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

(g) The Director may prescribe that—

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

(2) Any notice, within the meaning of paragraph (c) of this section, be served by the PSOB Office upon an individual by electronic means (such as by telefacsimile or electronic mail addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office), in which case it shall be deemed served on the day that such notice is sent.

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

§ 32.3 Definitions.

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

respectively, with the terrorist attacks of Sept. 11, 2001, or with such terrorist attacks as may occur after Oct. 26, 2001), as well as the proviso under the Public Safety Officers Benefits heading in title II of division B of section 6 of Public Law 110-161.

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

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

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

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

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

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

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

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

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

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

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

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

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

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BJA means the Bureau of Justice Assistance, OJP.

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

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

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

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

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

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

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

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

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

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

(2) Expressly directed to the PSOB determining official;

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

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

(as to knowledge and authority) to be so;

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

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

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

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

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

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

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

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

Child of a public safety officer means an individual—

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

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

Claim means a request (in such form, and containing such information, as the Director may require from time to time) for payment of benefits under this part, where the individual seeking payment has affirmatively requested that the PSOB Office proceed to determination on the basis of the supporting evidence filed by or on behalf of the individual (and any associated legal arguments so filed) at or before the time of that affirmative request: *Provided*, That nothing in this definition shall be

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understood to preclude any PSOB determining official from (at any time) obtaining or considering other evidence in connection with a determination of the claim.

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

Commonly accepted means generally agreed upon within the medical profession.

Convincing evidence means clear and convincing evidence.

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

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

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

- (1) A court;
- (2) An agency described in the Act, at 34 U.S.C. 10284(9)(B) or (C); or
- (3) Otherwise a public entity—
 - (i) That is legally an express part of the internal organizational structure of the relevant government;
 - (ii) That has no legal existence independent of such government; and
 - (iii) Whose obligations, acts, omissions, officers, and employees are legally those of such government.

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

Director means the Director of BJA.

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

Direct and proximate result of an injury—Except as may be provided in the Act, at 34 U.S.C. 10281(k), a death or disability results directly and proximately from an injury if the injury is a substantial factor in bringing it about.

Disaster relief activity means activity or an action encompassed within the

duties described in the Act, at 34 U.S.C. 10284(9)(B) or (C).

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

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

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

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

Drugs or other substances means—

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

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

Educational/academic institution means an institution whose primary purpose is educational or academic learning.

Eligible payee means—

- (1) An individual (other than the officer) described in the Act, at 34 U.S.C.

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10281(a), with respect to a claim under subpart B of this part; or

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

Emergency medical services means—

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

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

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

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

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

(2) Is—

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

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

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

Employee does not include—

(1) Any independent contractor; or

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

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

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

Fire protection means—

(1) Suppression of fire;

(2) Hazardous-material response; or

(3) Emergency medical services or rescue activity of the kind performed by firefighters.

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

Firefighter means an individual who—

(1) Is trained (or is receiving candidate-officer training) in—

(i) Suppression of fire; or

(ii) Hazardous-material response; and

(2) Has the legal authority or responsibility to engage in the suppression of fire, as—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heart attack means—

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

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

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

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

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

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

(1) Any occupational disease; or
(2) Any condition of the body caused or occasioned by stress or strain.

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

the time of the line of duty injury that—

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

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

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

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

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

(1) The entity—

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

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

(2) The entity's—

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

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

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

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

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

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

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

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

Intention-notice filer means an individual—

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

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

(3) Who has no claim pending.

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

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

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

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

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

(1) As of the date it is performed,

(i) Such action or activity—

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

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

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

(2) Such action or activity—

(i) Is intentional; and

(ii) Is—

(A) Performed without reasonable excuse; and

(B) Objectively unjustified.

Involvement—An individual is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer (including a candidate-officer) of a public agency and, in that capacity, has legal authority or responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by

such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility.

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

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

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

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

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

(1) Law enforcement officers;

(2) Firefighters;

(3) Chaplains;

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

(5) Disaster relief workers.

Law enforcement means enforcement of the criminal laws, including—

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

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

(3) Prison security activity; and

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

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

(1) A law enforcement officer or a firefighter—

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

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

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is compensated), under the auspices of the public agency he serves; and

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

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

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

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

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

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

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

(2) A disaster relief worker, only if, not being described in the Act, at 34 U.S.C. 10282(a), and not being commuting or a frolic or detour, it is disaster relief activity, and the public agency in which he is an employee (or the relevant government), being described in the Act, at 34 U.S.C. 10284(9)(B) or (C), legally recognizes it to have been such at the time performed (or, at a minimum, does not

deny (or has not denied) it to have been such); or

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

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

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

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

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

(1) It is sustained in the course of—

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

(ii) Authorized commuting; or

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

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

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

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

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

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

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

Mental faculties means brain function.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Parent means a father or a mother.

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

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

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

- (1) Alive at the time of his conception; and
- (2) Deceased at or before the time of his birth.

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

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

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

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

Public employee means—

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

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

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

Public safety activity means any of the following:

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

Public safety agency means—

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

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

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

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

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

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

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

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

Representative services include expenses incurred in connection with such services.

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

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

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

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

- (i) Engage in rescue activity; or
- (ii) Provide emergency medical services.

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

Spouse means an individual with whom another individual lawfully entered into marriage under the law of

the jurisdiction in which it was entered into, and includes a spouse living apart from the other individual, other than pursuant to divorce, except that—

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

(2) Notwithstanding any other provision of law—

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

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

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

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

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

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

(2) As of the injury date—

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

(ii) After the officer obtained such knowledge—

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

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

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

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

Stroke means cerebrovascular accident.

Student means an individual who meets the definition provided in the

Act, at 34 U.S.C. 10284(3)(ii), with respect to an educational/academic institution.

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

(1) Contributed to the death, injury, or disability to a significant degree; or

(2) Is a substantial factor in bringing the death, injury, or disability about.

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

(1) The factor alone was sufficient to have caused the death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke; or

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

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

Supporting-evidence collection period means the period—

(1) That begins upon the filing of a notice of intention to file a claim, and ends upon the earlier of—

(i) One year thereafter (unless, for good cause shown, the Director extends the period); or

(ii) The date on which such claim is filed; and

(2) During which an intention-notice filer may collect and assemble supporting evidence for his intended claim.

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

(1) There is a reasonable indication that the event or act was (or would be or would have been, with respect to a *priori* prevention or investigation efforts) an act of domestic or international terrorism within the meaning of the criminal terrorism laws, at 18 U.S.C. 2331; and

(2) The event or act (or the circumstances of death or injury) was of such extraordinary or cataclysmic

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character as to make particularized factual findings impossible, impractical, unnecessary, or unduly burdensome.

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

(1) With respect to alcohol,

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

(ii) In any claim not described in paragraph (1)(i) of this definition, unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally, it means intoxication—

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

(B) As of the injury date; and

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

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

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

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

(C) Any controlled substance included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)) and with respect to which there is a therapeutic range

or maximum recommended dosage, at levels above or in excess of such range or dosage; or

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

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

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

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

WTC-related health condition means—

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

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

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

WTC responder means an individual who—

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

(2) Meets the definition at 42 U.S.C. 300mm-21(a)(1)(B) and has received an affirmative decision from the WTC Health Program under 42 CFR 88.6(d)(1) (as in effect on January 17, 2017);

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

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

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

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

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

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

§ 32.4 Terms; construction, severability; effect.

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

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

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

(d) Unless the same should expressly provide otherwise (e.g., by use of the word “hereafter” in an appropriations proviso), any amendment to the Act (or any statutory enactment otherwise directly referent or -applicable to the program that is the subject of this part), shall apply only with respect to injuries (or, in connection with claims under the Act, at 34 U.S.C. 10281(k),

shall apply only with respect to heart attacks, strokes, or vascular ruptures referred to in the Act, at 34 U.S.C. 10281(k)(2)) occurring on or after the date it takes effect.

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

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

§ 32.5 Evidence.

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

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

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

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

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

(i) Such material- or relevant evidence or -information within his possession, control, or ken as may reasonably be requested from time to time by such official; or

(ii) Such authorizations or waivers as may reasonably be requested from time to time by such official to enable him