

2032. See section 203(b). A covered jurisdiction may terminate Section 203 coverage earlier if it can prove in a declaratory judgment action in a United States district court, that the illiteracy rate of the applicable language minority group is equal to or less than the national illiteracy rate, as described in section 203(d) of the Act.

■ 5. Amend § 55.8 by revising paragraph (b) to read as follows:

§ 55.8 Relationship between section 4(f)(4) and section 203(c).

* * * * *

(b) Jurisdictions subject to the requirements of section 4(f)(4)—but not jurisdictions subject only to the requirements of section 203(c)—are also

subject to the Act's special provisions, such as section 5 (regarding preclearance of changes in voting laws) and section 8 (regarding federal observers).² See part 51 of this chapter.

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■ 6. Amend § 55.11 by revising the last sentence to read as follows:

§ 55.11 General.

* * * For those jurisdictions covered under section 203(c), the coverage determination (indicated in the appendix) may specify the particular language minority group (in parentheses) for which the jurisdiction is covered, but does not specify the language or dialect to be used for such group.

■ 7. Amend § 55.23 by revising paragraph (b) to read as follows:

§ 55.23 Enforcement by the Attorney General.

* * * * *

(b) Also, certain violations may be subject to criminal sanctions. See sections 12(a) and (c) and 205.

■ 8. Revise the Appendix to part 55 to read as follows:

Appendix to Part 55—Jurisdictions Covered Under Sections 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as Amended [Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) ¹	Coverage under sec. 203(c) ²
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¹ Coverage determinations for Section 4(f)(4) were published at 40 FR 43746 (Sept. 23, 1975), 40 FR 49422 (Oct. 22, 1975), 41 FR 783 (Jan. 5, 1976) (corrected at 41 FR 1503 (Jan. 8, 1976)), and 41 FR 34329 (Aug. 13, 1976). The Voting Section maintains a current list of those jurisdictions that have maintained successful declaratory judgments from the United States District Court for the District of Columbia pursuant to section 4 of the Act on its Web site at <http://www.justice.gov/crt/about/vot/>. See § 55.7 of this part.

² Coverage determinations for Section 203 based on 2000 Census data were published at 67 FR 48871 (July 26, 2002). Subsequent coverage determinations for Section 203 will be based on 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data. See section 203(b)(2)(A). New coverage determinations for Section 203 by the Director of the Census Bureau are forthcoming.

Dated: August 24, 2011.

Eric H. Holder, Jr.,
Attorney General.

[FR Doc. 2011-22160 Filed 8-30-11; 8:45 am]

BILLING CODE 4410-13-P

DEPARTMENT OF JUSTICE

28 CFR Part 104

[Docket No. CIV 151]

RIN 1105-AB39

James Zadroga 9/11 Health and Compensation Act of 2010

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On January 2, 2011, President Obama signed into law the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act). Title II of the Zadroga Act reactivates the September 11th Victim Compensation Fund of 2001 and requires a Special Master, appointed by the Attorney General, to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. The Attorney General appointed Sheila

L. Birnbaum to serve as Special Master and administer the Fund. On June 21, 2011, the Special Master issued a Notice of Proposed Rulemaking that proposed to amend the regulations implementing the Fund to reflect the changes made by the Zadroga Act. After reviewing the extensive public comments and meeting with numerous victims, victims' families, and other groups, the Special Master is issuing this final rule and associated commentary, which make certain clarifications and changes that are designed to address issues that have been raised. Specifically, the final rule clarifies, supplements, and amends the proposed rule by, among other things: Expanding the geographic zone recognized as a "9/11 crash site"; providing greater consistency with the World Trade Center Health Program by adding additional forms of proof that may be used to establish eligibility; and clarifying the types of fees and charges that would come within the caps on amounts that a claimant's representative may charge in connection with a claim made to the Fund.

DATES: This final rule takes effect on October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania

Avenue, NW., Washington, DC 20530, telephone 855-885-1555 (TTY 855-885-1558).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (2001 Act), the September 11th Victim Compensation Fund of 2001 was open for claims from December 21, 2001, through December 22, 2003. The Fund provided compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and to personal representatives of those who died as a result of the crashes.

Special Master Kenneth R. Feinberg was appointed by the Attorney General to administer the Fund. The Fund was governed by Interim Final Regulations issued on December 21, 2001, *see* 66 FR 66274, and by Final Regulations issued on March 13, 2002, *see* 67 FR 11233. During its two years of operation, the Fund distributed over \$7.049 billion to survivors of 2,880 persons killed in the September 11th attacks and to 2,680 individuals who were injured in the attacks or in the rescue efforts conducted thereafter. In 2004, Special Master Feinberg issued a report describing how the fund was administered. *See* Final Report of the

² In addition, a jurisdiction covered under section 203(c) but not under section 4(f)(4) is subject to the

Act's special provisions if it was covered under

section 4(b) prior to the 1975 Amendments to the Act.

Special Master for the September 11th Victim Compensation Fund of 2001, available at http://www.justice.gov/final_report.pdf.

On January 2, 2011, President Obama signed the Zadroga Act into law. Title I of the Zadroga Act establishes a program within the Department of Health and Human Services to provide medical monitoring and treatment benefits to eligible individuals. Title II amends the 2001 Act and reopens the Fund. Among other changes, Title II adds new categories of beneficiaries for the Fund and sets new filing deadlines. It also imposes a cap on the total awards that can be paid by the Fund and limits the fees that an attorney may receive for awards made under the Fund.

The Zadroga Act did not appropriate administrative funds for the Fund to begin taking and processing claims. On April 15, 2011, President Obama signed into law Public Law 112–10, the continuing budget resolution for 2011, which permits the Fund to draw on the money originally allocated in the Zadroga Act in order to pay for its administrative expenses, beginning on October 1, 2011.

The Attorney General appointed Sheila L. Birnbaum to serve as Special Master and to administer the Fund. On June 21, 2011, the Special Master issued the Notice of Proposed Rulemaking, which provided for a 45-day public comment period.

The Department received 95 comments since the publication of the proposed rules. The Special Master's office has reviewed each of these comments. In addition, the Special Master has participated in town hall meetings with several hundred victims, victims' advocates, and others. The Special Master has considered all comments in promulgating the final rules. Significant comments received in response to the proposed rules and any significant changes are discussed below.

Significant Comments or Changes

I. Eligibility

In order to be eligible for the Fund, Title II of the Zadroga Act requires an individual to have been present at a "9/11 crash site" at the time or in the immediate aftermath of the crashes, and have suffered "physical harm or death as a result of" one of the air crashes or debris removal. The Department received many comments regarding the interpretation of these provisions in the proposed rule.

(a) "9/11 Crash Site"

In requiring that a claimant have been present at a "9/11 crash site" in order

to receive compensation from the Fund, Title II of the Zadroga Act recognizes that such sites include more than just the World Trade Center, Pentagon, and Shanksville, Pennsylvania sites and the buildings that were destroyed as a result. Title II of the Zadroga Act defines "9/11 crash site" to include both the crash sites themselves, routes of debris removal, and any area that is contiguous to one of the crash sites that the Special Master "determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from" the impact of the aircraft or subsequent fire, explosions, or building collapses.

During the Fund's first iteration, Special Master Feinberg applied a regulation that required him to make this same determination. At that time, the most prevalent physical injuries were blunt trauma injuries suffered by those who were struck by debris or who were in the zone in which there was a demonstrable risk of physical harm from falling debris, explosions, or fire. Accordingly, the relevant area was defined to include the immediate area surrounding the World Trade Center: Starting from the intersection of Reade and Centre Streets, the northern boundary ran west along Reade Street to the Hudson River; the western boundary was the Hudson River; the southern boundary ran from the Hudson River, east along the line of W. Thames Street, Edgar Street and Exchange Place to Nassau Street; and the eastern boundary, starting from the intersection of Exchange Place and Nassau Street, ran north along Nassau Street to the intersection of Centre and Reade Streets. See Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001 at 19 and n. 53. The Zadroga Act, which covers conditions that may have been caused over longer periods of time and thus are not limited to harms caused by falling debris, states that the term "9/11 crash site" "includ[es]" that original area but could also include other areas.

The proposed rule suggested that the term "9/11 crash site" includes the area in Manhattan south of the line that runs along Reade Street from the Hudson River to the intersection of Reade Street and Centre Street, south on Centre Street to the Brooklyn Bridge, and along the Brooklyn Bridge, or any other area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which

the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals). Those proposed boundaries are substantially broader than those used in the Fund's first iteration and narrower than boundaries used for the World Trade Center (WTC) Health Program in Title I of the Act.

Several commenters stated that the proposed boundaries were too narrow. Some commenters noted that debris removal barges were located north of Reade Street. With respect to these comments, areas related to debris removal barges will be covered. The definition of "9/11 crash site" in the Zadroga Act and proposed and final rules includes "routes of debris removal, such as barges and Fresh Kills." Another commenter urged that survivors who were present at the Shanksville, Pennsylvania, or Pentagon sites should be covered. The Zadroga Act and proposed and final rules cover those who were present at, among other things, the "Pentagon site, and Shanksville, Pennsylvania site." As a result, both the areas in which the barges were located and the Pentagon and Shanksville sites will be covered.

Some suggested that the Fund's geographic definition of "9/11 crash site" should be coextensive with the geographic boundaries identified in Title I of the Zadroga Act, for the WTC Health Program. Such boundaries would ensure complete consistency in geographic eligibility under the two programs. While that consistency has value, Title II of the Zadroga Act requires the Special Master to make an independent determination based on the area in which there was a demonstrable risk of harm. Accordingly, the Special Master must review evidence of that risk. That evidence is discussed further below.

Some commenters indicated that dust from the explosions traveled north of Reade Street, as well as into parts of Brooklyn, thereby creating a heightened risk of harm in those areas, too. Some of these comments indicated that dust was visibly present north of Reade Street. A few commenters noted further that even in areas in which dust was not visibly present, harmful microscopic dust particles may have traveled farther north.

A review of the comments and of available scientific evidence suggests that the risk of physical harm differed depending on the level of an individual's exposure. Based on the comments that were submitted, as well as further examination of the available evidence, the Special Master has determined that individuals in the area

of Manhattan south of Canal Street suffered an increased risk of harm as a result of the crashes, depending on the duration, timing and amount of exposure. In addition to the dust that was present most heavily in the area south of Reade Street, there is also evidence suggesting that prolonged exposure to dust between Reade Street and Canal Street created a demonstrable risk of physical harm. There are also substantial numbers of patients who live between Reade Street and Canal Street that are receiving treatment in the World Trade Center Environmental Health Center program. Based on this information, the final rule expands the zone of geographic eligibility to include the area south of Canal Street.

While there is evidence that the smoke plume from the site traveled beyond Manhattan south of Canal Street, the concentrations of contaminants in the smoke cloud were most intense within and very near Ground Zero. By the time the smoke cloud had reached other areas, such as Brooklyn, the particulate concentrations were significantly diluted. Thus while the final rule gives the Special Master discretion to identify, based on additional evidence, additional areas in which there was a demonstrable risk of harm, the initial zone of coverage will include the World Trade Center, Pentagon, and Shanksville sites; the buildings that were destroyed; the area south of Canal St. in lower Manhattan; and the routes of debris removal. It is important to bear in mind, however, that eligibility for the Fund requires not only that a claimant have been present at one of these 9/11 crash sites, but also that the claimant satisfy the Fund's other eligibility criteria, including that the claimant's injury was "a result of" the aircraft crashes or debris removal. Depending on the condition, this criterion likely will be satisfied only by individuals with significant exposure, and thus individuals who have transient or limited exposure are unlikely to meet this requirement.

Finally, a few comments expressed uncertainty regarding whether claimants must live in the New York area to be eligible for the Fund. The Special Master does not believe that these questions require any changes to the proposed rule. Although the proposed and final rules address the location of a claimant in the immediate aftermath of the attacks, there is no requirement regarding a claimant's current residence or location. Therefore, eligibility is not limited to those who currently live in the New York area.

(b) Physical Harm or Death as a Result of the Crash or Debris Removal

In requiring that a claimant have suffered "physical harm or death as a result of" one of the air crashes or the debris removal, the Zadroga Act also requires the Special Master to determine which physical harms and deaths were "a result of" the crashes or debris removal within the meaning of the statute.

Although Title II of the Zadroga Act does not provide additional specificity about the harms that are to be covered by the Fund, Title I of the Zadroga Act, which establishes the WTC Health Program, contains a list of illnesses and health conditions for which exposure to airborne toxins, other hazards and any other adverse conditions resulting from the September 11, 2001 terrorists attacks could be determined by experienced medical professionals to be substantially likely to have been a significant factor in aggravating, causing, or contributing to an illness or health condition, as well as procedures for adding additional conditions to the list over time. That title also provides that in order for an individual to receive treatment under the WTC Health Program, there must be an individual determination that the WTC attacks were "substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition."

The proposed rule required the Fund to maintain and publish a list of presumptively covered conditions that resulted from the air crashes or debris removal. This list would consist of the physical injuries and conditions that are found, under the WTC Health Program, to be WTC-related health conditions. The proposed rule also required the Special Master to update this list so that it includes not only those physical conditions listed in Title I of the Zadroga Act, but also any additional physical conditions that the WTC Health Program determines to be WTC-related.

General approach. Many individuals and organizations commented on the general approach that the Fund should take on these issues. One set of comments noted that in order to ensure that the available funds go to those most deserving, it will be important for the Fund to ensure that the compensated injuries are, in fact, caused as a result of the crashes and debris removal. Other comments rightly noted the sacrifices made by the first responders and other claimants, and urged that the Fund reciprocate the generosity that they showed. Through the processes laid out in Zadroga Act and the final rule, the

Fund will seek to ensure that eligible claimants are compensated in the manner Congress provided, and that payments to the deserving are not diluted by payments made to claimants who do not actually meet the criteria laid out in the law.

Cancer and other conditions. The most frequently discussed topic in these comments concerned eligibility for individuals with cancer. Most of these comments argued that cancer should be considered a WTC-related condition. Several commenters stated that many first responders who worked or volunteered at Ground Zero have developed cancer, and that it is likely that these conditions resulted from the air crashes or debris removal. To a lesser extent, other illnesses were also suggested for coverage.

After considering all of the comments and the available evidence, the Special Master will continue to rely on the medical judgment made by the WTC Health Program. While the Fund will continue to evaluate new evidence as it becomes available, and will add to its list of presumptively covered conditions any physical injury condition that the WTC Health Program recognizes as WTC-related, the final rule will not add any additional conditions at this time. Title I of the Zadroga Act contains a list of illnesses and health conditions that experienced medical professionals have determined could be found on an individual basis to be substantially likely to have been aggravated, caused, or contributed to by exposure to airborne toxins, other hazards and any other adverse conditions resulting from the September 11, 2001 terrorists attacks. This list does not include any form of cancer. In addition, the Zadroga Act requires the Administrator of the WTC Health Program to consider other conditions for coverage over time, and specifically to "periodically conduct a review of all available scientific and medical evidence, including findings and recommendations of Clinical Centers of Excellence, published in peer-reviewed journals to determine if, based on such evidence, cancer or a certain type of cancer should be added to the applicable list of WTC-related health conditions." 42 U.S.C. sec. 300mm-22(a)(5)(A).

The first periodic review by the WTC Health Program Administrator found insufficient scientific and medical evidence for adding cancer to the list of covered conditions. See First Periodic Review of Scientific and Medical Evidence Related to Cancer for the World Trade Center Health Program; as prepared by the Department of Health and Human Services, Centers for

Disease Control and Prevention, National Institute for Occupational Safety and Health, available at <http://www.cdc.gov/niosh/topics/wtc/prc/prc-1.html>. That review was based on peer-reviewed scientific literature, findings and recommendations solicited from clinics and other stakeholders who monitor the health of WTC first responders, and information solicited from the public through notices issued in March 2011. The WTC Health Program's second review will consider additional evidence that has become available since the initial review, and determine whether it provides a sufficient basis to identify particular types of cancer as WTC-related conditions. If the WTC Health Program determines that certain forms of cancer should be added to the list of WTC-related conditions, the final rule requires the Special Master to add such conditions to the list of presumptively covered conditions for the Fund.

PTSD and mental health conditions. Several comments argued that the Fund should include individuals with Post-Traumatic Stress Disorder (PTSD) or other mental health conditions. The Special Master is unable to change the final rule to accept these comments. As in the Fund's first iteration, the statute creating the Fund limits eligible injuries to those consisting of "physical harm." While individuals with mental or emotional injuries may be eligible for treatment by the WTC Health Program, the statutory language does not permit the Fund to cover individuals with only mental and emotional injuries.

Extraordinary circumstances. Finally, the Special Master notes that the final regulations do not make the list of presumptively covered conditions the only conditions for which a claimant may seek coverage from the Fund. Where the claimant satisfies other eligibility criteria, including presence at a 9/11 crash site, and establishes extraordinary circumstances that were not adequately taken into account in the list of presumptively covered conditions, the proposed rule will permit the Special Master to find the claimant eligible even if the injury in question is not on the list of presumptively covered conditions. Though one commenter suggested that the "extraordinary circumstances" test is too high a bar, as a result of the Fund's reliance on the WTC Health Program's process for making decisions based on the best available science, it is anticipated that it will be the unusual case in which a condition not on the list of presumptively covered conditions would be covered. Any lower threshold for that determination would invite

much larger volumes of claims that would require extensive, expensive reviews, sapping administrative costs out of the funds available to pay other victims, but would be highly unlikely to result in payable claims. Given those trade-offs, the final rule maintains the "extraordinary circumstances" standard.

(c) *Immediate Aftermath*

One comment suggested that, because many workers continued their efforts after May 30, 2002, the period defined as the "immediate aftermath" should be defined to match the eligibility requirements for the WTC Health Program, and that individuals who suffered harms after May 30, 2002, should be eligible if they can meet other eligibility requirements. Because the Zadroga Act defines the "immediate aftermath" to end at May 30, 2002, the Fund has no discretion to extend that deadline. Another commenter suggested that regulations make clear that individuals whose work spanned the period before and after May 30, 2002 are eligible to file claims and that any injury sustained by such an individual that is found to have occurred (either in whole or in part) from work at the site after May 30, 2002, shall be deemed to "relate back" to the individual's work at the WTC Site prior to May 30, 2002. The Special Master does not believe that this comment requires a change to the rule. The Zadroga Act requires that an individual have been present prior to May 30, 2002 in order to be eligible; an individual's eligibility will not be affected by whether he or she continued to be present after that date. Once an individual is deemed to have been eligible based on presence during the relevant time period, it will not be necessary for the Fund to determine the precise date on which the condition was deemed to have been caused.

(d) *Forms of Proof*

Several comments also sought to ensure that, to the greatest extent possible, the information required to determine eligibility in the Fund are consistent with the information required for participation in the WTC Health Program. Section 104.22(b)(3)(ii) has been modified to include certain forms of proof that will be considered in the WTC Health Program. The forms of proof listed there are not exhaustive, and the Fund will consider other appropriate forms of proof.

II. *Timing and Effect of Filing Claims*

Several comments focused on the times by which claimants must file claims, and the consequences of those

filings on any September 11th-related civil litigation.

Timing. Commenters expressed concerns regarding the two-year statute of limitations on filing claims. One commenter indicated that if a new condition is added as a presumptively covered condition in the Fund's third year, claimants who had that condition but had not applied in the first two years should not be barred from filing a claim. The Fund agrees that the Zadroga Act's two-year statute of limitations does not bar that claim, and that individuals have two years from the time that they became eligible to file a claim. Sections 104.62(a)(1) and (a)(2) of the final rule make clear that the two-year statute of limitations on a claim does not begin to run before an individual is eligible to file the claim.

One commenter also noted that there may be instances in which the two-year statute of limitations extends past the Fund's five-year limitation on accepting claims. The Zadroga Act provides that notwithstanding the two-year statute of limitations, claims may not be filed after the date that is five years after the regulations become final. The Special Master has no discretion to change the final rule in this respect.

Relationship to litigation. There were a variety of concerns expressed regarding the requirement that claimants in pending WTC-related litigation withdraw from their litigation prior to submitting a claim to the Fund. One comment contended that the requirement should be eliminated entirely, because it puts claimants who already settled their actions on different footing from those who have not already settled their actions, will encourage litigants who might have been successful in their litigation to withdraw from it and apply instead to the Fund, and will reduce the funds available to pay claims from the Fund. There were also concerns that requiring claimants to withdraw from litigation within 90 days of the final regulations would force them to give up their civil actions without knowing whether they would be eligible for payment under the Fund; the commenter proposed that the Fund require withdrawal of the civil action only after the Fund has advised the claimant whether he or she would be eligible for payment. With respect to both issues, the requirement to withdraw from pending WTC-related litigation within 90 days of the regulations becoming final is a statutory provision, which the Special Master has no authority to disregard. Nor may the Fund accept the commenter's suggestion to determine a potential claimant's eligibility prior to requiring the claimant

to withdraw a pending suit. The statute requires such individuals to withdraw from pending litigation within 90 days of the promulgation of these regulations; otherwise the individual “may not submit a claim.” Therefore, the Fund cannot accept applications that do not satisfy this requirement.

One comment raised the specific concern that the filing of a claim with the Fund should not preclude a claimant from later filing a civil action regarding harms that a claimant later suffers that are unrelated to the harm for which the claim was submitted. This comment suggests that the release that claimants were required to sign in the Fund’s first iteration was overly broad. By law, when a claimant submits a claim, “the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal.” Section 104.61 of the rule requires the Special Master to inform potential claimants of this statutory requirement. While the final rule permits claimants to amend their claims to add new conditions in certain circumstances, the Fund does not have the authority to change the terms or consequences of the statute.

III. Valuation of Claims

A number of commenters suggested changes in the manner in which the Fund would determine the appropriate value of compensable claims.

Methodology for injury claims. One commenter was troubled that the Special Master, in determining economic loss for claimants who suffered physical harm, may rely upon the methodology created for determination of economic loss for claimants who died. The commenter noted that in calculating economic loss for death claims, a deduction is taken for consumption that would not be appropriate in calculating losses for injury claims. The Special Master agrees with the commenter that it would not be appropriate to deduct for consumption in personal injury claims, and notes that the methodology applied in the first iteration of the Fund in fact made an adjustment to eliminate consumption deductions when computing economic loss for injury claims. Accordingly, no change in the rule is necessary.

Future losses. Several comments focused on the manner in which the Fund would calculate future losses. Some noted that the accuracy of calculations of future economic losses may depend on the continuation of the

WTC Health Program. These comments note that the WTC Health Program is set to expire in 2016, and that projections of future medical expenses should be lower if treatment provided under that program is extended. In order to ensure that projections of future economic losses are as accurate as possible, the final rule modifies Section 104.47 to clarify that in calculating offsets from the World Trade Center Health Program, the Fund will assume continuing operations of the Program to the extent that the Program is authorized to continue operations at the time of the payment to the claimant. If the Program is extended, shortened, or modified before a claimant’s subsequent payments, such subsequent payments may be adjusted to reflect the Program’s current status.

Other comments focused on the valuation of replacement services and noted that replacement services losses can be substantial and should be considered. Replacement services loss is included in the definition of economic loss in the statute. Under the Fund’s first iteration, the computation of economic loss included replacement services loss where such loss was demonstrated with appropriate proof. In addition, under the proposed rule and the rule that governed the Fund’s first iteration, Sections 104.43(c) and 104.45(c) specifically provide that replacement services losses may be compensated for individuals who did not have any prior earned income or who worked only part-time outside the home. That provision does not exclude other individuals for whom replacement services losses may also be appropriate. As in the Fund’s first iteration, losses from replacement services may be variable, and claimants must present individualized data to support their inclusion in an award.

Finally, one comment suggested that the valuation approach proposed in Section 104.43(a), regarding the appropriate calculation for future losses for victims who are minors, should rely not on the average income of all wage earners, but on likely educational attainment based on the child’s demographics. In the Fund’s first iteration, minor children’s earning capacity was based on average income of all wage earners. Changing the standard now would result in different projected earnings between identical claimants in the two Funds, based solely on when the claim was filed. While slight modifications to the previous valuation models may be appropriate where the facts underlying the assumptions have changed, adopting a new approach to valuation now would

undermine the consistency that is important to treating all claimants equally. Further, given the difficulty of projecting a child’s future earning capacity, regardless of the model, a heavily fact-intensive inquiry for such projections may add significant administrative costs with little additional benefit in accuracy.

Valuation of mental injuries. Some commenters noted that it is often difficult to distinguish between the harms caused by physical injuries and those caused by mental injuries, with one commenter suggesting that awards for non-economic losses should take into account the losses caused by PTSD. Under the Zadroga Act, non-economic losses consist of “losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.” To the extent that an individual is eligible for compensation by the Fund, an award for non-economic losses will reflect these harms, but no change is required to the final rule.

Offsets. One comment addressed the manner in which pensions are used as offsets, and urged that the regulations distinguish between retirement pensions that are earned through years of service and disability pensions that are based on an injury caused by September 11th. Section 104.47(a) provides that pension funds will be used to offset payments only to the extent they are related to the crashes or debris removal. Standard retirement pensions will not be used as offsets.

Reliance on determinations by other bodies. Several commenters suggested that the Fund should recognize determinations of eligibility or disability made by other government agencies, such as the Department of Veterans Affairs and Department of Labor, administrative boards, or in the September 11th litigation. One commenter noted that relying on such determinations would save administrative costs. Under Section 104.22(c)(2), a claimant may submit any such information for consideration by the Fund. As in the first iteration, the Fund will consider such information in the context of the full claim.

IV. Funding and Payment of Claims

A number of comments focused on the amounts available for payment and the manner in which the regulations proposed to distribute the available

funds. For example, several comments addressed the provisions in the Zadroga Act regarding the \$2.775 billion cap on total awards that can be paid by the Fund, as well as the requirement that only \$875 million may be paid during the first five years of the Fund. One commenter suggested simply that additional funding will be needed. Another argued that claimants should not have to wait five years to receive full payment. Because Congress explicitly provided these requirements in the statute creating the Fund, these requirements cannot be changed by the Special Master.

Another comment focused on the schedule of payments, and suggested that instead of evenly dividing the funds available to make the initial award payments, the Fund should take into account the extent of a claimant's harm and the immediacy and severity of the claimant's need. The Special Master has given this suggestion considerable thought, and recognizes that—particularly given that only one-third of the overall funding is available during the Fund's first five years—initial payments may make only a small difference in a claimant's overall circumstance. Because initial payments will be pro-rated, those who have suffered or will suffer greater harms will receive larger payments than those with lesser harms. To that extent, the initial payments will take into account both the extent of the claimant's harm and the immediacy of the claimant's need. However, giving greater awards based on the immediacy of a particular claimant's needs raises numerous practical challenges, such as the nature of the urgent needs that would justify a greater payment: The Zadroga Act empowered the Special Master to determine how much a claimant is entitled to receive for economic losses, but the Special Master is not in a position to compare the urgency of each claimant's needs and resources.

While the final rule thus does not contemplate advance benefits for urgent needs, it does incorporate a change that may ease some of this burden. One comment noted that over the Fund's first five years, it may become apparent that it would be possible to provide claimants with more than one payment without expending all the available funds. The proposed rule contemplated just two rounds of payments to each claimant: An initial payment within the first five years, followed by the remaining payment in the sixth year. If it becomes apparent that sufficient funding is available for additional payments before the sixth year, the final

rule gives the Special Master discretion to make such additional payment.

Finally, some commenters asked that the Fund inform claimants of the Fund's full valuation of their award at the time the award decision is made, even though the first payment will only be a pro-rated portion of that total. Under Section 104.33(g), the Special Master will notify the claimant in writing of the final amount of the award. The Special Master intends for this notice to inform the claimant of the Fund's full award determination and the pro-rated amount of the initial payment. In addition, claimants will be informed that they will receive a subsequent payment during the Fund's sixth year, but that the amount of this payment is not certain, and may be reduced pursuant to Section § 104.51 (requiring the Special Master to ratably reduce the amount of compensation in the event that the total amount of all claims exceeds the amount available under law) and Section 104.47 (authorizing the Special Master to recalculate offsets from the World Trade Center Health Program and adjust subsequent payments accordingly).

V. Fees and Expenses

A number of comments sought clarity or modifications in the provisions of the proposed rule regarding the amounts that a representative of a claimant may charge in connection with a claim made to the Fund.

10% cap on fees. Some comments sought clarity on the provisions implementing the Zadroga Act's 10% cap on fees that representatives may charge a client in connection with a claim to the Fund. Specifically, one set of these comments expressed concern that the regulations did not provide sufficient guidance on the types of fees and charges that would come within the cap on amounts that a claimant's representative may charge in connection with a claim made to the Fund. While it is recognized that there may be cases in which an attorney provides some unusual service, and there is no indication in the statute that Congress intended to disadvantage claimants by discouraging those attorneys from providing beneficial services, the Zadroga Act does reflect an intention to limit the amounts that may be charged for routine legal services. Accordingly, the final rule clarifies that the caps on amounts that an attorney may charge include charges for expenses routinely incurred in the course of providing legal services. Thus, for example, absent special circumstances, routine office photocopying costs, as well as fees charged by expert consultants or

witnesses, that are routinely incurred in the course of providing legal services, count against the caps on fees that attorneys may charge. By the same token, where an attorney provides a non-routine service, which depending on the circumstances may include acquiring a client's files from a third party (rather than requiring the claimant to collect those files), the attorney may be able to pass along those costs on top of the routine fees. Thus, the final rule notes that charges for services routinely incurred in the course of providing legal services fall within the cap on fees, and provides that attorneys or other representatives may seek the Fund's approval to charge for non-routine services in particular cases.

Records costs. Along similar lines, there were a number of comments regarding the costs of obtaining voluminous medical files that are often in the possession of a claimant's medical provider or previous counsel. Some comments suggested that the Fund establish a retrieval service or limit the fees that custodians of those records may charge claimants or their new attorneys for providing documents that a claimant must provide to the Fund. Others noted that the custodian's costs of producing such records can be significant, too, and that current custodians should be permitted to pass on reasonable costs.

At the outset, it is worth noting that the Fund intends to work with willing custodians who possess large volumes of relevant records to determine the extent to which it is possible to transfer appropriate information to the Fund electronically. Providing the electronic transfer of information where appropriate and cost-effective will reduce burdens and costs for claimants.

Further, while the Zadroga Act does not grant the Fund the authority to establish caps on costs that a third-party custodian not before the Fund may charge for providing records, it does empower the Special Master to ensure that counsel who represent claimants before the Fund are charging appropriate rates. The Special Master recognizes the role that able counsel will serve in the claims process, and notes that in the Fund's first iteration, there was an outpouring of pro bono assistance that was consistent with the spirit of the legislation and the Bar's tradition of public service. While the Zadroga Act does not prevent a claimant's previous counsel from passing along certain minimal administrative costs associated with the transfer of files, attorneys have professional obligations regarding a client's access to his or her records. The

Zadroga Act empowers the Special Master to reduce the fees that an attorney may charge claimants, and attorneys who charge unreasonable costs for the services provided should expect that, in appropriate cases, the Fund will exercise its statutory authority to limit the fees charged.

Effects of fees charged in a previous settlement. One comment focused on the question of whether certain attorneys may charge fees in connection with a claim filed with the Fund. Specifically, the commenter expressed concern regarding Section 104.81 of the proposed rule, which implements the Zadroga Act's statutory cap on fees that an attorney who charged a fee in connection with a prior September 11th-related settlement may charge in connection with a claim submitted to the Fund. Under the Zadroga Act, such an attorney may charge a fee in connection with the claim to the Fund only if the legal fee charged in connection with the settlement "is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement"; in such instances, the attorney may receive only such funds as are necessary to reach a total payment that equals 10 percent of the aggregate compensation from the settlement. The commenter expressed concern that Section 104.81 of the proposed regulation interprets this provision in a manner that is inequitable to attorneys who previously represented clients in a settlement, and argued that the cap on fees should be based on the aggregate of the civil settlement and recoveries under the Fund. The statute refers to "the aggregate amount of compensation awarded to such individual through such settlement" (emphasis added), and therefore does not permit such a reading.

Along similar lines, the commenter suggested that Section 104.81(b)(1) of the proposed rule be clarified to give guidance on whether an attorney who previously charged a fee in connection with a previous settlement may charge a client's new counsel a "consultation or participation fee" in connection with the client's claim to the Fund. The commenter suggests that such consultation or participation fee would allow the former attorney to provide time and resources to assist the new counsel. The statutory provision in question provides that "the representative of the individual may not charge any amount for compensation for services rendered in connection with a claim filed under this title." The proposed regulatory provision on which the commenter sought clarification had

stated that such attorney may not charge "that individual" any such amount; the commenter suggests that because a consultation fee would not increase the overall charge to the claimant herself, but would be charged only to the claimant's new counsel, a consultation or participation fee achieves the statutory objectives. The Special Master disagrees, and the final rule clarifies that provision. Because Congress dictated that the representative "may not charge any amount for compensation for services rendered in connection with a claim," it would defeat Congress's intention were that representative permitted to charge an amount for services rendered. Accordingly, Section 104.81(b)(1) is clarified in the final rule to track, with one exception, the statutory language. Because it does not appear that Congress intended to forbid such a representative from charging for services rendered in connection with claims filed by *other* clients, whom the representative did not charge any amount in a previous settlement, Section 104.81(b)(1) is clarified to provide that "the representative who charged such legal fee may not charge any amount for compensation for services rendered in connection with a claim filed *by or on behalf of that individual* under this title" (emphasis added).

VI. Other Comments

The Fund received a number of additional comments that, while not requiring changes to the regulations, raise important issues for the administration of the Fund. As the Special Master has indicated previously, her goal is to design a program that is fair, transparent, and easy to navigate. The many suggestions along these lines will be extremely valuable as the Fund gets up and running.

Comments stressed the importance of making the claims process as accessible to the public as possible, a goal that the Special Master shares. Commenters suggested several ways that the Fund can make this goal a reality. They stressed the value of transparency, so that claimants can make informed decisions and understand the reasons for how their claims are handled. The Special Master agrees that making public as much information as possible concerning the Fund's valuation methodologies will assist claimants in deciding whether to file with the Fund or pursue other forms of relief. The Fund will provide information outside the context of formal regulations, such as through Frequently Asked Questions, periodic reports, explanations of decisions to individual claimants, and

other materials on the Fund's Web site, in order to give claimants greater confidence in the Fund's decision-making processes.

Making the Fund accessible to the public also requires that the process be as simple and non-bureaucratic as possible. Although claimants should be able to use an attorney if they so choose, the process should be simple enough that claimants can participate without the need for one—and the Special Master should encourage attorneys to provide pro bono assistance. Given the diversity of the eligible population, commenters also urged the Fund to translate key forms and other materials into languages other than English. The Special Master agrees with these commenters and will take steps to make the Fund more accessible in these ways.

In addition to creating a process that is transparent, commenters also urged the Special Master to recognize that between private litigation and various governmental programs operating in this space, a lack of consistency can lead to confusion, frustration, and increased burdens on claimants who have already suffered extensively. Commenters noted that this can play out in a variety of contexts: Different sets of forms and proof requirements; different types of harms and valuation methodologies; and inconsistent determinations between government programs ostensibly aimed at the same populations. While the Fund has certain unique statutory purposes, the Special Master recognizes that unnecessary inconsistency and redundancy are in no one's interests. So while some differences are inevitable, coordination with other government programs will be an important consideration in the Fund's operations. Importantly, as part of the Fund's efforts to minimize burdens on claimants, it will work with medical providers and others in possession of claimants' information to provide for appropriate transfers of electronic data where possible.

The Special Master appreciates all of these comments, as well as the many comments expressing appreciation or good wishes for the Fund's operations. While the suggestions here do not require changes in the regulations, they suggest a number of ways that the Fund can better achieve its mission. They will all be taken into account as we seek to build a program that serves this community as the Zadroga Act intended.

Regulatory Certifications

Paperwork Reduction Act of 1995

This rule implements Title II of the Zadroga Act, which reactivates the September 11th Victim Compensation Fund of 2001. In order to be able to evaluate claims and provide compensation, the Fund will need to collect information from an individual (or a personal representatives of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes. Accordingly, the Department of Justice (DOJ), Civil Division will submit an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The Department will also publish a Notice in the **Federal Register** soliciting public comment on the information collection associated with this rulemaking.

Regulatory Flexibility Act

These regulations set forth procedures by which the Federal government will award compensation benefits to eligible victims of the September 11, 2001 terrorist attacks. Under 5 U.S.C. 601(6), the term “small entity” does not include the Federal government, the party charged with incurring the costs attendant to the implementation and administration of the Victims Compensation Fund. Accordingly, the Department has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it provides compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a “personal representative” for those who were killed as a result of those crashes. This rule provides compensation to individuals, not to entities.

Executive Orders 12866 and 13563—Regulatory Review

This regulation 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 Department of Justice has determined that this rule is an “economically significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Further, both 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Assessment of Benefits, Costs, and Alternatives.

As required by Executive Order 13563 and Executive Order 12866 for economically significant regulatory actions, the Department has assessed the benefits and costs anticipated from this rulemaking and considered whether there are reasonably feasible alternatives to this rulemaking, including considering whether there are reasonably viable non-regulatory actions that could be taken in lieu of this rulemaking. The purpose of this rulemaking is to provide the legal and administrative framework necessary to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes, as provided by Title II of the Zadroga Act. The primary benefits and costs of this rulemaking are both set by statute as Congress has appropriated a capped amount—\$2.775 billion payable over a period of years—for this program. Because the \$2.775 billion appropriated by Congress for the Fund must pay for claimant awards as well as the Fund’s administrative expenses, it is important for the Fund to establish procedures to screen out ineligible or inappropriate claims while keeping administrative expenses as low as possible consistent with the goal of ensuring that funds are not diverted to processing ineligible claims in order to maximize the amount

of funds available for claimants. Finally, based on past practice with the operation of the original Fund and the necessity to establish the legal and administrative framework for the reopened Fund, the Department concludes that there are no viable non-regulatory actions that it could take to implement the Zadroga Act in a fair and efficient manner.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, the Department of Justice has worked cooperatively with state and local officials in the affected communities in the preparation of this rule. Also, the Department individually notified national associations representing elected officials regarding this rulemaking.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 104

Disaster assistance, Disability benefits, Terrorism.

Accordingly, for the reasons set forth in the preamble, Part 104 of chapter I of Title 28 of the Code of Federal Regulations is amended by revising part 104 to read as follows:

PART 104—SEPTEMBER 11TH VICTIM COMPENSATION FUND**Subpart A—General; Eligibility**

Sec.

- 104.1 Purpose.
- 104.2 Eligibility definitions and requirements.
- 104.3 Other definitions.
- 104.4 Personal Representative.
- 104.5 Foreign claims.
- 104.6 Amendments to this part.

Subpart B—Filing for Compensation

- 104.21 Presumptively covered conditions.
- 104.22 Filing for compensation.

Subpart C—Claim Intake, Assistance, and Review Procedures

- 104.31 Procedure for claims evaluation.
- 104.32 Eligibility review.
- 104.33 Hearing.
- 104.34 Publication of awards.
- 104.35 Claims deemed abandoned by claimants.

Subpart D—Amount of Compensation for Eligible Claimants

- 104.41 Amount of compensation.
- 104.42 Applicable state law.
- 104.43 Determination of presumed economic loss for decedents.
- 104.44 Determination of presumed noneconomic losses for decedents.
- 104.45 Determination of presumed economic loss for claimants who suffered physical harm.
- 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.
- 104.47 Collateral sources.

Subpart E—Payment of Claims

- 104.51 Payments to eligible individuals.
- 104.52 Distribution of award to decedent's beneficiaries.

Subpart F—Limitations

- 104.61 Limitation on civil actions.
- 104.62 Time limit on filing claims.
- 104.63 Subrogation.

Subpart G—Measures To Protect the Integrity of the Compensation Program

- 104.71 Procedures to prevent and detect fraud.

Subpart H—Attorney Fees

- 104.81 Limitation on attorney fees.

Authority: Title IV of Pub. L. 107–42, 115 Stat. 230, 49 U.S.C. 40101 note; Title II of Pub. L. 111–347, 124 Stat. 3623.

Subpart A—General; Eligibility**§ 104.1 Purpose.**

This part implements the provisions of the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107–42, 115 Stat. 230 (Air Transportation Safety and System Stabilization Act), as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347, to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal during the immediate aftermath of those crashes, and to the “personal representatives” of those who were killed as a result of the crashes. All compensation provided through the Fund will be on account of personal physical injuries or death.

§ 104.2 Eligibility definitions and requirements.

(a) *Eligible claimants.* The term eligible claimants means:

- (1) Individuals present at a 9/11 crash site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes and who suffered physical harm, as defined herein, as a direct result of the crashes or debris removal;
- (2) The Personal Representatives of deceased individuals aboard American Airlines flights 11 or 77 and United Airlines flights 93 or 175; and
- (3) The Personal Representatives of individuals who were present at a 9/11 crash site at the time of or in the immediate aftermath of the crashes and who died as a direct result of the terrorist-related aircraft crash.

(4) The term eligible claimants does not include any individual or representative of an individual who is identified to have been a participant or conspirator in the terrorist-related crashes of September 11.

(b) *Immediate aftermath.* The term immediate aftermath means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002.

(c) *Physical harm.* (1) The term physical harm shall mean a physical injury to the body that was treated by a medical professional within a reasonable time from the date of discovering such harm; and

(2) The physical injury must be verified by medical records created by or at the direction of the medical professional who provided the medical care contemporaneously with the care.

(d) *Personal Representative.* The term Personal Representative shall mean the person determined to be the Personal

Representative under § 104.4 of this part.

(e) *WTC Health Program.* The term WTC Health Program means the World Trade Center Health Program established by Title I of Public Law 111–347 (codified at Title XXXIII of the Public Health Service Act, 42 U.S.C. 300mm through 300mm–61).

(f) *WTC-related health condition.* The term WTC-related health condition means those health conditions identified as WTC-related by Title I of Public Law 111–347 and by regulations implementing that Title.

(g) *9/11 crash site.* The term 9/11 crash site means:

- (1) The World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site; or
- (2) The buildings or portions of buildings that were destroyed as a result of the terrorist-related airplane crashes of September 11, 2001; or
- (3) The area in Manhattan south of the line that runs along Canal Street from the Hudson River to the intersection of Canal Street and East Broadway, north on East Broadway to Clinton Street, and east on Clinton Street to the East River; or

(4) Any other area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); or

(5) Any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

§ 104.3 Other definitions.

(a) *Beneficiary.* The term beneficiary shall mean a person to whom the Personal Representative shall distribute all or part of the award under § 104.52 of this part.

(b) *Dependents.* The Special Master shall identify as dependents those persons so identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death (or those persons who legally could have been identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death) unless:

(1) The claimant demonstrates that a minor child of the victim was born or adopted on or after January 1 of the year of the victim's death;

(2) Another person became a dependent in accordance with then-applicable law on or after January 1 of the year of the victim's death; or

(3) The victim was not required by law to file a Federal income tax return for the year prior to the year of the victim's death.

(c) *Spouse*. The Special Master shall identify as the spouse of a victim the person reported as spouse on the victim's Federal tax return for the year prior to the year of the victim's death (or the person who legally could have been identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death) unless:

(1) The victim was married or divorced in accordance with applicable state law on or after January 1 of the year of the victim's death; or

(2) The victim was not required by law to file a Federal income tax return for the year prior to the year of the victim's death.

(d) *The Act*. The Act, as used in this part, shall mean Public Law 107-42, 115 Stat. 230 ("Air Transportation Safety and System Stabilization Act"), 49 U.S.C. 40101 note, as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347.

(e) *Victim*. The term victim shall mean an eligible injured claimant or a decedent on whose behalf a claim is brought by an eligible Personal Representative.

(f) *Substantially Complete*. A claim becomes substantially complete when, in the opinion of the Special Master or her designee, the claim contains sufficient information and documentation to determine both the claimant's eligibility and, if the claimant is eligible, an appropriate award.

§ 104.4 Personal Representative.

(a) *In general*. The Personal Representative shall be:

(1) An individual appointed by a court of competent jurisdiction as the Personal Representative of the decedent or as the executor or administrator of the decedent's will or estate.

(2) In the event that no Personal Representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the person named by the decedent in the decedent's will as the executor or administrator of the decedent's estate. In the event no will exists, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the first

person in the line of succession established by the laws of the decedent's domicile governing intestacy.

(b) *Notice to beneficiaries*. (1) Any purported Personal Representative must, before filing an Eligibility Form, provide written notice of the claim (including a designated portion of the Eligibility Form) to the immediate family of the decedent (including, but not limited to, the decedent's spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(2) Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this provision. The claim forms shall require that the purported Personal Representative certify that such notice (or other notice that the Special Master deems appropriate) has been given. In addition, as provided in § 104.21(b)(5) of this part, the Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Objections to Personal Representatives*. Objections to the authority of an individual to file as the Personal Representative of a decedent may be filed with the Special Master by parties who assert a financial interest in the award up to 30 days following the filing by the Personal Representative. If timely filed, such objections shall be treated as evidence of a "dispute" pursuant to paragraph (d) of this section.

(d) *Disputes as to identity*. The Special Master shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the Personal Representative. In the event of a dispute over the appropriate Personal Representative, the Special Master may suspend adjudication of the claim or, if sufficient information is provided, calculate the appropriate award and authorize payment, but place in escrow any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree in writing to the identity of a Personal Representative to act on their behalf, who may seek and accept payment from the Fund while the disputing parties work to settle their dispute.

§ 104.5 Foreign claims.

In the case of claims brought by or on behalf of foreign citizens, the Special Master may alter the requirements for documentation set forth herein to the extent such materials are unavailable to such foreign claimants.

§ 104.6 Amendments to this part.

Claimants are entitled to have their claims processed in accordance with the provisions of this Part that were in effect at the time that their claims were submitted under § 104.22(d). All claims will be processed in accordance with the current provisions of this Part, unless the claimant has notified the Special Master that he or she has elected to have the claim resolved under the regulations that were in effect at the time that the claim was submitted under § 104.22(d).

Subpart B—Filing for Compensation

§ 104.21 Presumptively covered conditions.

(a) *In general*. The Special Master shall maintain and publish on the Fund's Web site a list of presumptively covered conditions that resulted from the terrorist-related air crashes of September 11, 2001, or debris removal. The list shall consist of physical injuries that are determined to be WTC-related health conditions by the WTC Health Program.

(b) *Updates*. The Special Master shall update the list of presumptively covered conditions as the list of WTC-related health conditions by the WTC Health Program is updated. Claims may then be amended pursuant to § 104.22(e)(ii).

(c) *Conditions other than presumptively covered conditions*. A claimant may also be eligible for payment under § 104.51 where the claimant—

(1) Presents extraordinary circumstances not adequately addressed by the list of presumptively covered conditions; and

(2) Is otherwise eligible for payment.

§ 104.22 Filing for compensation.

(a) *Compensation form; "filing"*. A claim shall be deemed "filed" for purposes of section 405(b)(3) of the Act (providing that the Special Master shall issue a determination regarding the matters that were the subject of the claim not later than 120 calendar days after the date on which a claim is filed), and for any time periods in this part, when it is substantially complete.

(b) *Eligibility Form*. The Special Master shall develop an Eligibility Form, which may be a portion of a complete claim form, that will require

the claimant to provide information necessary for determining the claimant's eligibility to recover from the Fund.

(1) The Eligibility Form may require that the claimant certify that he or she has dismissed any pending lawsuit seeking damages as a result of the terrorist-related airplane crashes of September 11, 2001, or for damages arising from or related to debris removal (except for actions seeking collateral source benefits) within 90 days of the effective date of this part pursuant to section 405(c)(3)(C)(ii) of the Act and that there is no pending lawsuit brought by a dependent, spouse, or beneficiary of the victim.

(2) The Special Master may require as part of the notice requirement pursuant to § 104.4(b) that the claimant provide copies of a designated portion of the Eligibility Form to the immediate family of the decedent (including, but not limited to, the spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(3) The Eligibility Form may require claimants to provide the following proof:

(i) Proof of death: Death certificate or similar official documentation;

(ii) Proof of presence at site: Documentation sufficient to establish presence at a 9/11 crash site, which may include, without limitation, a death certificate, proof of residence, such as a lease or utility bill, records of employment or school attendance, contemporaneous medical records, contemporaneous records of federal, state, city or local government, a pay stub, official personnel roster, site credentials, an affidavit or declaration of the decedent's or injured claimant's employer, or other sworn statement (or unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the victim;

(iii) Proof of physical harm: Certification of a conclusion by the WTC Health Program that the claimant suffers from a WTC-related health condition and is eligible for treatment under the program; or a health form provided by the Fund and completed by a licensed medical professional.

(iv) Personal Representative: Copies of relevant legal documentation, including court orders; letters testamentary or similar documentation; proof of the purported Personal Representative's relationship to the decedent; copies of wills, trusts, or other testamentary

documents; and information regarding other possible beneficiaries as requested by the Eligibility Form;

(v) Any other information that the Special Master deems necessary to determine the claimant's eligibility.

(4) The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties tax returns, medical information, employment information, or other information that the Special Master deems relevant in determining the claimant's eligibility or award, and may request an opportunity to review originals of documents submitted in connection with the Fund.

(5) The Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Personal Injury Compensation Form and Death Compensation Form.* The Special Master shall develop a Personal Injury Compensation Form that each injured claimant must submit. The Special Master shall also develop a Death Compensation Form that each Personal Representative must submit. These forms shall require the claimant to provide certain information that the Special Master deems necessary to determining the amount of any award, including information concerning income, collateral sources, benefits, settlements and attorneys' fees relating to civil actions described in section 405(c)(3)(C)(iii) of the Act, and other financial information, and shall require the claimant to state the factual basis for the amount of compensation sought. It shall also allow the claimant to submit certain other information that may be relevant, but not necessary, to the determination of the amount of any award.

(1) Claimants shall, at a minimum, submit all tax returns that were filed for the period beginning three years prior to the year of death or discovery of the injury and ending with the year the claim was filed or the year of death. The Special Master may, at the Special Master's discretion, require that claimants submit copies of tax returns or other records for any other period of years the Special Master deems appropriate for determination of an award. The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties medical information, employment information, or other information that the Special Master deems relevant to determining the amount of any award.

(2) Claimants may attach to the "Personal Injury Compensation Form" or "Death Compensation Form" any additional statements, documents or analyses by physicians, experts, advisors, or any other person or entity that the claimant believes may be relevant to a determination of compensation.

(d) *Submission of a claim.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal, except for civil actions to recover collateral source obligations and civil actions against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. A claim shall be deemed submitted for purposes of section 405(c)(3)(C) of the Act when the claim is deemed filed pursuant to § 104.22, regardless of whether any time limits are stayed or tolled.

(e) *Amendment of claims.* A claimant who has previously submitted a claim may amend such claim to include:

(1) An injury that the claimant had not suffered (or did not reasonably know the claimant suffered) at the time the claimant filed the previous claim;

(2) A condition that the Special Master has identified and published in accordance with 104.21(a), since the time the claimant filed the previous claim, as a presumptively covered condition;

(3) An injury for which the claimant was previously compensated by the Fund, but only if that injury has substantially worsened, resulting in damages or loss that was not previously compensated; and

(4) Claims for which the individual is an eligible claimant as a result of amendments contained in the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347.

(f) *Provisions of information by third parties.* Any third party having an interest in a claim brought by a Personal Representative may provide written statements or information regarding the Personal Representative's claim. The Claims Evaluator or the Special Master or the Special Master's designee may, at his or her discretion, include the written statements or information as part of the claim.

Subpart C—Claim Intake, Assistance, and Review Procedures**§ 104.31 Procedure for claims evaluation.**

(a) *Initial review.* Claims Evaluators shall review the forms filed by the claimant and either deem the claim “filed” (pursuant to § 104.22(a)) or notify the claimant of any deficiency in the forms or any required documents.

(b) *Procedure.* The Claims Evaluator shall determine eligibility and the claimant’s presumed award pursuant to §§ 104.43 to 104.46 of this part and, within 75 days of the date the claim was deemed filed, notify the claimant in writing of the eligibility determination, the amount of the presumed award, and the right to request a hearing before the Special Master or her designee under § 104.33 of this part. After an eligible claimant has been notified of the presumed award, within 30 days the claimant may either accept the presumed compensation determination as the final determination and request payment, or may instead request a review before the Special Master or her designee pursuant to § 104.33. Claimants found to be ineligible may appeal pursuant to § 104.32.

(c) *Multiple claims from the same family.* The Special Master may treat claims brought by or on behalf of two or more members of the same immediate family as related or consolidated claims for purposes of determining the amount of any award.

§ 104.32 Eligibility review.

Any claimant deemed ineligible by the Claims Evaluator may appeal that decision to the Special Master or her designee by filing an eligibility appeal within 30 days on forms created by the office of the Special Master.

§ 104.33 Hearing.

(a) *Supplemental submissions.* The claimant may prepare and file Supplemental Submissions within 21 calendar days from notification of the presumed award. The Special Master shall develop forms appropriate for Supplemental Submissions.

(b) *Conduct of hearings.* Hearings shall be before the Special Master or her designee. The objective of hearings shall be to permit the claimant to present information or evidence that the claimant believes is necessary to a full understanding of the claim. The claimant may request that the Special Master or her designee review any evidence relevant to the determination of the award, including without limitation: The nature and extent of the claimant’s injury; evidence of the claimant’s presence at a 9/11 crash site;

factors and variables used in calculating economic loss; the identity of the victim’s spouse and dependents; the financial needs of the claimant; facts affecting noneconomic loss; and any factual or legal arguments that the claimant contends should affect the award. Claimants shall be entitled to submit any statements or reports in writing. The Special Master or her designee may require authentication of documents, including medical records and reports, and may request and consider information regarding the financial resources and expenses of the victim’s family or other material that the Special Master or her designee deems relevant.

(c) *Location and duration of hearings.* The hearings shall, to the extent practicable, be scheduled at times and in locations convenient to the claimant or his or her representative. The hearings shall be limited in length to a time period determined by the Special Master or her designee.

(d) *Witnesses, counsel, and experts.* Claimants shall be permitted, but not required, to present witnesses, including expert witnesses. The Special Master or her designee shall be permitted to question witnesses and examine the credentials of experts. The claimant shall be entitled to be represented by an attorney in good standing, but it is not necessary that the claimant be represented by an attorney. All testimony shall be taken under oath.

(e) *Waivers.* The Special Master shall have authority and discretion to require any waivers necessary to obtain more individualized information on specific claimants.

(f) *Award Appeals.* For award appeals, the Special Master or her designee shall make a determination whether:

(1) There was an error in determining the presumptive award, either because the claimant’s individual criteria were misapplied or for another reason; or

(2) The claimant presents extraordinary circumstances not adequately addressed by the presumptive award.

(g) *Determination.* The Special Master shall notify the claimant in writing of the final amount of the award, but need not create or provide any written record of the deliberations that resulted in that determination. There shall be no further review or appeal of the Special Master’s determination. In notifying the claimant of the final amount of the award, the Special Master may designate the portions or percentages of the final award that are attributable to economic loss and non-economic loss, respectively, and may provide such

other information as appropriate to provide adequate guidance for a court of competent jurisdiction and a personal representative.

§ 104.34 Publication of awards.

The Special Master reserves the right to publicize the amounts of some or all of the awards, but shall not publish the name of the claimants or victims that received each award. If published, these decisions would be intended by the Special Master as general guides for potential claimants and should not be viewed as precedent binding on the Special Master or her staff.

§ 104.35 Claims deemed abandoned by claimants.

The Special Master and her staff will endeavor to evaluate promptly any information submitted by claimants. Nonetheless, it is the responsibility of the claimant to keep the Special Master informed of his or her current address and to respond within the duration of this five-year program to requests for additional information. Claims outstanding at the end of this program because of a claimant’s failure to complete his or her filings shall be deemed abandoned.

Subpart D—Amount of Compensation for Eligible Claimants**§ 104.41 Amount of compensation.**

As provided in section 405(b)(1)(B)(ii) of the Act, in determining the amount of compensation to which a claimant is entitled, the Special Master shall take into consideration the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant. The individual circumstances of the claimant may include the financial needs or financial resources of the claimant or the victim’s dependents and beneficiaries. As provided in section 405(b)(6) of the Act, the Special Master shall reduce the amount of compensation by the amount of collateral source compensation the claimant (or, in the case of a Personal Representative, the victim’s beneficiaries) has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001. In no event shall an award (before collateral source compensation has been deducted) be less than \$500,000 in any case brought on behalf of a deceased victim with a spouse or dependent, or \$300,000 in any case brought on behalf of a deceased victim who was single with no dependents.

§ 104.42 Applicable state law.

The phrase “to the extent recovery for such loss is allowed under applicable

state law," as used in the statute's definition of economic loss in section 402(5) of the Act, is interpreted to mean that the Special Master is not permitted to compensate claimants for those categories or types of economic losses that would not be compensable under the law of the state that would be applicable to any tort claims brought by or on behalf of the victim.

§ 104.43 Determination of presumed economic loss for decedents.

In reaching presumed determinations for economic loss for Personal Representatives bringing claims on behalf of decedents, the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master, as part of the process of reaching a "determination" pursuant to section 405(b) of the Act, shall develop a methodology and publish schedules, tables, or charts that will permit prospective claimants to estimate determinations of loss of earnings or other benefits related to employment based upon individual circumstances of the deceased victim, including: The age of the decedent as of the date of death; the number of dependents who survive the decedent; whether the decedent is survived by a spouse; and the amount and nature of the decedent's income for recent years. The Decedent's salary/income in the three years preceding the year of death (or for other years the Special Master deems relevant) shall be evaluated in a manner that the Special Master deems appropriate. The Special Master may, if she deems appropriate, take an average of income figures for the three years preceding the year of death, and may also consider income for other periods that she deems appropriate, including published pay scales for victims who were government or military employees. The Special Master's methodology and schedules, tables, or charts shall yield presumed determinations of loss of earnings or other benefits related to employment for annual incomes up to but not beyond the 98th percentile of individual income in the United States for the year preceding the year of death. In cases where the victim was a minor child, the Special Master may assume an average income for the child commensurate with the average income of all wage earners in the United States. For victims who were members of the armed services or government employees such as firefighters or police officers, the Special Master may consider all forms of compensation (or pay) to which the victim was entitled. For example,

military service members' and uniformed service members' compensation includes all of the various components of compensation, including, but not limited to, basic pay (BPY), basic allowance for housing (BAH), basic allowance for subsistence (BAS), federal income tax advantage (TAD), overtime bonuses, differential pay, and longevity pay.

(b) *Medical expense loss.* This loss equals the out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that were not paid for or reimbursed through health insurance or other programs for which the claimant was not charged). This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the Personal Representative.

(c) *Replacement services loss.* For decedents who did not have any prior earned income, or who worked only part-time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss due to death/burial costs.* This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the personal representative and includes the out-of-pocket burial costs that were incurred.

(e) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure outlined above in paragraph (a) of this section.

§ 104.44 Determination of presumed noneconomic losses for decedents.

The presumed non-economic losses for decedents shall be \$250,000 plus an additional \$100,000 for the spouse and each dependent of the deceased victim. Such presumed losses include a noneconomic component of replacement services loss.

§ 104.45 Determination of presumed economic loss for claimants who suffered physical harm.

In reaching presumed determinations for economic loss for claimants who suffered physical harm (but did not die), the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master may determine the loss of earnings or other benefits related to employment on a case-by-case basis, using documentation and other information submitted by the claimant, regarding the actual amount of work that the claimant has missed or will

miss without compensation. Alternatively, the Special Master may determine the loss of earnings or other benefits related to employment by relying upon the methodology created pursuant to § 104.43(a) and adjusting the loss based upon the extent of the victim's physical harm.

(1) *Disability;* in general. In evaluating claims of disability, the Special Master will, in general, make a determination regarding whether the claimant is capable of performing his or her usual profession in light of the injuries.

(2) *Total permanent disability.* With respect to claims of total permanent disability, the Special Master may accept a determination of disability made by the Social Security Administration as evidence of disability without any further medical evidence or review. The Special Master may also consider determinations of permanent total disability made by other governmental agencies or private insurers in evaluating the claim. The Special Master may require that the claimant submit an evaluation of the claimant's disability and ability to perform his or her occupation prepared by medical experts.

(3) *Partial disability.* With respect to claims of partial disability, the Special Master may consider evidence of the effect of the partial disability on the claimant's ability to perform his or her usual occupation as well as the effect of the partial disability on the claimant's ability to participate in usual daily activities.

(b) *Medical Expense Loss.* This loss equals the out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that were not paid for or reimbursed through health insurance or other programs for which the claimant was not charged). In addition, this loss equals future out-of-pocket medical expenses that will be incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that will not be paid for or reimbursed through health insurance). These losses shall be calculated on a case-by-case basis, using documentation and other information submitted by the claimant.

(c) *Replacement services loss.* For injured claimants who did not have any prior earned income, or who worked only part-time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure

outlined above in paragraph (a) of this section.

§ 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.

The Special Master may determine the presumed noneconomic losses for claimants who suffered physical harm (but did not die) by relying upon the noneconomic losses described in § 104.44 and adjusting the losses based upon the extent of the victim's physical harm. Such presumed losses include any noneconomic component of replacement services loss.

§ 104.47 Collateral sources.

(a) *Payments that constitute collateral source compensation.* The amount of compensation shall be reduced by all collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal in the immediate aftermath, including life insurance, pension funds, death benefits programs, payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act (to the extent such program is authorized, at the time of the payment, to continue operations), and payments made pursuant to the settlement of a civil action as described in section 405(c)(3)(C)(iii) of the Act. In determining the appropriate collateral source offset for future benefit payments, the Special Master may employ an appropriate methodology for determining the present value of such future benefits. In determining the appropriate value of offsets for pension funds, life insurance and similar collateral sources, the Special Master may, as appropriate, reduce the amount of offsets to take account of self-contributions made or premiums paid by the victim during his or her lifetime. In determining the appropriate collateral source offset for future benefit payments that are contingent upon one or more future event(s), the Special Master may reduce such offsets to account for the possibility that the future contingencies may or may not occur. In cases where the recipients of collateral source compensation are not beneficiaries of the awards from the Fund, the Special Master shall have discretion to exclude such compensation from the collateral source offset where necessary to prevent beneficiaries from having their awards

reduced by collateral source compensation that they will not receive.

(b) *Payments that do not constitute collateral source compensation.* The following payments received by claimants do not constitute collateral source compensation:

(1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and

(2) Charitable donations distributed to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant by privately funded charitable entities; provided however, that the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in paragraph (a) of this section.

(3) Tax benefits received from the Federal government as a result of the enactment of the Victims of Terrorism Tax Relief Act.

Subpart E—Payment of Claims

§ 104.51 Payments to eligible individuals.

(a) *Payment date.* Subject to paragraph (c) of this section, the Special Master shall authorize payment of an award to a claimant not later than 20 days after the date on which:

(1) The claimant accepts the presumed award; or

(2) A final award for the claimant is determined after a hearing on appeal.

(b) *Failure to accept or appeal presumed award.* If a claimant fails to accept or appeal the presumed award determined for that claimant within 30 days, the presumed award shall be deemed to have been accepted and all rights to appeal the award shall have been waived.

(c) *Pro-rata and payment of remaining claims.* The James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347, requires that the total amount of Federal funds paid for expenditures including compensation with respect to claims filed on or after October 3, 2011, will not exceed \$2,775,000,000. Furthermore, the total amount of Federal funds expended during the period from October 3, 2011, through October 3, 2016, may not exceed \$875,000,000.

(1) *In general.* The Special Master shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to a payment receive a payment during the period from October

3, 2011, to October 3, 2016, and that the total amount of all such payments made during that 5-year period do not exceed the amount available under law during that period. The Special Master may periodically adjust the amount of ratable reduction in light of available information regarding potential future claims and available funds, and may make additional payments in light of such adjustments.

(2) *Subsequent payments.* Subject to paragraph (c)(3) of this section, in any case in which the amount of a claim is ratably reduced pursuant to paragraph (c)(1) of this section, on or after October 3, 2016, but in no event later than October 3, 2017, the Special Master shall pay to the claimant the amount that is equal to the difference between:

(i) The amount that the claimant would have been paid under the presumed award; and

(ii) The amount the claimant was paid during the period from October 3, 2011, to October 3, 2016.

(3) In the event that the total amount of all claims under paragraph (c)(2) of this section exceeds the amount available under law, the Special Master shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to an additional payment receive their pro-rated share of the available funds.

(4) At the time at which subsequent payments are made, the Special Master may review offsets from the World Trade Center Health Program that were included in the award determination and adjust such subsequent payments to reflect the Program's current status.

(5) During the five years that the Fund is accepting claims, the Special Master shall report periodically on the total amount of all claims under paragraph (c)(2) of this section.

§ 104.52 Distribution of award to decedent's beneficiaries.

The Personal Representative shall distribute the award in a manner consistent with the law of the decedent's domicile or any applicable rulings made by a court of competent jurisdiction. The Personal Representative shall, before payment is authorized, provide to the Special Master a plan for distribution of any award received from the Fund. Notwithstanding any other provision of these regulations or any other provision of state law, in the event that the Special Master concludes that the Personal Representative's plan for distribution does not appropriately compensate the victim's spouse, children, or other

relatives, the Special Master may direct the Personal Representative to distribute all or part of the award to such spouse, children, or other relatives.

Subpart F—Limitations

§ 104.61 Limitation on civil actions.

(a) *General.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal, except that this limitation does not apply to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. The Special Master shall take appropriate steps to inform potential claimants of section 405(c)(3)(C) of the Act.

(b) *Pending actions.* Claimants who have filed a civil action or who are a party to such an action as described in paragraph (a) of this section may not file a claim with the Special Master unless they withdraw from such action not later than January 2, 2012.

(c) *Settled actions.* In the case of an individual who settled a civil action described in Section 405(c)(3)(C) of the Act, such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such action was tendered prior to January 2, 2011.

§ 104.62 Time limit on filing claims.

(a) *In general.* A claim may be filed by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on October 3, 2011, and ending on October 3, 2016, as follows:

(1) In the case that the individual knew (or reasonably should have known) before October 3, 2011, that the individual suffered a physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and is eligible to file a claim under this Part as of October 3, 2011, the individual may file a claim not later than October 3, 2013.

(2) In the case that the individual first knew (or reasonably should have known) on or after October 3, 2011, that the individual suffered such a physical harm or in the case that the individual became eligible to file a claim under this Part on or after that date, the individual

may file a claim not later than the last day of the 2-year period beginning on either the date that the individual first knew (or should have known) that the individual both suffered from such harm or the date the individual became eligible to file a claim under this title, whichever is later, but in no event beyond October 3, 2016.

(b) *Determination by Special Master.* The Special Master or the Special Master's designee should determine the timeliness of all claims under paragraph (a) of this section.

§ 104.63 Subrogation.

Compensation under this Fund does not constitute the recovery of tort damages against a third party nor the settlement of a third party action, and the United States shall be subrogated to all potential claims against third party tortfeasors of any victim receiving compensation from the Fund. For that reason, no person or entity having paid other benefits or compensation to or on behalf of a victim shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.

Subpart G—Measures To Protect the Integrity of the Compensation Program

§ 104.71 Procedures to prevent and detect fraud.

(a) *Review of claims.* For the purpose of detecting and preventing the payment of fraudulent claims and for the purpose of assuring accurate and appropriate payments to eligible claimants, the Special Master shall implement procedures to:

(1) Verify, authenticate, and audit claims;

(2) Analyze claim submissions to detect inconsistencies, irregularities, duplication, and multiple claimants; and

(3) Ensure the quality control of claims review procedures.

(b) *Quality control.* The Special Master shall institute periodic quality control audits designed to evaluate the accuracy of submissions and the accuracy of payments, subject to the oversight of the Inspector General of the Department of Justice.

(c) *False or fraudulent claims.* The Special Master shall refer all evidence of false or fraudulent claims to appropriate law enforcement authorities.

Subpart H—Attorney Fees

§ 104.81 Limitation on Attorney Fees.

(a) *In general—(1) In general.* Notwithstanding any contract, the representative of an individual may not charge, for services rendered in

connection with the claim of an individual under this title, including expenses routinely incurred in the course of providing legal services, more than 10 percent of an award paid under this title on such claim. Expenses incurred in connection with the claim of an individual in this title other than those that are routinely incurred in the course of providing legal services may be charged to a claimant only if they have been approved by the Special Master.

(2) *Certification.* In the case of any claim in connection with which servicers covered by this section were rendered, the representative shall certify his or her compliance with this section and shall provide such information as the Special Master requires to ensure such compliance.

(b) *Limitation—(1) In general.* Except as provided in paragraph (b)(2) of this section, in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act, the representative who charged such legal fee may not charge any amount for compensation for services rendered in connection with a claim filed by or on behalf of that individual under this title.

(2) *Exception.* If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative who charged such legal fee to that individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

(i) Ten (10) percent of such aggregate amount through the settlement, minus

(ii) The total amount of all legal fees charged for services rendered in connection with such settlement.

(c) *Discretion to lower fee.* In the event that the Special Master finds that the fee limit set by paragraph (a) or (b) of this section provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (a) of this section.

Dated: August 26, 2011.

Sheila L. Birnbaum,
Special Master.

[FR Doc. 2011-22295 Filed 8-30-11; 8:45 am]

BILLING CODE 4410-12-P