.

■ 2. Amend § 32.2 as follows:

■ a. In paragraph (b), remove “A filing” and add in its place “Except as provided in paragraph (g) of this section, a filing”.

■ b. In paragraph (c) introductory text, remove “Notice” and add in its place “Except as provided in paragraph (g) of this section, notice”.

■ c. In paragraph (c)(1), add “or” after the semicolon.

■ d. In paragraph (c)(2), remove “; or” and add in its place a period.

■ e. Remove paragraph (c)(3).

■ f. In paragraphs (e) and (f), remove “42 U.S.C. 3796(a)” and add in its place “34 U.S.C. 10281(a)”.

■ g. In paragraphs (e) and (f), remove “42 U.S.C. 3796c–1” and add in its place “34 U.S.C. 10286”.

■ h. Add paragraph (g).

The addition reads as follows:

#### **§ 32.2 Computation of time; filing.**

\* \* \* \* \*

(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.

■ 3. Amend § 32.3 as follows:

■ a. Revise the definition of *Act*.

■ b. Revise the definition of *Authorized commuting*.

■ c. Add definitions of *Candidate-officer*; *Candidate-officer training*; and *Certification described in the Act*, at 34 U.S.C. 10286 or Public Law 107–37 in alphabetical order.

- d. Remove the definition of *Certification described in the Act*, at 42 U.S.C. 3796c-1 or Public Law 107-37.
- e. In the definition of *Chaplain*, remove “42 U.S.C. 3796b(2)” and add in its place “34 U.S.C. 10284(2)”.
- f. Revise paragraph (1) of the definition of *Child of a public safety officer*.
- g. Add definitions of *Claim* and *Claimant* in alphabetical order.
- h. Remove the definition of *Consequences of an injury that permanently prevent an individual from performing any gainful work*.
- i. In the definition of *Department or agency*, remove “42 U.S.C. 3796b(8)” and add in its place “34 U.S.C. 10284(8)”.
- j. In paragraph (2) of the definition of *Department or agency*, remove “42 U.S.C. 3796b(9)(B)” and add in its place “34 U.S.C. 10284(9)(B)”.
- k. In the definition of *Determination*, remove “, the determination described in the Act, at 42 U.S.C. 3796(c), or any recommendation under § 32.54(c)(3)”.
- l. In the definitions of *Direct and proximate cause* and *Direct and proximate result of an injury*, remove “42 U.S.C. 3796(k)” each place it appears and add in its place “34 U.S.C. 10281(k)”.
- m. In the definitions of *Disaster relief activity* and *Disaster relief worker*, remove “42 U.S.C. 3796b(9)(B)” each place it appears and add in its place “34 U.S.C. 10284(9)(B)”.
- n. In the definition of *Divorce*, remove “divorce from the” and add in its place “(for civil purposes) dissolution of the”.
- o. Revise the definition of *Drugs or other substances*.
- p. In paragraph (1) of the definition of *Eligible payee*, remove “42 U.S.C. 3796(a)” and add in its place “34 U.S.C. 10281(a)”.
- q. In paragraph (2) of the definition of *Eligible payee*, remove “42 U.S.C. 3796(b)” and add in its place “34 U.S.C. 10281(b)”.
- r. In paragraph (1) of the definition of *Emergency medical services*, remove “Provision of first-response” and add in its place “First-response”.
- s. In the introductory text of the definition of *Employed by a public agency*, remove “42 U.S.C. 3796c-1” and add in its place “34 U.S.C. 10286”.
- t. In paragraph (2)(i) of the definition of *Employed by a public agency*, remove “of any kind but disaster relief workers; or” and add in its place “described in the Act, at 34 U.S.C. 10284(9)(A);”.
- u. In paragraph (2)(ii) of the definition of *Employed by a public agency*, remove “42 U.S.C. 3796b(9)(B) or (C) (with respect to disaster relief workers)” and add in its place “34 U.S.C. 10284(9)(B) or (C) (with respect to disaster relief workers); or”.
- v. In the definition of *Employed by a public agency*, add paragraph (2)(iii).
- w. In paragraph (1) of the definition of *Firefighter*, add “(or is receiving candidate-officer training)” after “trained”.
- x. In the introductory text of paragraph (2) of the definition of *Firefighter*, remove “authority and” and add in its place “authority or”.
- y. In paragraph (2)(i) of the definition of *Firefighter*, add “(or candidate-officer)” after “employee”.
- z. In paragraph (2)(i) of the definition of *Firefighter*, remove “42 U.S.C. 3796b(4)” and add in its place “34 U.S.C. 10284(4)”.
- aa. Add a definition of *Foundational evidence as to status or injury* in alphabetical order.
- bb. In the introductory text of the definition of *Gross negligence*, remove “practice—” and add in its place “practice (which departure is without reasonable excuse and is objectively unjustified)—”.
- cc. In the definition of *Injury*, remove “radiation, virii, or bacteria, but” and add in its place “radiation, virus, or bacteria, and includes (with respect to a WTC responder) a WTC-related health condition, but”.
- dd. In the introductory text of the definition of *Injury date*, remove “42 U.S.C. 3796(k) (where, for purposes of determining beneficiaries under the Act, at 42 U.S.C. 3796(a), it generally means the time of the heart attack or stroke referred to in the Act, at 42 U.S.C. 3796(k)(2)), injury” and add in its place “34 U.S.C. 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”.
- ee. In the introductory text of the definition of *Instrumentality*, remove “except that no entity shall be considered an instrumentality within the meaning of the Act, at 42 U.S.C. 3796b(8), or” and add in its place “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”.
- ff. Add a definition of *Intention-notice filer* in alphabetical order.
- gg. In paragraph (1)(i)(B) of the definition of *Intentional misconduct*, remove “the public agency in which he serves” and add in its place “his public safety agency”.
- hh. In the definition of *Involvement*, remove “officer of a public agency and, in that capacity, has legal authority and” and add in its place “officer (including a candidate-officer) of a public agency and, in that capacity, has legal authority or”.
- ii. Revise the introductory text of the definition of *Line of duty activity or action*.
- jj. In the introductory text of paragraph (1) of the definition of *Line of duty activity or action*, remove “officer, a firefighter, or a member of a rescue squad or ambulance crew—” and add in its place “officer or a firefighter—”.
- kk. Revise paragraph (1)(i) of the definition of *Line of duty activity or action*.
- ll. Revise paragraph (1)(ii) of the definition of *Line of duty activity or action*.
- mm. In paragraph (2) of the definition of *Line of duty activity or action*, remove “agency he serves (or the relevant government), being described in the Act, at 42 U.S.C. 3796b(9)(B)” and add in its place “public agency in which he is an employee (or the relevant government), being described in the Act, at 34 U.S.C. 10284(9)(B)”.
- nn. In paragraph (2) and paragraph (3) introductory text of the definition of *Line of duty activity or action*, remove “42 U.S.C. 3796a(1), and not being” each place it appears and add in its place “34 U.S.C. 10282(a), and not being commuting or”.
- oo. In the definition of *Line of duty activity or action*, add paragraph (4).
- pp. Revise paragraph (2) of the definition of *Line of duty injury*.
- qq. Add a definition of *Notice of intention to file a claim* in alphabetical order.
- rr. In the definition of *Official capacity*, remove “An” and add in its place “Subject to § 32.5(l), an”.
- ss. Remove the definition of *Official training program of a public safety officer’s public agency*.
- tt. Add a definition of *Official training program of a public safety officer’s public safety agency* in alphabetical order.
- uu. Add a definition of *Officially recognized or designated employee member of a rescue squad or ambulance crew* in alphabetical order.
- vv. In the definition of *Officially recognized or designated member of a department or agency*, remove “42 U.S.C. 3796b(8)” and add in its place “34 U.S.C. 10284(8)”.
- ww. Remove the definition of *Officially recognized or designated public employee member of a squad or crew*.
- xx. Add a definition of *Officially recognized or designated volunteer member of a rescue squad or ambulance crew* in alphabetical order.

- yy. In the definition of *Public employee*, remove “42 U.S.C. 3796b(8)” each place it appears and add in its place “34 U.S.C. 10284(8)”.
- zz. Remove the definition of *Public employee member of a squad or crew*.
- aaa. Add a definition of *Public safety agency* in alphabetical order.
- bbb. In the introductory text of the definition of *Qualified beneficiary*, remove “42 U.S.C. 3796c-1” and add in its place “34 U.S.C. 10286”.
- ccc. In paragraph (1)(i) of the definition of *Qualified beneficiary*, remove “42 U.S.C. 3796(a)” and add in its place “34 U.S.C. 10281(a)”.
- ddd. In the introductory text of the definition of *Rescue squad or ambulance crew*, add “(including candidate-officers)” after “members”.
- eee. In paragraph (1) of the definition of *Rescue squad or ambulance crew*, add “(or are receiving candidate-officer training)” after “trained”.
- fff. Add a definition of *September 11, 2001, attacks* in alphabetical order.
- ggg. Revise the definition of *Spouse*.
- hhh. In the definition of *Stroke*, remove “cerebral vascular” and add in its place “cerebrovascular”.
- iii. In the definition of *Student*, remove “42 U.S.C. 3796b(3)(ii)” and add in its place “34 U.S.C. 10284(3)(ii)”.
- jjj. In the introductory text of the definition of *Substantial contributing factor*, remove “, or disability,” and add in its place “, disability, heart attack, stroke, or vascular rupture,”.
- kkk. Add a definition of *Supporting-evidence collection period* in alphabetical order.
- lll. In the introductory text of the definition of *Terrorist attack*, remove “42 U.S.C. 3796c-1(a)” and add in its place “34 U.S.C. 10286(a)”.
- mmm. Remove the definition of *Voluntary intoxication at the time of death or catastrophic injury*.
- nnn. Add definitions of *Voluntary intoxication at the time of fatal or catastrophic injury*; *WTC-related health condition*; and *WTC responder* in alphabetical order.

The additions and revisions read as follows:

**§ 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.

\* \* \* \* \*  
*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.

\* \* \* \* \*  
*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

\* \* \* \* \*  
*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);
- (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.

\* \* \* \* \*  
*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

\* \* \* \* \*  
*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 determination 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.

\* \* \* \* \*  
*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.

\* \* \* \* \*

*Employed by a public agency*

\* \* \* \* \*

(2) \* \* \*

(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).

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*Line of duty activity or action*—

Subject to § 32.5(f) 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) \* \* \*

(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 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; 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;

\* \* \* \* \*

(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*

\* \* \* \* \*

(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).

\* \* \* \* \*

*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.

\* \* \* \* \*

*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 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.

\* \* \* \* \*

*Public safety agency* means—

(1) A public agency—

(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).

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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;

(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).

■ 4. Amend § 32.4 as follows:

■ a. In paragraph (b), remove "42 U.S.C. 3796a(4)" and add in its place "34 U.S.C. 10282(a)(4)".

■ b. In paragraph (d), remove "42 U.S.C. 3796(k), shall apply only with respect to heart attacks or strokes referred to in the Act, at 42 U.S.C. 3796(k)(2)" and add in its place "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))”.

■ c. Add paragraph (e).

The addition reads as follows:

**§ 32.4 Terms; construction; severability; 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.

■ 5. Amend § 32.5 as follows:

■ a. In paragraph (b), remove “provided in this part, the PSOB determining official may, at his discretion, consider (but shall not be bound by) the factual findings of a public agency.” and add in its place “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).”.

■ b. In paragraph (f), remove “42 U.S.C. 3796c–1” each place it appears and add in its place “34 U.S.C. 10286”.

■ c. In paragraph (f)(1)(ii), remove (i.e., performing official functions for, or on behalf of, the agency);” and add in its place “and performing official functions for, or on behalf of, the agency;”.

■ d. In paragraph (f)(1)(iii)(D), remove “public employee member of one of the agency’s rescue squads or ambulance crews;” and add in its place “employee member or volunteer member of a rescue squad or ambulance crew that is (or is a component of) the agency;”.

■ e. In paragraph (f)(1)(iii)(E), remove “42 U.S.C. 3796b(9)(B)” and add in its place “34 U.S.C. 10284(9)(B)”.

■ f. In paragraph (g), remove “42 U.S.C. 3787 (hearings, subpoenas, oaths, witnesses, evidence), and to the authorities specified at 42 U.S.C. 3788(b)–(d)” and add in its place “34 U.S.C. 10225 (hearings, subpoenas, oaths, witnesses, evidence), and to the authorities specified at 34 U.S.C. 10226(b)–(d)”.

■ g. In paragraph (h)(2)(v), remove “42 U.S.C. 3795a” and add in its place “34 U.S.C. 10272”.

■ h. In paragraph (i), remove “public agency” and add in its place “public safety agency”.

■ i. Add paragraphs (j), (k), (l) and (m).

The additions read as follows:

**§ 32.5 Evidence.**

\* \* \* \* \*

(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—

(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*.

■ 6. Amend § 32.6 as follows:

■ a. Revise paragraph (b).

■ b. In paragraph (d), remove “42 U.S.C. 3796(m)” and add in its place “34 U.S.C. 10281(m)”.

■ c. Add paragraph (f).

The revision and addition read as follows:

**§ 32.6 Payment and repayment.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

■ 7. Amend § 32.7 as follows:

■ a. In the first sentence of paragraph (a), remove “claimant for representative services provided in connection with any claim may” and add in its place “claimant for representative services provided in connection with any matter under this part may”.

■ b. Revise the introductory text of paragraph (c).

■ c. Revise the introductory text of paragraph (d).

■ d. In the first sentence of paragraph (f), remove “Upon its authorizing or not authorizing the payment of any amount under paragraph” and add in its place “Upon its approving (in whole or in part), or denying, a petition under paragraph”.

■ e. In the second sentence of paragraph (f), remove “authorization” and add in its place “approval or denial”.

■ f. Add paragraph (h).

The revisions and addition read as follows:

**§ 32.7 Fees for representative services.**

\* \* \* \* \*

(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:

\* \* \* \* \*

(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—

\* \* \* \* \*

(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.

#### § 32.11 [Amended]

■ 8. Amend § 32.11 as follows:

■ a. In paragraph (a), remove “42 U.S.C. 3796(a)” and add in its place “34 U.S.C. 10281(a)”.

■ b. In paragraph (b), remove “42 U.S.C. 3796c-1” and add in its place “34 U.S.C. 10286”.

■ 9. Effective June 14, 2018, revise § 32.12 to read as follows:

#### § 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:

(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.

■ 10. Effective June 14, 2020, revise paragraph (d) of § 32.12 to read 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).

■ 11. Amend § 32.13 as follows:

■ a. Remove the definition of *Beneficiary under the Act*, at 42 U.S.C. 3796(a)(4)(A).

■ b. Add definitions of *Beneficiary under the Act*, at 34 U.S.C. 10281(a)(4)(A) and *Competent medical evidence* in alphabetical order.

■ c. Remove the definition of *Competent medical evidence to the contrary*.

■ d. In the definition of *Designation on file*, remove “42 U.S.C. 3796(a)(4)(A)” and add in its place “34 U.S.C. 10281(a)(4)(A)”.

■ e. In paragraph (2) of the definition of *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*, remove “The public agency he serves” and add in its place “His public safety agency”.

■ f. In the definition of *Event*, remove “42 U.S.C. 3796(k)(1)” and add in its place “34 U.S.C. 10281(k)(1)”.

■ g. Remove the definition of *Excessive consumption of alcohol*.

■ h. Add a definition of *Execution of a designation of beneficiary under the Act*, at 34 U.S.C. 10281(a)(4)(A) in alphabetical order.

■ i. Remove the definitions of *Extrinsic circumstances*; *Execution of a designation of beneficiary under the Act*, at 42 U.S.C. 3796(a)(4)(A) and *Most recently executed designation of beneficiary under the Act*, at 42 U.S.C. 3796 (a)(4)(A).

■ j. Add a definition of *Most recently executed designation of beneficiary under the Act*, at 34 U.S.C. 10281(a)(4)(A) in alphabetical order.

■ k. In the definitions of *Nonroutine strenuous physical activity* and *Nonroutine stressful physical activity*,

remove “42 U.S.C. 3796(I)” and add in its place “34 U.S.C. 10281(I)”.

■ l. In paragraph (1) of the definition of *Participation in a training exercise*, remove “public agency;” and add in its place “public safety agency;”.

■ m. Remove the definition of *Public safety agency, -organization, or-unit*.

■ n. Add a definition of *Public safety organization or unit* in alphabetical order.

■ o. Remove the definition of *Risky behavior*.

■ p. In paragraph (1) of the definition of *Routine*, remove “public agency” and add in its place “public safety agency”.

■ q. Add definitions of *Something other than the mere presence of cardiovascular disease risk factors* and *Unrelated*, in alphabetical order.

■ r. Remove the definition of *Undertaking of treatment*.

The additions read as follows:

### § 32.13 Definitions.

\* \* \* \* \*

*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 unterminated, 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.

\* \* \* \* \*

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

\* \* \* \* \*

*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).

\* \* \* \* \*

*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.

\* \* \* \* \*

*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).

\* \* \* \* \*

*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)).

\* \* \* \* \*

*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.

■ 12. Amend § 32.14 as follows:

■ a. Revise paragraph (a).

■ b. In paragraph (b), remove “abandoned.” and add in its place “abandoned, as though never filed.”

■ c. Remove paragraph (c).

The revision reads as follows:

### § 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.

\* \* \* \* \*

### § 32.15 [Amended]

■ 13. Amend § 32.15 as follows:

■ a. In paragraph (a) introductory text, remove “42 U.S.C. 3796c–1” and add in its place “34 U.S.C. 10286”.

■ b. In paragraph (a)(1) introductory text, remove “the public agency in which the public safety officer served” and add in its place “the public safety officer’s public safety agency”.

■ c. In paragraph (a)(2), add “(or public safety agency)” after “public agency”.

■ d. In paragraph (b), remove “public agency that legally is authorized to pay death benefits with respect to the agency described in that paragraph.” and add in its place “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).”.

■ e. In paragraph (c)(1), add “, and every public safety agency,” before “that”.

■ f. In paragraph (c)(2), add “, or public safety agency,” before “legally”.

■ g. In paragraph (d) introductory text, remove “42 U.S.C. 3796(k), are satisfied with respect to a particular public safety officer’s death, and that no circumstance specified in the Act, at 42 U.S.C. 3796a(1),” and add in its place “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),”.

■ h. In paragraph (d)(2)(i), add “(or public safety agency’s)” before “understanding”.

■ i. In paragraph (d)(2)(ii), add “(or public safety agency)” before “is”.

### § 32.16 [Amended]

■ 14. Remove paragraph (c) of § 32.16.

### § 32.21 [Amended]

■ 15. Amend § 32.21 as follows:

■ a. In paragraph (a), remove “42 U.S.C. 3796(b)” and add in its place “34 U.S.C. 10281(b)”.

■ b. In paragraph (b), remove “42 U.S.C. 3796c-1” and add in its place “34 U.S.C. 10286”.

■ 16. Effective June 14, 2018, revise § 32.22 to read as follows:

**§ 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.

■ 17. Effective June 14, 2020, revise paragraph (d) of § 32.22 to read as follows:

**§ 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).

■ 18. Amend § 32.24 as follows:

■ a. Revise paragraph (a).

■ b. In paragraph (b), remove “abandoned.” and add in its place “abandoned, as though never filed.”

The revision reads as follows:

**§ 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.

\* \* \* \* \*

**§ 32.25 [Amended]**

■ 19. Amend § 32.25 as follows:

■ a. In paragraph (a) introductory text, remove “42 U.S.C. 3796c-1” and add in its place “34 U.S.C. 10286”.

■ b. In paragraph (a)(1) introductory text, remove “the public agency in which the public safety officer served” and add in its place “the public safety officer's public safety agency”.

■ c. In paragraph (a)(2)(ii), remove “made by any public agency” and add in its place “or findings made by any public agency (or public safety agency)”.

■ d. In paragraph (b), add “(or public safety agency)” after “public agency”.

■ e. In paragraph (c)(1), add “, and every public safety agency,” before “that”.

■ f. In paragraph (c)(2), add “, or public safety agency,” before “legally”.

**§ 32.26 [Removed and reserved]**

■ 20. Remove and reserve § 32.26.

**§ 32.31 [Amended]**

■ 21. In § 32.31, remove “42 U.S.C. 3796d-1.” and add in its place “34 U.S.C. 10302.”.

**§ 32.32 [Amended]**

■ 22. Amend § 32.32 as follows:

■ a. In paragraph (a), remove “42 U.S.C. 3796d-1(c),” and add in its place “34 U.S.C. 10302(c),”.

■ b. In paragraph (c), remove “nonphysical” and add in its place “non-physical”.

■ 23. Amend § 32.33 as follows:

■ a. Remove the definitions of *Dependent* and *Eligible dependent*.

■ b. Revise the definition of *Eligible public safety officer*.

■ c. In the definition of *Financial assistance*, remove “42 U.S.C. 3796d-1” and add in its place “34 U.S.C. 10302.”.

■ d. In paragraph (1) of the definition of *Financial need*, remove “42 U.S.C. 3796d-1(a)(3)(A)” and add in its place “34 U.S.C. 10302(a)(3)”.

■ e. Remove the definitions of *Public safety agency* and *Tax year*.

The revision reads as follows:

**§ 32.33 Definitions.**

\* \* \* \* \*

*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).

\* \* \* \* \*

#### § 32.34 [Amended]

- 24. In paragraph (c) of § 32.34, remove “abandoned.” and add in its place “abandoned, as though never filed.”

#### § 32.36 [Amended]

- 25. In paragraph (a) of § 32.36, remove “42 U.S.C. 3796d–1(a)(2),” and add in its place “34 U.S.C. 10302(a)(2),”.

#### § 32.43 [Amended]

- 26. In paragraph (a) of § 32.43, remove “42 U.S.C. 3787” and add in its place “34 U.S.C. 10225”.

- 27. Revise paragraph (b) of § 32.44 to read as follows:

#### § 32.44 Hearing Officer determination.

\* \* \* \* \*

(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.

\* \* \* \* \*

- 28. Amend § 32.45 as follows:

- a. In paragraph (d)(1), remove “; and”.

- b. In paragraph (d)(2), remove the period and add in its place “; and”.

- c. Add paragraph (d)(3).

The addition reads as follows:

#### § 32.45 Hearings.

\* \* \* \* \*

(d) \* \* \*

(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.

\* \* \* \* \*

#### § 32.51 [Amended]

- 29. In § 32.51, remove “42 U.S.C. 3796c–1” and add in its place “34 U.S.C. 10286”.

#### § 32.52 [Amended]

- 30. In paragraph (b) of § 32.52, remove “nonphysical” and add in its place “non-physical”.

- 31. Effective June 14, 2018, amend § 32.53 as follows:

- a. In paragraph (b)(2), remove “42 U.S.C. 3796c–1” and add in its place “34 U.S.C. 10286”.

- b. Add paragraph (d).

The addition reads as follows:

#### § 32.53 Review.

\* \* \* \* \*

(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.

- 32. Effective June 14, 2020, revise paragraph (d)(5) of § 32.53, to read 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).

- 33. Amend § 32.54 as follows:

- a. Revise paragraph (a).

- b. In paragraph (c) introductory text, remove “may—” and add in its place “may (among other things)—”.

The revision reads as follows:

#### § 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.

\* \* \* \* \*

- 34. Revise § 32.55 to read as follows:

#### § 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.

Dated May 2, 2018.

**Alan R. Hanson,**

*Principal Deputy Assistant Attorney General.*

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BILLING CODE 4410–18–P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

#### Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation’s regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in June 2018. The interest assumptions are used for paying benefits under