

§ 32.4

(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),

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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