on systems. It also generates proposals and evaluates options for quantitative and qualitative limitations on strategic weapons systems. It proposes or analyzes studies, projects and plans in support of the SALT negotiations.[1]

§ 601.13 Non-Proliferation and Advanced Technology Bureau.

(a) "The Non-Proliferation and Advanced Technology Bureau" has technical and policy responsibilities involving arms control in such areas as the proliferation of nuclear weapons; nuclear weapon tests; military use of environmental modification; chemical, biological and radiological weapons; and other kinds of advanced weapon technology. It also has an operational responsibility for negotiations in some of the above areas. The head of the Bureau, or his representative, currently chairs the Non-Proliferation Backstopping Committee and the interagency group backstopping the Threshold Test Ban Treaty/Peaceful Nuclear Explosion negotiations.

(b) "The Weapons Technology Division" devotes most of its resources to arms control measures that might come under negotiation in the Conference of the Committee on Disarmament (CCD) or elsewhere with particular emphasis on the technological factors involved in arms control policy. These measures include nuclear weapon test limitations; control of military use of environmental modification; chemical, biological and radiological weapons control; and limitations on advanced weapons developments including high-energy laser weapons and other kinds of weapons of mass destruction.

(c) "The Nuclear Energy Division" is responsible for analyzing the arms control aspects of U.S. and foreign nuclear technology, particularly as it relates to nuclear weapons, nuclear reactors, and facilities for producing and processing fissionable material. This responsibility includes the formulation and evaluation of policy recommendations for curbing the spread of nuclear weapons to additional countries, as well as other arms control policy issues involving nuclear technology.

(d) "The International Division" performs a variety of activities in support of the Nuclear Non-Proliferation Treaty, such as encouraging additional adherences to the Treaty, ensuring its adequate implementation, and participating in international reviews of its operation. The Division also participates in international discussions of common nuclear supply policies and other proposals aimed at regulating international transactions in the nuclear export field, and represents ACDA in intra-Governmental consultations on this subject. The Division maintains liaison with the International Atomic Energy Agency in order to support that Agency's non-proliferation activities.

[1] ACDA studies, policy recommendations for the Director, and ACDA's position in the interagency process involving SALT are coordinated by the Special Assistant for SALT.

§ 601.14 International Relations Bureau.

(a) "The International Relations Bureau" is generally responsible for the diplomatic/policy aspects of arms control negotiations. It conducts and backstops the negotiations at the Conference of the Committee on Disarmament (CCD) and plays a leading role in the annual UN disarmament debates. On MBFR, the Bureau coordinates implementation of agreed policy in the East-West negotiations and in continuing NATO consultations about issues arising in the Vienna talks and also has the leading role in formulating ACDA positions on basic MBFR policy questions that require high-level Washington decisions. It assesses world military expenditures and arms transfers to other countries and assists the Director in advising other USG agencies on individual US arms transfers and on arms transfer policy. In addition, the Bureau provides advice on other regional arms control matters and on political aspects of SALT.

(b) "The Regional Division," in addition to the major responsibility of providing the support staff for ACDA's interagency responsibilities for MBFR, is responsible for providing advice on the regional impact of SALT, particularly as it affects the interests of NATO Allies, and for pursuing arms control possibilities in other regions.

(c) "The CCD and UN Division" has the major responsibility for US participation in the CCD and takes a leading role in the annual United Nations disarmament debates. The Division also oversees many matters that relate to various arms control treaties and their implementation.

(d) "The Arms Transfer Division" develops policy recommendations and negotiating proposals relating to the control of international transfers of arms and related technology and, under the supervision of the Assistant Director for IR, represents the Director in advising State, NSC, and the White House concerning arms control factors involved in individual US arms transfers and in policy decisions related to such transfers. This Division also organizes, evaluates, and as appropriate publishes data on worldwide conventional arms transfers and production, and conducts or oversees research appropriate to improving the knowledge and control of international arms transfers.

§ 601.15 Verification and Analysis Bureau.

(a) "The Verification and Analysis Bureau" is responsible for studying the verifiability of existing arms control agreements and possible new agreements, the implications for national security of the verifiability of such agreements, and the development of new and improved verification technology. The Bureau evaluates the economic implications of arms control agreements and potential arms control measures, and has the operational responsibility for assessing world military expenditures. The Bureau also analyzes the quantitative aspects of arms control policies and operations. Through an Intelligence Staff, the Bureau serves as the Agency's central point of contact with the intelligence community.

(b) "The Verification Division" conducts internal studies and initiates external research on the verification process and its relation to arms control proposals, negotiations and agreements. Evaluation of verification procedures and systems is done to identify limitations, opportunities and new requirements.

(c) "The Operations Analysis Division" studies the quantitative aspects of arms control policies and operations. Its work includes analysis of present and future relative force capabilities, analysis of operational and technical constraints and the effect of uncertainties on force structures, and the evaluation of verification systems. The Division supports policy formulation in the strategic arms limitations area, the mutual and balanced force reductions area, the comprehensive test ban area and other areas as assigned.

(d) "The Economics Division" assesses the economic effects of military spending and arms control initiatives, analyzes the economics of technologies relevant to arms control, studies the use of economic measures to achieve arms control objectives, assesses from an arms control perspective the impact on military budgets caused by economic forces, monitors and develops proposals relating to the military expenditures of all nations and their limitations, and studies other economic questions relating to arms control.

§ 601.16 Office of Administration.

The Office of Administration, under the direction of the Executive Officer, is responsible for administrative management of the Agency and for providing support to all of its components. This includes all personnel, budget, fiscal, supply, security, communications and general administrative activities. The Office advises the Director and other senior officials of the Agency on these and other matters relating to the management of the Agency, and maintains regular liaison with the Department of State and other organizations providing services for the Agency.

§ 601.17 Office of Public Affairs.

The Office of Public Affairs, under the direction of the Public Affairs Adviser, carries out the Agency's responsibility for the dissemination and coordination of public information concerning arms control matters. It also advises the Director, Deputy Director and other Agency officers on the public information aspects of such matters. In conjunction with other Agency components, the Office prepares for transmittal to the Congress an annual report of the Agency's activities including a positive statement on the status and prospects of arms control and disarmament goals, negotiations, and activities. Within the Office, the ACDA Historian is responsible for the preparation of historical analyses on arms control topics and previous negotiations.

Dated: January 30, 1976.

FRED C. IKLE,
Director.

[FR Doc.76-6184 Filed 3-3-76;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

MISCELLANEOUS AMENDMENTS; CORRECTIONS

Chapter I of Title 23 of the Code of Federal Regulations is amended by making the following changes which are in the nature of corrections.

PART 652—BIKEWAYS AND WALKWAYS IN CONJUNCTION WITH FEDERAL AND FEDERAL-AID HIGHWAYS

In § 652.1—The words "The purpose of this *subsection*" are changed to "The purpose of this part";

PART 710—RIGHT-OF-WAY—GENERAL

In § 710.304(b)(2)—The reference to Volume 1, Chapter 4, Section 5 is changed to "Part 140, Subpart G of this chapter";

In § 710.304(f)—The reference to Volume 6, Chapter 4, Section 1, Subsection 6 is changed to "Part 635, Subpart A of this chapter";

In § 710.304(i)—The reference to Volume 1, Chapter 4, Sections 3 and 4 is changed to "Part 140, Subpart I and Part 645, Subpart A of this chapter";

PART 712—THE ACQUISITION FUNCTION

In § 712.204(g)—The reference to Volume 6, Chapter 3, Section 1, Subsection 1 is changed to "Part 630, Subpart C of this chapter";

In § 712.502—712.503 is changed to "§ 712.503" and 712.504 is changed to "§ 712.504";

In § 712.504(b)(6)—The reference to PPM 90-1, 23 CFR Chapter I, Appendix A is changed to "Part 771 of this chapter";

In § 712.702(b)—The Federal Register citation is deleted;

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

In § 713.302(b)—The reference to Volume 6, Chapter 1, Section 1, Subsection 8 is changed to "Part 620, Subpart B of this chapter";

In § 713.304(b)—The reference to Volume 6, Chapter 1, Section 1, Subsection 8 is changed to 'Part 620, Subpart B of this chapter";

PART 720—APPRAISAL

In § 720.201(b)(3)—The words "or PPM 80-9" are deleted, and the words "and Parts 751 and 753" are inserted between the words "Subpart D of Part 750" and "of this chapter";

PART 740—RELOCATION ASSISTANCE

In § 740.55(b)—740.54 is changed to "§ 740.54";

PART 750—HIGHWAY BEAUTIFICATION

In § 750.103(b)—750.107 is changed to "§ 750.107";

In § 750.106(a)—"in accordance with Regulations * * *" should read "in accordance with section 1.35 of this chapter";

In § 750.106—Change the date in the source given as 23 FR 8793, November 13, 1970, to November 13, 1958;

In § 750.308—A footnote is added to advise that "Forms are available at FHWA Division Offices located in each State.";

PART 751—JUNKYARD CONTROL AND ACQUISITION

In § 751.7(d)—The reference to Volume 7, Chapter 6, Section 2 is changed to "Part 750, Subpart G of this Chapter." The footnote is also deleted.;

In § 751.25(a)—The reference to Volume 6, Chapter 3, Section 2, Subsection 2 is changed to "Part 630, Subpart A of this chapter";

PART 770—AIR QUALITY GUIDELINES FOR USE IN FEDERAL-AID HIGHWAY PROGRAMS

In § 770.205(b)(4)—The reference to Volume 7, Chapter 7, Section 2 is changed to "Part 771 of this chapter." The footnote is also deleted.;

In § 770.205(c)(5)—The reference to Volume 7, Chapter 7, Section 2 is changed to "Part 771 of this Chapter ";

In § 770.205(d)—Delete "in accordance with the interim regulation (23 CFR Part 770, 38 FR 31677)" and insert "in accordance with Subpart B of Part 770 of this Chapter";

PART 771—ENVIRONMENTAL IMPACT AND RELATED STATEMENTS

Section 771.18(i)(2)(~~iv)(E~~)(ix)—should be rewritten as follows:

§ 771.18 Content of the environmental impact statement.

* * * * *

(i) * * *

(2) * * *

(iv) * * *

(E) * * *

(ix) *Flood hazard evaluation.* When an alternative under consideration significantly encroaches on a flood plain, this section will include a summary of studies and consultation made for compliance with Part 650, Subpart A of this chapter, or information evidencing that such requirements can be met during project development.

* * * * *

The footnote is also deleted.

These amendments are entirely administrative in nature and no purpose would be served by observing the public rulemaking process.

Issued on: February 25, 1976.

L. P. Lamm,
Executive Director.

[FR Doc.76-6183 Filed 3-3-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7407]

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

PART 53—FOUNDATION EXCISE TAXES

Use of Form 5227

This document contains amendments to the Foundation Excise Taxes Regulations (26 CFR Part 53) and the Income Tax Regulations (26 CFR Part 1). The amendments provide for the filing of new Form 5227 by charitable trusts described in section 4947(a)(1) which are private foundations, and by certain split-interest trusts described in section 4947(a)(2).

The regulations also provide that in certain cases, the filing of Form 5227 by charitable trusts will also fulfill the income tax return filing requirement of section 6012 and thus obviate the necessity of filing Form 1041.

Amendments to the regulations. In view of the foregoing the Foundation Excise Taxes Regulations (26 CFR Part 53) and the Income Tax Regulations (26 CFR Part 1) are amended as follows:

Paragraph 1. Paragraph (a) of § 53.4940-1 is amended to read as follows:

§ 53.4940-1 Excise tax on net investment income.

(a) *In general.* Section 4940 imposes an excise tax of 4 percent on the net investment income (as defined in section 4940(c) and paragraph (c) of this section) of a tax-exempt private foundation (as defined in section 509) for each taxable year beginning after December 31, 1969. This tax will be reported on the form the foundation is required to file under section 6033 for the taxable year and will be paid annually at the time prescribed for filing such annual return (determined without regard to any extension of time for filing). In addition, an excise tax is imposed in the manner prescribed in paragraph (b) of this section on certain non-exempt private foundations (including certain non-exempt charitable trusts). Except as provided in the succeeding sentence, this tax is to be reported by means of a schedule attached to the organization's income tax return.

For taxable years ending on or after December 31, 1975, the tax imposed by section 4940(b) and paragraph (b) of this section on a trust described in section 4947(a)(1) which is a private foundation shall be reported on Form 5227. The tax imposed by section 4940(b) and this section is to be paid annually at the time the organization is required to pay its income taxes imposed under Subtitle A. Except as otherwise provided herein, no exclusions or deductions from gross investment income or credits against tax are allowable under this section.

* * * * *

PAR. 2. Section 53.6011-1 is amended by adding paragraph (d) to read as follows:

§ 53.6011-1 General requirement of return, statement, or list.

* * * * *

(d) For taxable years ending on or after December 31, 1975, every trust described in section 4947(a)(1) which is a private foundation and every trust described in section 4947(a)(2) which is subject to any of the provisions of Chapter 42 as if it were a private foundation shall file an annual return on Form 5227.

PAR. 3. Section 1.6012-3 is amended by revising the introductory text of paragraph (a)(1) and by adding paragraph (a)(7) to read as follows:

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts*—(1) *In general.* Except as otherwise provided in this paragraph, every fiduciary, or at least one of joint fiduciaries, must make a return of income on Form 1041 (or by use of a composite return pursuant to § 1.6012-5).

* * * * *

(7) *Certain trusts described in section 4947(a).* For taxable years ending on or after December 31, 1975, in the case of a trust described in section 4947(a)(1) which is a private foundation, and which has no taxable income for a taxable year, the filing requirement of section 6012 and this section shall be satisfied by the fiduciary of such trust filing Form 5227 pursuant to § 53.6011-1 of this chapter (Foundation Excise Tax Regulations). When the provisions of this paragraph are met, the fiduciary shall not be required to file Form 1041.

PAR. 4. Section 53.6071-1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 53.6071-1 Time for filing returns.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, a return required by § 53.6011-1 shall be filed at the time the private foundation or trust described in section 4947(a)(2) is required to file its annual information or tax return under section 6033 or 6012 (as may be applicable).

* * * * *

(c) *Form 5227.* A Form 5227 required to be filed by paragraph (d) of § 53.6011-1 for a trust described in section 4947(a) shall be filed on or before the 15th day of the fourth month following the close of the trust's taxable year.

Because this Treasury decision revises the procedure for filing forms, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date of limitations of 5 U.S.C. 553(d).

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: February 26, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.76-6275 Filed 3-3-76;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

PART 245—PLAN FOR THE SECURITY CONTROL OF AIR TRAFFIC AND AIR NAVIGATION AIDS (SHORT TITLE: SCATANA)

The Deputy Secretary of Defense, the Deputy Secretary of Transportation, and the Defense Commissioner, Federal Communications Commission, have approved this revised part, effective March 1, 1976.

SCATANA is an emergency preparedness plan which prescribes the joint action to be taken by the Federal Aviation Administration, Federal Communications Commission, and appropriate elements of the Department of Defense in the interest of national security in order to effect control of air traffic and air navigation aids under emergency conditions.

The revised Part 245 reads as follows:

AUTHORITY: Sections 245.1 to 245.11 issued under Title 5, U.S.C., sec. 301, Title 5, U.S.C. 552.

§ 245.1 Foreword.

(a) This part is promulgated in furtherance of the Federal Aviation Act of 1958, as amended, the Communications Act of 1934, as amended, and Executive Order 11490, and supersedes: Plan for the Security Control of Air Traffic and Air Navigation Aids—June 1971.

(b) This part defines the responsibilities of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) and the appropriate military authorities for the security control of civil and military air traffic, and control of federal and non-federal air navigation aids.

§ 245.2 Explanation of terms.

For the purpose of this part and supporting documents, the following explanations apply:

(a) *Air defense emergency.* An emergency condition which exists when attack upon the continental United States, Alaska, Canada, or U.S. installations in Greenland by hostile aircraft or missiles is considered probable, is imminent, or is taking place.

(b) *Air defense identification zone.* Airspace of defined dimensions within which the ready identification, location and control of aircraft is required.

(c) *Air navigation aid (NAVAIDS).* (1) Federal NAVAIDS. VOR, VORTAC, TACAN and LORAN stations owned and operated by an agency of the Federal Government such as the FAA, Military Services and United States Coast Guard.

(2) Non-Federal NAVAIDS: VOR, VORTAC and TACAN stations licensed by the FCC.

(d) *Appropriate military authorities.* Within the NORAD area of responsibility—CINCNORAD AND NORAD region commanders. CINCNORAD has delegated all actions associated with the appropriate military authority to NORAD region commanders. Outside the NORAD area of responsibility—the Commander in Chief, or his designated representative, of unified or specified commands for U.S. areas located within their area of responsibility.

(e) *Defense area.* Any airspace of the United States (other than that designated as an ADIZ) in which the control of aircraft is required for national security.

(f) *Defense emergency.* An emergency condition which exists when:

(1) A major attack is made upon U.S. forces overseas, or allied forces in any area, and is confirmed either by the commander of a unified or specified command or higher authority.

(2) An overt attack of any type is made upon the United States and is confirmed either by the commander of a command established by the Secretary of Defense or higher authority.

(g) *Dispersal.* Relocation of aircraft to predesignated dispersed operating bases for the purpose of increasing survivability.

(h) *Diversion.* The intentional change of a flight from its intended destination for operational or tactical reasons.

(i) *Emergency Security Control of Air Traffic (ESCAT) Rules.* Emergency rules for the security control of air traffic prior to the declaration of Air Defense Emergency (see § 245.4).

(j) *FAA Region.* A geographical subdivision of the area for which the FAA is responsible.

(k) *Implement SCATANA.* The phrase used to direct FAA to commence those actions required in the SCATANA plan (see § 245.5).

(l) *Nontactical air traffic.* Civil or military flights other than tactical air traffic.

(m) *North American Air Defense Command (NORAD).* An integrated United States—Canadian command. NORAD includes, as component commands, the United States Air Force Aerospace Defense Command and the Canadian Forces Air Defense Command.

(n) *NORAD Region.* A geographical subdivision of the area for which NORAD is responsible.

(o) *Rerouting.* The intended deviation of a flight from its original course without changing its destination.

(p) *SARDA.* State and Regional Disaster Airlift. A plan for the use of non-air carrier aircraft during a national emergency.

(q) *SCATANA.* The short title for the joint DoD/DOT/FCC plan for the Security Control of Air Traffic and Air Navigation Aids.

(r) *Security control authorization.* Military authorization for an aircraft to take off when ESCAT is applied or SCATANA has been implemented. (See §§ 245.5 and 245.8).

(s) *Tactical air traffic.* Military flights actually engaged in operational missions against the enemy, flights engaged in immediate deployment for a combat mission, and preplanned combat and logistical support flights contained in Emergency War Plans.

(t) *United States.* The several states, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories and possessions of the United States (including areas of air, land, or water administered by the United States under international agreement), including the territorial waters and the overlying airspace thereof.

(u) *Wartime Air Traffic Priority List (WATPL).* The list comprises eight priorities designed to control the volume of air traffic when SCATANA has been implemented. (See § 245.5, §§ 245.6 and 245.8).

(v) *The use of the words "will" and "shall."* For the purpose of this Part, use of the words will and shall denotes mandatory compliance by the affected persons or agency(ies).

(w) *List of Acronyms and Abbreviations.*

ADIZ—Air Defense Identification Zone.
ARTCC—Air Route Traffic Control Center.
ATC—Air Traffic Control.
CINCNORAD—Commander in Chief North American Air Defense.
CRAF—Civil Reserve Air Fleet.
DoD—Department of Defense.
DVFR—Defense (ADIZ) Visual Flight Rules.
ESCAT—Emergency Security Control of Air Traffic.
EWO—Emergency War Orders.
FAA—Federal Aviation Administration.
FCC—Federal Communications Commission.
ICAO—International Civil Aviation Organization.
IFR—Instrument Flight Rules.
JCS—Joint Chiefs of Staff.
LORAN—A hyperbolic system of navigation, i.e., LORAN-A and LORAN-C systems of navigation.
NAVAID—Navigation Aid.
NORAD—North American Air Defense.
SAC—Strategic Air Command.
SARDA—State and Regional Disaster Airlift.
SCATANA—Security Control of Air Traffic and Air Navigation Aids.
TACAN—Tactical Air Navigation.
VFR—Visual Flight Rules.
VHF—Very High Frequency.
VOR—VHF Omnirange.
VORTAC—VHF Omnirange/Tactical Air Navigation.
WASP—War Air Service Program.
WATPL—Wartime Traffic Priority List.

§ 245.3 The SCATANA Plan.

(a) *Purpose.* The purpose of this part is to establish responsibilities, procedures and instructions for the security control of civil and military air traffic and NAVAIDS which will provide for the most effective use of airspace under various emergency conditions.

(b) *Authority.* (1) The Joint Chiefs of Staff directives which outline NORAD responsibilities for the development of plans and policies in concert with the FAA and FCC for the establishment of a system for identification and security control of air traffic and air NAVAIDS.

(2) Federal Aviation Act of 1958, as amended.

(3) Communications Act of 1934, as amended.

(4) Executive Order 11490.

(5) The National Security Act of 1947, as amended.

(c) *Scope.* This part applies to all United States territory over which the FAA has air traffic control jurisdiction. For the purpose of this part, the appropriate military authorities within this territory are as follows:

(1) For the NORAD area of responsibility, NORAD region commanders have been designated as appropriate military authority by CINCNORAD.

(2) Outside the NORAD area, the commander, or his designated representative, of the unified-specified command exercising operational control over the area.

(d) *General description of the plan.* This part is intended to meet two types of situations. These are outlined below, together with a general summary of the actions required.

(1) In the first situation, an emergency may develop which does not meet the criteria for the declaration of a Defense Emergency or Air Defense Emergency, but in the interests of hemispheric and national security requires identification and control of all aircraft operating in the defense area, its coastal approaches or any parts of these areas. Under such conditions, the following actions, which are described in more detail in § 245.3, will be taken:

(i) The appropriate military authority will direct the FAA Air Route Traffic Control Center (ARTCC) concerned to apply Emergency Security Control of Air Traffic (ESCAT) in the affected area.

(ii) The ARTCC will advise all aircraft operating under its control and relay ESCAT implementation instructions to appropriate aeronautical facilities within its area that ESCAT rules have been applied and will then issue any special security instructions which are required to identify, locate and ensure immediate control of all air traffic.

(iii) When ESCAT is applied, all aircraft must file IFR or DVFR flight plans and comply with the special security instructions issued. These instructions may require diverting or rerouting airborne flights and, using a system of security control authorizations, restrictions to proposed flights not already airborne.

(2) In the second situation, an emergency will have arisen which has resulted in the declaration of Defense Emergency outside the NORAD area, Air Defense Emergency within the NORAD area, or both of these. Under such conditions the following actions, described in detail in § 245.5, will be taken:

(i) The appropriate military authority will direct the FAA ARTCC concerned to implement Security Control of Air Traffic and Air Navigation Aids (SCATANA).

(ii) The ARTCC will relay SCATANA implementation to appropriate aeronautical facilities, will direct all VFR traffic under its control to land and file an IFR/DVFR flight plan, and will implement other directions specified by the appropriate military authority. These may include grounding, diversion and other restrictions to flight, plus the control of navigation aids.

(iii) Aircraft movements will be controlled by the use of the WATPL except for specific exceptions which will be controlled by using a Security Control Authorization.

(iv) The NORAD Region in its transmission of SCATANA air traffic control instructions to the ARTCC will clearly state which WATPL Numbers are authorized to operate. This information will also include any special authorizations for operations under Security Control Authorizations procedures (see § 245.8).

(e) *Amplifying Instructions*—(1) *Interference with normal air traffic.* This will be minimized, consistent with the requirement for operation of the air defense system.

(2) *Supplements for essential civil air operations.* Appropriate Unified-Specified commands, in collaboration with the FAA region directors will prepare annexes and agreements supplementing this plan for their area of responsibility. These supplements are to consider the special requirements of organized civil defense and disaster relief flights, agricultural and forest fire flights, border patrol flights and other essential civil air operations to the end that maximum use of these flights, consistent with air defense requirements will be made when SCATANA and ESCAT are in effect.

(3) *Vital military flights to have priority.* Military air operations vital to national defense are to be given priority over all other military and civil aircraft through procedural handling by the Air Traffic Control (ATC) systems as specified in coordinated agreements or authorizations for particular operations (see § 245.8).

(4) *One Military authority to direct ARTCCs.* In consonance with this plan,

appropriate military authorities will direct the extent of security control of air traffic and air navigation aids as required by the military situation. Such directions will be issued to appropriate FAA ARTCCs for implementation. The area of responsibility of the appropriate military authority may not be congruent with ARTCC boundaries, especially in the NORAD area where one ARTCC's boundaries may lie within two or more NORAD regions. To prevent confusion, agreements will be developed between appropriate military authorities and the ARTCCs concerned to ensure that each ARTCC receives direction from one military authority only. Unless operational requirements dictate otherwise, directed SCATANA actions will be consistent throughout an individual ARTCC area.

(5) *Tactical air movements plans.* To assist appropriate military authorities in making a preliminary assessment of wartime air traffic patterns and to simplify the transition to SCATANA operations, major commands are to coordinate the air traffic movement section of their Emergency War Plans (including dispersal and evacuation) and preposition flight plan information with appropriate military authorities. This authority is the NORAD region commander within the NORAD area of responsibility. Detailed requirements are explained in § 245.6.

(6) *Testing procedures.* To insure that implementing actions can be taken expeditiously, SCATANA tests will be conducted periodically in accordance with § 245.10.

(7) *Dispersal actions.* Prior to or subsequent to the declaration of a Defense Emergency or an Air Defense Emergency, there may be a requirement to disperse civil and military aircraft for their protection. If such dispersal plans are implemented when any part of this plan has been placed in effect, operations will be in accordance with the requirements of that portion of the SCATANA plan which is in effect. If any part of the SCATANA plan is ordered while dispersal is in progress, dispersal operations will be revised as required to comply with SCATANA.

(8) *Communications.* Direct communications are authorized between appropriate agencies and units for the purpose of coordinating and implementing the procedures in this plan.

(9) *Review and revision.* All concerned agencies are encouraged to continuously monitor this plan for adequacy and currency. Hq NORAD, acting as executive agent for DoD, will process and distribute administrative and organizational changes as they occur. However, this plan will be reviewed at least once every two years by FAA, FCC, and NORAD and reissued or changed as required. Recommended changes should be forwarded to:

Headquarters, North American Air Defense Command.
Ent Air Force Base, Colorado 80912.

(f) *Responsibilities.* (1) The Commander in Chief, NORAD will:

(i) Establish the military requirements for the Security Control of Air Traffic and Air Navigation Aids.

(ii) Coordinate with the Administrator, FAA, and the Defense Commissioner, FCC, as appropriate, regarding the establishment of procedures for implementation.

(2) The Administrator, FAA will:

(i) Promulgate the necessary FAA directives/plans, including special ATC procedures to implement this plan.

(ii) Coordinate with appropriate military authorities prior to the establishment of procedures for this plan.

(iii) Maintain liaison with appropriate NORAD region commanders through appropriate FAA offices.

(iv) Administer this plan in accordance with requirements established by the Commander in Chief, North American Air Defense Command.

(v) Collaborate with the FCC in establishing procedures for control of non-Federal NAVAIDS as defined in this plan.

(3) Federal Communications Commission will:

(i) Engage in rule making or other actions as appropriate in support of this plan.

(ii) Collaborate with the FAA in establishing procedures for control on non-Federal NAVAIDS as defined in this plan.

(4) Appropriate Military Authorities will:

(i) Direct the control of NAVAIDS (VOR, VORTAC, TACAN and LORAN) in their areas, as required.

(ii) Issue security control instructions to appropriate FAA region/ARTCC as necessary to insure performance of their air defense mission.

(iii) Maintain liaison with appropriate FAA regional directors and FCC Regional Liaison Officers.

(iv) Conduct tests of this plan in coordination with the FAA and FCC.

(v) Collaborate with the FAA regional director and FCC Regional Liaison Officer in making supplemental agreements to this plan.

(5) The FAA Regional Directors will:

(i) Assure FAA participation with the NORAD region commanders in the testing of this plan in the NORAD region areas.

(ii) Ensure dissemination of information and instructions concerning this plan within their areas of responsibility to civil and military aeronautical facilities and civil pilots.

(iii) Place in effect procedures outlined in this plan in accordance with requirements established by appropriate military authorities.

(iv) Assist appropriate military authorities in making supplemental agreements to this plan as may be required.

(6) The FCC Regional Liaison Officers will:

(i) Maintain liaison with the NORAD region commanders and FAA regional directors with regard to participation of FCC licensed aeronautical navigational aids in this plan.

(ii) Disseminate information and instructions concerning this plan to FCC licensed navigational aids affected by this plan.

(iii) Assist the NORAD region commanders in making such supplemental agreements to this plan as may be required.

(7) Comanders of Responsible Major Commands will:

(i) Ensure that the air traffic movement sections of the Emergency War Plans are coordinated with appropriate military authorities.

(ii) Ensure that flight plans in support of their coordinated Emergency War Plans are prepositioned with appropriate military authorities and the FAA. (See § 245.6).

(iii) Identify specific NAVAIDS (VOR, VORTAC, TACAN and LORAN) which are essential to support contingency operations of assigned forces during implementation of SCATANA. The appropriate military authority will, except under actual emergency air defense situations, ensure that such air NAVAIDS within their area of responsibility remain in operation. Control of LORAN C will be in accordance with the JCS Master Navigation Plan (SM 525-XX). If actual emergency air defense situations require shutdown of these air NAVAIDS, the appropriate military authority will immediately notify the respective commander of the affected major command of the shutdown.

§ 245.4 Application of Emergency Security Control of Air Traffic (ESCAT).

(a) *Situation.* Emergency conditions exist which threaten national security but do not warrant the declaration of Defense Emergency, Air Defense Emergency or the control of air NAVAIDS.

(b) *Intention.* To provide for the most effective use of airspace in the affected area by:

(1) Ensuring that the position of all friendly air traffic is known and can be contacted by radio, if necessary.

(2) Controlling the density of air traffic operating in airspace critical to the conduct of air defense operations.

(c) *Application.* (1) The appropriate military authority will take the following actions:

(i) Direct the affected ARTCCs to apply ESCAT.

(ii) Specifically define the affected area.

(iii) Define the types of restrictions to be placed in effect. These may require the diverting and rerouting of traffic, the restricting of traffic to certain areas or corridors, and the initiating of a requirement to obtain a Security Control Authorization prior to take-off.

(iv) Within NORAD, the region commander will advise CINCNORAD who will then advise the Administrator, FAA and the Defense Commissioner, FCC, that ESCAT has been applied. Outside NORAD the appropriate military authority will advise the Administrator, FAA and the Defense Commissioner, FCC directly. When time is vital notification may occur after ESCAT has been implemented.

(v) Direct the appropriate ARTCCs to relax or terminate restrictions as the tactical situation allows.

(2) ARTCCs will take the following actions when directed to apply ESCAT:

(i) Disseminate ESCAT instructions and restrictions received to air traffic, civil and military air traffic control facilities, flight service stations and other appropriate aeronautical facilities.

(ii) Impose the restrictions on air traffic as directed by the appropriate military authority. The restrictions will automatically include instructions for all VFR traffic to land at the nearest suitable airport and file an IFR/DVFR flight plan.

(iii) Civil and military air traffic control facilities, and other aeronautical facilities will disseminate to air traffic and aircraft operators, and will implement, those instructions and restrictions received from the ARTCCs. When an IFR or DVFR flight plan has been filed, it will be examined by the appropriate aeronautical facility to ensure that it conforms with the ESCAT restrictions placed in effect by the appropriate military authority. When a flight plan does conform with the ESCAT restrictions, the appropriate aeronautical facility will grant a Security Control Authorization and the flight can then be given take-off clearance. When a flight plan does not conform with the ESCAT restrictions, a Security Control Authorization will not be given and take-off clearance will be denied.

(iv) The pilot in command will take the following actions when ESCAT is applied:

(*a*) If airborne, comply with the instructions issued by the appropriate aeronautical facility.

(*b*) If not airborne, file an IFR or DVFR flight plan prior to take-off and comply with the instructions issued by the appropriate aeronautical facility.

(*c*) Aircraft which are not radio equipped may not file an IFR or DVFR flight plan and will not be permitted to operate in areas affected by ESCAT.

§ 245.5 Implementation of Security Control of Air Traffic and Air Navigation Aids.

(a) *Situation.* Three types of situations may require the implementation of SCATANA.

(1) In the first of these, an emergency has arisen which has resulted in the declaration of an Air Defense Emergency within the NORAD area. Under this condition SCATANA will be automatically implemented.

(2) In the second situation, which applies only to NORAD, a NORAD region commander may direct implementation of SCATANA for his region when his region or an adjacent region is under attack and Air Defense Emergency has not yet been declared.

(3) In the third situation, an emergency has arisen which has resulted in the declaration of a Defense Emergency outside the NORAD area. Under this condition, SCATANA may be considered for implementation.

(b) *Intention.* To provide for the most effective use of airspace by aircraft of civil and military agencies by:

(1) Exercising security control of civil and military aircraft entering, departing or moving within the U.S. areas and their coastal approaches.

(2) Selectively limiting air traffic, consistent with air defense requirements.

(3) Exercising control over the following air navigation systems: VOR, VORTAC, TACAN and LORAN.

(c) *Implementation.* (1) The appropriate military authority will take the following actions:

(i) Direct the appropriate ARTCC to implement SCATANA.

(ii) Specify what restrictions are to be implemented, such as:

(*a*) Routing restrictions on flights entering or operating within appropriate portions of the defense area.

(*b*) Restrictions for the volume of air traffic within the defense area, using the WATPL (See § 245.8) and Security Control Authorizations.

(*c*) Altitude limitations on flight operations in selected areas.

(*d*) Special instructions concerning the control of accurate navigation aids which permit their use for friendly aircraft operations. This includes continued operation, as long as the actual air defense situation permits, of those air NAVAIDS essential to support other major command contingency operations.

(*e*) Confirmation or modification of previous instructions which may have been implemented with the application of ESCAT.

(iii) Revise or remove restrictions to the movement of air traffic and control of air navigation aids as the tactical situation permits.

(2) ARTCCs will take the following actions when directed to implement SCATANA:

(i) Disseminate SCATANA implementation instructions to civil and military air traffic control facilities and other appropriate aeronautical facilities.

(ii) Impose the restrictions on air traffic as directed by the appropriate military authority. The restrictions will automatically include instructions for all VFR traffic to land at the nearest suitable airport and file an IFR or DVFR flight plan. Landing, diversion or dispersal of traffic, when ordered, will be to airports outside of metropolitan areas or likely target complexes whenever possible. Instructions will be passed over normal air/ground/air radio channels.

(iii) As directed by the appropriate military authority, implement the control of VOR, VORTAC, TACAN, and LORAN as follows:

(*a*) Shut down the above navigation aids in accordance with the military command/FAA region supplemental agreements. These shall permit time to land/disperse airborne aircraft, and shall provide for the extension of such times when the air traffic situation dictates.

(*b*) Aids which require more than five minutes control time shall be shut down as soon as possible, except when directed otherwise by the appropriate military authority, or unless such aids are essential for the regulation and control of existing air traffic.

(*c*) Direct the control of air navigational aids to ensure that required aids, as indicated in flight plans, will be available for authorized aircraft flights.

(iv) When directed to reduce or remove SCATANA restrictions, authorize resumption of air traffic and operation of air navigation aids as specified by the appropriate military authority.

(3) Civil and miltary air traffic control facilities, and other appropriate aeronautical facilities will:

(i) Maintain the current SCATANA ACTION Form for that facility at appropriate operating positions.

(ii) When SCATANA is implemented or terminated, take the actions indicated on the facility's SCATANA ACTION Form.

(iii) Maintain current information on the status of restrictions imposed on air traffic.

(iv) Approve or disapprove filed flight plans in accordance with current instructions received from the ARTCCs. Approval will indicate that the flight is permitted under the WATPL priority currently in effect or that the flight has been granted a Security Control Authorization.

(v) Forward flight plans and approval requests to the ARTCC as required.

(vi) Disseminate instructions and restrictions to air traffic as directed by the ARTCCs.

(4) The pilot in command will conform to security control instructions as follows:

(i) IFR flights—comply with instructions received from the appropriate aeronautical facility.

(ii) VFR flights—land at the nearest suitable airport when so directed.

(iii) Aircraft on the ground—file an IFR or DVFR flight plan with the proper FAA facility and receive approval prior to departure.

§ 245.6 Tactical Air Movement Plans.

(a) *Situation.* In a situation when Emergency War plans and other contingency plans are being implemented, the large volume of tactical air traffic generated is likely to result in conflicting requirements for the available airspace. It is obvious that such conflicts should be minimized in order to prevent saturation of the air defense system, yet at the same time permit the orderly execution of the various contingency plans. To this end, it is essential that responsible military commanders coordinate fully with the appropriate military authorities responsible for air defense to ensure that conflicting situations can be resolved while emergency plans are still under development. The provisions of this section do not apply to Strategic Air Command (SAC) Emergency War Orders (EWOs) for which special coordination has been effected between SAC, NORAD and FAA agencies.

(b) *Intention.* To establish coordination procedures necessary to fulfill air defense and air traffic control requirements for the movement of tactical air traffic and identify specific air NAVAIDS which are essential to support contingency operations of major command forces during implementation of SCA TANA.

(c) *Execution*. (1) Commanders of Major Commands (or "Responsible Military Commanders") are to ensure that:

(i) The air traffic movement sections of their Emergency War Plans (including dispersal, evacuation and other related contingency plans) and the specific air NAVAIDS essential to support contingency operations are fully coordinated during development with the appropriate military authority responsible for air defense. In the NORAD area of responsibility the authority is the NORAD region commander. When flights will transit more than one region, coordination must be effected with all of the region commanders involved. The NORAD region commander will effect necessary coordination on those tactical operations with the FAA through the Region Air Defense Liaison Officer (RADLO).

(ii) Subsequent to the coordination required in the paragraph (c)(1)(i) of this section, extracts of the air traffic movement section of their plans are to be passed to the approprate military authorities. The extracts are to be prepared according to the format shown in § 245.7. In the NORAD area of responsibility the extracts are to be sent to the Commander of the NORAD region in which the flights originate.

(2) Responsible military authorities will:

(i) During the coordination phase, ensure that proposed aircraft movements do not conflict in time, altitude, route or any other respect with other planned movements. Potential conflicts are to be resolved through negotiations with the commands involved.

(ii) On receipt of the tactical air movement plan extracts, review again their impact on the overall air situation, incorporate the extracts into the unit SCATANA plan, as supplements, and distribute the extracts to appropriate military agencies, FAA regions and ARTCCs.

§ 245.7 Extract of Tactical Air Movement Plan.

(Unit)

(Office symbol)

Address

Project officer name and phone number

Mission name:

SCATANA ------------------------------
(NORAD region of flight plan origination)

(Number assigned by region)

(WATPL number)

(a) ------------------------------------
(Call sign, or VCSL block/line of flight lead)

(b) ------------------------------------
(Number and type aircraft/NAV equip)

(c) ------------------------------------
(Departure base, ICAO 4 letters)

(d) ------------------------------------
(Level-off point/elasped time) (direct or airway route)

Points to penetration fix

(e) ------------------------------------
(Destination/total time enroute) (ICAO 4 letters)

(f) "E" hour plus----------------------
(ETD)

(Interval planned between aircraft, cells, or flights)

Altitude Reservation Void on hour after last ETD.

(g) --------------- KT.
(TAS)

MARSA within this flight.

(Military assumes responsibility for separation of aircraft)

All other call signs are: ---------------

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§ 245.8 Wartime Air Traffic Priority List (WATPL).

(a) *Situation*. When SCATANA is implemented, a system of traffic priorities is required in order to ensure that optimum use is made of airspace, consistent with air defense requirements. This system will be the prime means of controlling the volume of air traffic. (The Security Control Authorization will be used as a supplement to WATPL.)

(b) *Intention*. To establish a WATPL for the movement of air traffic when SCATANA has been implemented, and to provide policy guidance for the practical application of the system. Priorities shall take precedence in the order listed and subdivisions within priorities are equal.

(c) *Wartime Air Traffic Priority List*—(1) *Priority One*. (i) Aircraft engaged in active continental defense missions. This includes interceptors, antisubmarine aircraft and airborne early warning and control aircraft.

(ii) Retaliatory aircraft, including their direct support aircraft, executing EWO.

(iii) Airborne command elements which provide backup to command and control systems for the combat forces.

(iv) The President of the United States and Prime Minister of Canada and respective cabinet members essential to national security.

(2) *Priority Two*. (i) Forces being deployed for or in direct and immediate support of combat operations against the enemy to include the use of activated Civil Reserve Air Fleet (CRAF) aircraft as necessary.

(ii) SAC aircraft in direct and immediate support of EWO not included in priority one.

(iii) Search and rescue aircraft operating in support of these activities.

(3) *Priority Three*. (i) Forces being deployed in support of combat operations against the enemy.

(ii) Continental Air Reconnaissance for Damage Assessment (CARDA) missions for the support of immediate combat operations.

(iii) Search and rescue aircraft not included in priority two.

(iv) Flight inspection aircraft flights in connection with emergency restoration of airway and airport facilities in support of immediate combat operations.

(4) *Priority Four*. Dispersal of:

(i) Tactical military aircraft.

(ii) U.S. air carrier aircraft assigned to the War Air Service Program (WASP).

(iii) U.S. civil air carrier aircraft allocated to the CRAF Program.

(iv) FAA flight inspection aircraft.

(v) Foreign civil air carrier aircraft in the U.S. in accordance with specific international agreements.

(vi) Public aircraft assigned to FAA and other Federal agencies.

(5) *Priority Five*. (i) The air transport of military commanders, their representatives, and DoD sponsored key civilian personnel which is of the utmost importance to national security, or which will have an immediate effect upon combat operations of the Armed Forces.

(ii) Dispersal of nontactical military aircraft for their protection.

(iii) Public aircraft assigned to FAA and other Federal agencies.

(6) *Priority Six*. (i) Flight operations in accordance with approved Federal and State emergency plans (WASP and SARDA). U.S. civil air carrier flights will operate under the provisions of CAB Air Transport Mobilization Order ATM-1, "Route Authorizations and Operations," and the WASP. Foreign civil air carrier flights will operate in accordance with specific international agreements.

(ii) Other essential CARDA missions not included in (3)(ii) of this paragraph.

(iii) Flight inspection activity in connection with airway and airport facilities

(7) *Priority Seven*. Other military flight operations.

(8) *Priority Eight*. All other flight operations not specifically listed above.

(d) *Policy for Application of WATPL*. (1) The restrictions embodied in the WATPL will apply to all aircraft except those in receipt of a Security Control Authorization.

(2) Priority will be solely dependent on the nature of the aircraft's mission. Operational test figihts will take the priority of the mission aircraft tested.

(3) The originator of a request for aircraft movement will be responsible for determining and verifying the appropriate priority in accordance with the list described above.

(4) The individual filing the flight plan will be responsible for including the priority number as determined by the originator of the request.

(5) During general war conditions, situations may occur which cannot be related to the WATPL. Aircraft emergencies and inbound international flights which have reached the point of no return, including foreign air carrier flights enroute to safe haven airports in accordance with specific international agree-

ments are examples of such situations. These incidents must be treated individually through coordination between ATC and appropriate military agencies in consideration of the urgency of the inflight situation and existing tactical military conditions.

(6) During periods other than general war, aircraft movements are handled as follows:

(i) Involvement in limited war or execution of contingency plans, to include JCS directed actions, immediately makes successful completion of such action a primary national objective. Therefore, aircraft movements in support of these actions will be afforded expeditious handling by the ATC system commensurate with the degree or urgency stated by the JCS to the FAA. When directing the execution of a contingency/limited war plan, or other JCS directed operation which is in pursuit of primary national objectives, the JCS will so advise the FAA (or appropriate Canadian authority if Canadian airspace is involved), requesting that aircraft operating in accordance with such plans be given preferential handling over all air traffic except active air defense missions and launch of the strategic alert force and supporting aircraft. Should contingency, limited warfare, or other JCS directed plans be executed concurrently by more than one operational commander, the JCS will state to the FAA (or appropriate Canadian authority when Canadian airspace is involved), and the military commanders concerned, the relative urgency of each operation and will resolve conflicts that may arise therefrom.

(ii) Assignment of reserved airspace to accommodate military air operations which, because of their objectives, cannot be conducted in accordance with routine ATC procedures will be based upon an order of precedence for the purpose of resolving mission conflicts in planning altitude reservations. This order of precedence is published in appropriate Joint Service Regulations and FAA documents.

(7) Priorities for air traffic clearances required under the SCATANA plan are not to be confused with civil priorities assigned to civil air carrier aircraft under the WASP priorities system, or to general aviation civil aircraft under the SARDA plan. WASP and SARDA priorities are designed to provide for controlled use of civil aircraft capability and capacity, and they have secondary significance when the WATPL for the movement of aircraft is in effect.

§ 245.9 Procedures for movement of air traffic.

(a) *Situation*. The primary instrument used by NORAD region commanders to control the volume of air traffic operating within their areas of responsibility is the WATPL for Movement of Air Traffic (§ 245.8).

(b) *Intention*. To establish procedures necessary for the expeditious movement of tactical air traffic during periods when SCATANA is in effect.

(c) *Execution*. (1) Tactical air traffic assigned a WATPL number of 1 or 2 will not be delayed, diverted, rerouted, or landed by NORAD region commanders. However, NORAD region commanders may recommend that this traffic be rerouted to avoid battle or battle threatened areas.

(2) Air traffic assigned a WATPL number other than 1 or 2 may be delayed, diverted, rerouted, or landed by the NORAD region commander to prevent degradation of the air defense system.

(3) Aircraft being "recovered" will be expedited to home or alternate base, and "search and rescue" aircraft expedited on their missions; but such aircraft may be diverted to avoid battle areas or take off may be delayed to prevent saturation of airspace.

(4) Tactical air traffic will file IFR flight plans and comply with IFR procedures regardless of weather. The appropriate WATPL number will be entered in the Remarks section in the Aircraft Clearance Form DD 175. The WATPL number will be posted on ARTCC flight strips passed from one ARTCC to the next, and to the appropriate air defense control facilities.

(5) For mass military operations a single clearance form will be filed and ALTRAV procedures will be applied.

(6) Compliance with approved flight plan and position report requirements is of utmost importance for identification. Aircraft aborting or deviating from an approved flight plan will air-file a revised flight plan as soon as the necessity for such deviation is evident. Unauthorized deviations may preclude identification and result in engagement by defensive weapons.

(d) *Special operations*. (1) The volume of air traffic in areas critical to air defense can be controlled by means of the WATPL. In areas that are not critical to air defense or in areas of poor or no radar coverage, the appropriate military authority may wish to authorize additional specific flights which may not qualify for a high enough priority under the WATPL. When ESCAT or SCATANA have been implemented the appropriate military authority may authorize flights by granting a Security Control Authorization to the ARTCC or agency requesting the clearance.

(2) The following flights may require the granting of a Security Control Authorization prior to take off:

(i) Organized civil defense missions.

(ii) Disaster relief flights.

(iii) Agricultural and forest fire flights.

(iv) Border patrol flights.

(v) SARDA flights prior to WATPL Six.

§ 245.10 SCATANA testing.

(a) *Situation*. To insure that SCATANA actions can be taken expeditiously, SCATANA tests will be conducted periodically.

(b) *Intention* (1) SCATANA tests will be conducted in connection with Headquarters NORAD or NORAD region large-scale simulated exercises. Additional tests may be conducted by individual NORAD regions when test objectives are local in nature.

(2) All Federal facilities responsible for SCATANA actions will participate in SCATANA tests, except where such participation will involve the safety of aircraft. Non-federal civil aeronautical facilities may be requested to participate.

(c) *Execution*. (1) During SCATANA tests, all actions will be simulated.

(i) Aircraft will not be grounded or diverted.

(ii) Air navigation aids will not be shut down.

(iii) Test messages will not be transmitted over air/ground/air radio frequencies.

(iv) Radio communications will not be interrupted.

(2) For NORAD Exercises.

(i) If ESCAT is applied by CINC NORAD, this fact will be passed to the Region SCATANA Officer in plain language. Region SCATANA officers may call or simulate calling the appropriate ARTCC using the following statement:

This is a NORAD exercise. Apply ESCAT. ARTCC acknowledge and take no further action.

(ii) If ESCAT is applied or SCATANA is implemented by the Region Commander, the Region SCATANA Officer may simulate the call or may make an actual call using the format shown in paragraph (c)(2)(i) of this section, and inserting ESCAT or SCATANA as appropriate.

(3) SCATANA Test. This is a test conducted by ARTCC's in which SCATANA participants conduct simulated notification actions required by the plan. Timing of the test will be at the discretion of the ARTCC. A narrative summary of each test is to be prepared by the ARTCC MLO and copies sent to appropriate NORAD Region SCATANA Officer, FAA Region MLO, FAA NORAD RDLO and FAA NORAD Hq LO. FAA NORAD Hq LO will be responsible for reviewing the SCATANA tests reports and recommending changes to the testing procedures to Hq NORAD as deemed appropriate. The SCATANA tests will be conducted at least quarterly.

(4) SCATANA Diversion Simulation. This is a test designed to exercise ARTCC personnel in making decisions on aircraft diversion which would be required under actual implementation of the plan. The timing of the simulation will be pre-coordinated between the ARTCCs and the NORAD Region SCATANA Officer. The guideline timeframe for the area recovery of all non-essential air traffic in actual operations has been fixed at an optimum of twenty minutes; diversion simulation exercises should operate on a similar timeframe. Tests will be conducted at least semi-annually.

(i) The NORAD region will provide charts to the ARTCC for the recording of simulated aircraft diversions. The completed charts will be passed to the NORAD Region SCATANA Officer for analysis. The NORAD Region SCATANA Officer will brief region staffs on the results of the exercise and FAA representation will be invited.

(ii) The charts will record the position of all live aircraft on IFR clearances in the ARTCC's area at the time ESCAT was simulated, the position of all aircraft when SCATANA was simulated, and will show the airports to which simulated diversions were made.

§ 245.11 Authentication.

Authentication is not required between NORAD Region Control Centers and ARTCCs for the implementation of SCATANA.

Approved:

Dated: August 8, 1975.

W. P. CLEMENTS, Jr.,
Secretary of Defense, Deputy.

Dated: September 26, 1975.

JOHN W. BARNUM,
Secretary of Transportation, Deputy.

Dated: November 18, 1975.

CHARLOTTE T. REID,
Defense Commissioner, Federal Communications Commission.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

MARCH 1, 1976.

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Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—GENERAL

[CGD-74-179]

PART 25—CLAIMS

Administrative Processing of Claims

• The purpose of this amendment is to revise Part 25 of Subchapter A. •

Part 25 presently consists of Subparts A through G pertaining to the administrative processing of claims against the United States arising out of Coast Guard activities, and Subparts L through N pertaining to the administrative processing of claims on behalf of the Coast Guard.

This document includes Subparts A through N of the revised Part 25. Subpart A contains general regulations for the administrative processing of claims arising out of and related to Coast Guard activities. Subparts B through J implement various statutes pertaining to claims against the United States, its agents and employees, and delegate certain authority to the Chief Counsel and other designated Coast Guard officers. Subparts K through M are reserved for other claims regulations.

Subparts N through P implement various statutes pertaining to claims on behalf of the United States and delegate certain authority to the Chief Counsel and other designated Coast Guard officers.

Since this amendment relates to agency procedure, it is exempted from notice of proposed rule making and public procedure thereon by 5 U.S.C. 553(b), and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER, because 5 U.S.C. 553(d) does not apply.

Accordingly, Part 25 of Title 33, Code of Federal Regulations, is revised to read as follows:

Subpart A—General

AUTHORITY: 14 USC 633; 49 CFR 1-45 (a)(2).

§ 25.101 Purpose.

The regulations in this subpart prescribe the administrative procedure for the settlement of claims, other than contract claims, by and against the United States Coast Guard, including claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its territories, and possessions.

§ 25.103 Information and assistance.

Any person who desires to file a claim against the United States arising out of the activities of the Coast Guard may obtain information and assistance from Commandant (G-LCL), U.S. Coast Guard, Washington, DC or from the Commander of any Coast Guard District.

§ 25.105 Defintions.

(a) *Accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in injury or damage for which the claim is made. In medical malpractice cases, however, a claim usually accrues when the claimant discovers, or in the exercise of reasonable diligence should have discovered the act or acts constituting the alleged malpractice.

(b) *Claim*. A written demand for the payment of a specified sum of money, other than for ordinary obligations incurred for services, supplies, or equipment.

§ 25.107 Who may present claims.

(a) A claim for property loss or damage may be presented by anyone having an interest in the property, or in his name by a duly authorized agent, legal representative, or survivor, or by a subrogee, unless a subrogated interest is barred under § 25.109(a).

(b) A claim for personal injury may be presented by the injured person or in his name by a duly authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim under local law.

(d) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has, in fact, incurred the expenses for which the claim is made.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

(f) Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, they must be combined in one claim.

§ 25.109 Subrogation.

(a) A subrogated claim is not cognizable under Subparts D, G, H, or I.

(b) The claims of a subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute a single claim and thus the total of such claims may not exceed the monetary jurisdictions of the settlement authority. If the total of the combined claims exceeds, or is expected to exceed settlement limits, neither claim will be considered for payment, but the claim file will be forwarded to an appropirate settlement authority. Care will be exercised to avoid the splitting of subrogated claims through improper settlement procedures.

(c) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim is payable only to the subrogee. A joint claim must be asserted in the names of and signed by the parties in interest, and the approved payment will be made by a check to the joint claimants and sent to the subrogee. If separate claims are filed, payment will be made by check issued to each claimant to the extent of his undisputed interest.

(d) Each claimant must, as a part of his claim, make a written disclosure concerning insurance coverage as to—

(1) The names and addresses of all insurers;

(2) The kind and amount of insurance;

(3) The policy number;

(4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and

(5) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(e) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and must support his claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence of liability of the Government or conclusive evidence of the amount of damages. The settlement authority makes an independent determination on the issues of fact and law based upon the evidence of record.

§ 25.111 Action by claimant.

(a) *Form of claim*. The claimant must submit his claim on authorized official forms whenever practicable. The forms are available from Commandant (G-LCL), U.S. Coast Guard, Washington, DC or from the Commander of any Coast Guard District.

(b) *Signatures*. The claim and all other papers must be signed in ink by the claimant or by his duly authorized agent or legal representative. His signature must include the first name, middle initial, and surname. A married woman must sign her claim by her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

(c) *Presentation*. The claim must be presented to the commanding officer of the Coast Guard unit involved, to a Coast Guard unit convenient to the claimant, or to Chief, Claims and Litigation Division, Office of Chief Counsel, United States Coast Guard, Washington, DC 20590. In a foreign country, where there is no Coast Guard unit, the claim will be treated as if presented to the Coast Guard if it is submitted to any attaché of the U.S. Armed Forces or to the commanding officer of any unit of the U.S. Armed Forces.

§ 25.113 Determination of compensation for damage or injury.

Unless otherwise prescribed by local law, statute, or implementing regulations, compensation for damage is determined in accordance with the following principles:

(a) *For damage to or loss of property:*

(1) If the property has been or can be economically repaired, the measure of damages is the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately before the incident. Damages so determined may not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value (betterment) effected through the repair is deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property is added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All cost of repair awards are based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by two or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages is the value of the property immediately before the incident less the value thereof immediately after the incident. All estimates of value should be made, if possible, by two or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs, and provided that idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) *For personal injury or death:*

(1) Damages may include, but are not limited to, reasonable medical, hospital or burial expenses necessarily incurred; loss of income; expenses incurred as a result of loss of services; physical disability; anticipated medical expenses; physical disfigurement; and pain and suffering.

(c) Punitive damages, interest, court costs, attorney's fees, bail, or other similar charges are not allowable as elements of damage.

§ 25.115 Proof of damage.

Independent evidence must be submitted by the claimant to support his claim. This evidence should include, if available, statements of witnesses, accident or casualty reports, photographs and drawings, and statement of loss to insurers. In addition, such evidence must consist, where applicable, of the following:

(a) *For personal injury or death:*

(1) Itemized medical, hospital, and burial bills.

(2) A written report by the attending physician setting forth the nature and extent of the injury and the treatment, the necessity and reasonableness of the various medical expenses incurred, loss of time from employment, the duration and extent of pain and suffering and of any disability or physical disfigurement involved, and a current prognosis, including past, present, and future reduction of earning capacity, and any antici-

pated medical expenses. The report should also include any past medical history of the claimant relevant to the particular injury alleged, and should be submitted by the claimant in addition to all hospital records or other documentation of a medical nature arising from either this injury or any relevant past injury.

(3) Loss of time and earnings should be supported by a written certified statement of the claimant's employer stating the claimant's age, occupation, hours of employment, hourly rate of pay or weekly salary, time lost from work as a result of the incident, and his actual period of employment, full-time or part-time, and any effect of the injury upon such employment.

(4) If necessary, the claimant may, in a personal injury case, and with his consent, be required to be examined by an independent medical facility or physician. The settlement authority makes mutually convenient arrangement for such an examination and bears the costs thereof.

(5) Physical disfigurement, pain and suffering, loss of services or income sustained by the claimant must be supported by a statement of costs or loss incurred.

(b) *For loss of, or damage to, property:*

(1) For each particular and distinct items of loss the claimant must submit two itemized statements or estimates of the cost of repairs or replacement, each supported by an appraisal or survey report signed by a disinterested and competent person familiar with the subject matter. The cost of appraisals or estimates are includable as elements of damage.

(i) A survey or appraisal must be performed as soon as practicable, and, whenever possible, unless waived in writing, must occur with all interests represented.

(ii) If the item is so severely damaged that it cannot be economically repaired or used, its value before and after the incident must be stated by such surveyor or appraisor.

(2) Whenever a claim includes loss of earnings or use during repairs to the damaged property, the following must also be furnished, where applicable, and supported by competent evidence:

(i) The date the vessel or property was damaged.

(ii) The name and location of the repair facility.

(iii) The beginning and ending dates of repairs.

(iv) A complete description of all repairs performed, segregating any work performed for the owner's account and not attributable to the incident involved, and the costs thereof.

(v) The date and place where the vessel or property was returned to service after completion of repairs, and an explanation, if applicable, of any delay.

(vi) Whether or not a substitute vessel or property was utilized by the claimant during the time of repair, and if so, an explanation as to the necessity of same, the costs incurred, the time of use and nature thereof, and any costs incurred that would have been similarly incurred by the claimant in utilization of his own property.

(vii) Whether or not during the course of undergoing repairs the vessel or property would have been employed, and an explanation submitted showing the identity of the person who offered that employment, the terms of the offer, time of prospective service, and rate of compensation.

(viii) If the vessel or property was under charter or hire at the time of damage, was otherwise employed, or would have been employed, the claimant must submit a statement of operating expenses that were, or would have been, incurred. This must include wages and all bonuses which would have been paid during the period of employment, the value of fuel which would have been consumed during the period of employment, the value of consumable stores which would have been consumed during the period of employment, and all other costs of operation which would have been incurred including, but not limited to, license and parking fees, personnel expenses, harbor fees, wharfage, dockage, shedding, stevedoring, towage, pilotage, inspection, tollage, lockage, anchorage and moorage, grain elevation, storage, and customs fees.

§ 25.117 Effect of other payments to claimant.

(a) The total amount to which the claimant and his subrogees, may be entitled is normally computed as follows:

(1) The total of the loss or damage suffered.

(2) Less any payment the claimant has received from the following sources:

(i) The U.S. employee who caused the incident.

(ii) The U.S. employee's insurer.

(iii) Any person or agency in a surety relationship with the U.S. employee.

(iv) Any joint tort-feasor or his insurer.

(3) No deduction is made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(b) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage as to which subrogated interests are allowable, the payment based on the total damages is apportioned as their separate interests shall appear (§ 25.111).

§ 25.119 Settlement and notice to claimant.

(a) *Approval of full amount claimed.* When the settlement authority has determined that a claim should be approved in full, he certifies the claim for payment to the appropriate disbursing officer, forwarding the claim and attachments. If the time involved in settling the claim has been extensive, he notifies the claimant of the action taken on the claim.

(b) *Approval of less than full amount.* When the claim is determined to be meritorious in part the settlement authority—

(1) Notifies the claimant in writing of his determination;

(2) Obtains from the claimant written acceptance and release utilizing SF-1145 (Voucher for Payment), modified as appropriate, or a claims settlement agreement for payment of the claim in the reduced amount. Normally this requirement does not apply to claims under Subparts G and H; and

(3) Advises the claimant, in the event he does not desire to accept the award, to reply within 45 days of the date of the settlement offer giving his reasons for rejection.

(c) *Nonacceptance of offer of settlement.*

(1) Except upon a showing of good cause for nonacceptance of a proposed settlement within 45 days of the date of the settlement offer, the nonacceptance constitutes a rejection. Rejection by a claimant of an offer of settlement renders the offer void.

(2) When a claimant rejects an offer of a reduced amount or fails to reply thereto within 45 days of the date of the settlement offer, the settlement authority reviews the matter and if justified, makes further efforts to settle the claim. If further efforts to settle are unproductive, he notifies the claimant that his claim has been disallowed for the reason that the amount demanded is excessive.

§ 25.121 Appeals.

There is no appeal to higher authority following the final denial of a claim by a settlement authority except under the procedures contained in Subpart C.

§ 25.123 Reconsideration.

(a) A settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, a settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part, even where a settlement agreement has been executed, when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he modifies the action and, if appropriate, makes a supplemental payment. The basis for a change in action is stated in a memorandum included in the file.

(b) A request for reconsideration should include the legal or factual grounds for the relief requested. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the settlement authority reconsiders the claim and attempts to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the claimant is notified that the relief requested cannot be granted.

(c) For the effect of reconsideration under the Federal Tort Claims Act see 28 CFR 14.

§ 25.125 Acceptance of offer of settlement.

The acceptance by a claimant of an offer of settlement is final and conclusive for all purposes and constitutes a complete release of any claim against the United States and against the military or civilian personnel of the Coast Guard whose act or omission gave rise to the claim.

§ 25.127 Redelegation of authority.

The authority delegated in this Part to District Commanders and Commanding Officers of certain Headquarters Units may, unless otherwise limited, be redelegated, in whole or in part, by a District Commander to his Chief of Staff and Legal Officer, and by a Commanding Officer of a Headquarters Unit to his Executive Officer and Legal Officer. No further redelegation is authorized.

§ 25.129 Multiple claims.

When more than one claim arises out of the same incident and the total amount of the claims exceeds the monetary jurisdiction delegated to the settlement authority, all of the claims arising from that incident are forwarded to the Chief, Claims and Litigation Division, Office of Chief Counsel, with the settlement authority's recommendations for disposition.

§ 25.131 Cross-servicing of claims in foreign countries.

(a) The Department of Defense has assigned single-service responsibility for the settlement of claims in certain areas arising under the Foreign Claims Act, the Military Claims Act, the Nonscope of Employment Claims Act, and the Federal Claims Collection Act.

(b) In a country where single-service claims responsibility has been assigned, claims against the United States cognizable under the acts referred to in paragraph (a) of this section are processed and settled by the service assigned responsibility.

Subpart B—Federal Tort Claims

Authority: 28 USC 2672; 28 CFR 14.11; 49 CFR 1.45(a)(2).

§ 25.201 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States under the Federal Tort Claims Act based on death, personal injury, or damage to or loss of property. Should there be a conflict between the provisions of this subpart and the provisions of the Department of Justice regulations, in 28 CFR Part 14, the latter govern.

§ 25.203 Claims payable.

Claims for death, personal injury, or damage to or loss of real or personal property are payable when the injury or damage is caused by a negligent or wrongful act or omission of military personnel or a civilian employee of the Coast Guard while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant under the law of the place where the act or omission occurred.

§ 25.205 Claims not payable.

A claim is not payable if it—

(a) Is based upon an act or omission of military personnel or a civilian employee, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid;

(b) Is based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty, whether or not the discretion is abused;

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or other postal matter;

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(e) Is cognizable under the Suits in Admiralty Act or the Public Vessels Act;

(f) Arises out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act;

(g) Is for death, personal injury, or damage to or loss of real or personal property, of a member of the Armed Forces of the United States incurred incident to service;

(h) Arises out of assault, battery, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless committed by Coast Guardsmen performing law enforcement duties;

(i) Arises out of combat activities of the Coast Guard during time of war;

(j) Arises in a foreign country;

(k) Is for taking of private property by trespass implied under local law or of a type contemplated by the Fifth Amendment to the United States Constitution; or

(l) Is for disability or death of a civilian employee of the United States for whom benefits are provided by the Federal Employees Compensation Act.

§ 25.207 Time limitations on claims.

(a) A claim may be settled only if presented in writing within two years after it accrues.

(b) The two year statute of limitations is not tolled until the Coast Guard receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain, for death, personal injury, or damage to or loss of real or personal property. When a claim is received by a Coast Guard command which does not have settlement authority over the claim, it is transmitted to the proper settlement authority without delay.

§ 25.209 Notification to claimant of action on claim.

(a) If a claim is determined to be meritorious, a written acceptance and release or a claim settlement agreement must be signed by the claimant before payment, unless the claim has been approved for payment in full as presented.

(b) Upon final denial of a claim, the settlement authority informs the claimant of the disposition of his claim by certified or registered mail. Notification of final denial includes a statement that, if the claimant does not accept or is dissatisfied with the action, he may institute suit against the United States and that if he does so he must institute it within six months after the date of mailing of the notice of final denial.

(c) Failure of a settlement authority to take final action on a claim within six months after the date of receipt of the claim by the Coast Guard may be treated by the claimant as a final denial for the purpose of filing suit.

§ 25.211 Payment of claims.

Once the amount to be paid has been agreed upon, a check is normally forwarded to the claimant in 30 days. If a claimant is represented by an attorney, both the claimant and his attorney are designated as payees on the check delivered to the claimant's attorney.

§ 25.213 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of $25,000, the Chief Counsel may deny or settle and authorize payment of claims in any amount.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel, may deny claims not exceeding $10,000 and may settle and authorize payment of claims in which the amount of payment does not exceed $10,000.

(c) The following officers may deny claims not exceeding $5,000 and may settle and authorize payment of claims in which the amount of payment does not exceed $5,000:

(1) The Commander of each Coast Guard District.

(2) The Superintendent, U.S. Coast Guard Academy.

(3) The Commanding Officer of each Headquarters Unit having a permanent legal officer billet.

§ 25.215 Indemnity or contribution.

(a) *Sought by the United States.* If a claim arises under circumstances in which the United States is entitled to contribution or indemnity under a contract or the applicable law governing joint tort-feasors, the third party is notified of the claim, and is requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, a claim is settled only after consultation with the Department of Justice as provided in 28 CFR § 14.7.

(b) *Sought from the United States.* Claims for indemnity or contribution from the United States are settled under this subpart if the incident giving rise to liability and the claim is otherwise cognizable under this subpart.

§ 25.217 **Attorneys' fees.**

Attorneys' fees for any claim settled under this subpart are limited to not more than 20 percent of the amount paid in settlement.

Subpart C—Military Claims

AUTHORITY: 10 U.S.C. 2733; 49 CFR 1.45(a) (2).

§ 25.301 **Scope.**

This subpart prescribes the requirements for the administrative settlement of claims against the United States under the Military Claims Act for death, personal injury, or damage to or loss of property caused by military personnel or civilian employees of the Coast Guard acting within the scope of their employment, or otherwise caused by the noncombat activities of the Coast Guard.

§ 25.303 **Claims payable.**

(a) A claim arising at any place caused either by noncombat activities of the Coast Guard or by military personnel or civilian employees of the Coast Guard acting within the scope of employment, whether or not negligence is shown, is payable for—

(1) Damage to or loss of real property, including damage or loss incident to the use and occupancy of real property by the Coast Guard;

(2) Damage to or loss of personal property, including damage to or loss of property bailed to the Coast Guard;

(3) Death or personal injury.

(b) A claim arising at any place is payable for damage to or loss of registered or insured mail damaged, lost, or destroyed by the criminal act of military personnel or civilian employees of the Coast Guard while the mail is in the possession of the Coast Guard.

§ 25.305 **Claims not payable.**

A claim is not payable if it—

(a) Results directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict;

(b) Results wholly or partly from the negligence or wrongful act of the claimant or his agent, unless comparative negligence is applicable under local law;

(c) Results from a specific risk which the claimant expressly assumed in writing before the incident giving rise to the claim;

(d) Is for personal injury or death of a member or civilian employee of the Armed Forces of the United States whose death or injury was incident to service;

(e) Is for personal injury or death of a civilian employee covered by the Federal Employees' Compensation Act or Longshoreman's and Harbor Workers' Compensation Act, as made applicable to certain employees of non-appropriated fund instrumentalities of the Armed Forces under 5 U.S.C. §§ 8171–8173;

(f) Is cognizable under Subparts B, D, and G of this Part:

(g) Is purely contractual in nature;

(h) Is for damage to or loss of property voluntarily bailed to the Coast Guard for the sole benefit of the bailor, e.g., jewelry and money bailed for safekeeping;

(i) Is for rent, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the Coast Guard except as provided in § 503(a) (1) of this subpart;

(j) Is for the taking of private property by trespass except for actual physical damage; or

(k) Is made by a national, or a corporation controlled by nationals, of a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the command exercising claims authority over the incident determines that the claimant is, and at the time of the incident was, friendly to the United States. However, a prisoner of war or an interned enemy alien is not excluded as to a claim for damage to or loss of personal property in the custody of the Government otherwise payable under this subpart.

§ 25.307 **Time limitation on claims.**

(a) A claim may be settled only if presented in writing within two years after it accrues, except that if it accrues in time of war or armed conflict or if war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not more than two years after the termination of the war or armed conflict.

(b) For the purposes of this section, a war or armed conflict is one in which an Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict will be as established by concurrent resolution of Congress or by determination of the President.

§ 25.309 **Procedure.**

(a) If a claim is determined to be meritorious in any amount a written acceptance and release or a claim settlement agreement must be signed by the claimant before payment.

(b) Upon disapproval of a claim, in whole or in part, the settlement authority notifies the claimant in writing of the action taken and reasons therefor.

(c) Where a claim not exceeding $5,000 is denied in full, or where a claim is only approved in part and the amount to be paid does not exceed $5,000, the letter of notification informs the claimant that—

(1) He may submit an appeal through the authority disapproving the claim;

(2) No particular form for appeal is prescribed;

(3) The ground for appeal should be set forth fully; and

(4) The appeal must be postmarked within 45 days after the date of notice of disapproval of the claim.

(d) Upon receipt of an appeal submitted under paragraph (c) of this section, the settlement authority examines and forwards it with the related file and opinions and recommendations, to the Chief Counsel. The settlement authority may, however, treat the appeal as a request for reconsideration, in which case the processing of the appeal may be delayed pending the outcome of further efforts by the settlement authority to settle the claim. If proper settlement cannot be reached, the appeal is forwarded to the Chief Counsel.

§ 25.311 **Delegation of authority.**

(a) The Chief Counsel may deny any claim and may settle and authorize payment of claims in which the amount of payment does not exceed $25,000. If the Chief Counsel determines that a claim is meritorious in an amount in excess of $25,000 he may authorize payment of $25,000, without the release or settlement agreement required in § 25.309, and report the excess to Congress for its consideration.

(b) Subject to appeal to the Chief Counsel, the following officers may deny claims not exceeding $5,000 and may settle and authorize payment of claims in which the amount of payment does not exceed $5,000:

(1) The Chief, Claims and Litigation Division, Office of Chief Counsel.

(2) The Commander of each Coast Guard District.

(3) The Superintendent, U.S. Coast Guard Academy.

(4) The Commanding Officer of each Headquarters Unit having a permanent legal officer billet.

Subpart D—Claims Arising in Foreign Countries

AUTHORITY: 10 USC 2734; 49 CFR 1.45 (a) (2).

§ 25.401 **Scope.**

This subpart prescribes the requirements for the administrative settlement of claims against the United States by a foreign country, a political subdivision or inhabitant thereof, for death, personal injury or damage to or loss of property occurring therein, caused by the noncombat activities of the Coast Guard, or a military member or civilian employee of the Coast Guard.

§ 25.403 **Proper claimants.**

(a) The claimant, or the decedent in a death case, must have been an inhabitant of a foreign country at the time of the incident giving rise to the claim and must not be otherwise excluded in this subpart. It is not necessary that a claimant be a citizen of, or have his legal domicile in, the foreign country to establish that he is an inhabitant thereof.

(b) A corporation or other organization doing business in a foreign country on a permanent basis may qualify as a proper claimant although organized under U.S. law.

(c) The government of a foreign country or a political subdivision thereof is a proper claimant unless waiver provisions of applicable international agreements exclude such claims.

§ 25.405 Claimants excluded.

The following claimants are excluded:

(a) U.S. military personnel and civilian employees of the United States Government or its agencies and instrumentalities and their dependents, who are in a foreign country primarily because of their own or their sponsor's duty status.

(b) Other citizens of the United States, its territories, commonwealths, or possessions, unless they have resided in the country in which the incident occurred for more than 90 consecutive days immediately preceding the incident.

§ 25.407 Claims payable.

(a) A claim is payable for—

(1) Death or personal injury;

(2) Damage to or loss of real or personal property; or

(3) Solatia payments when dictated by local custom.

(b) A claim is payable if it arose out of a noncombat activity of the Coast Guard or was caused by—

(1) Military personnel of the Coast Guard;

(2) Civilian employees of the Coast Guard who are United States citizens and who are employed in the country in which the incident occurred; or

(3) Civilian employees of the Coast Guard who are employed in the country in which the incident occurred; however, if the employee is a national of that country, he must be acting within the scope of his employment when the incident occurred.

(c) The fact that the act giving rise to a claim may constitute a crime does not, by itself, bar relief.

(d) Local law or custom pertaining to contributory or comparative negligence, and to joint tort feasors, are applied to the extent practicable.

§ 25.409 Claims not payable.

A claim is not payable if it—

(a) Results from action by an enemy or results directly or indirectly from an act of the Armed Forces of the United States in combat;

(b) Is purely contractual in nature;

(c) Is governed by the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(d) Is one for which a foreign country is responsible under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, or other similar treaty agreement;

(e) Arises from private or domestic obligations as distinguished from governmental transactions;

(f) Is a bastardy claim;

(g) Involves a patent or copyright infringement; or

(h) Is a subrogated claim.

§ 25.411 Time limitations on claims.

A claim may be settled only if presented in writing, stated in the currency of the country where the incident occurred, within two years after it accrues.

§ 25.413 Notification to claimant of action on claim.

If a claim is determined to be meritorious in any amount, a written acceptance and release or a claim settlement agreement must be signed by the claimant before payment.

§ 25.415 Delegation of authority.

(a) The authority to appoint foreign claims commissions is delegated to the following:

(1) The Chief Counsel may appoint foreign claims commissions to consider claims in any amount.

(2) The Commander of each Coast Guard District may appoint foreign claims commissions to consider claims not in excess of $5,000.

(3) The Commanding Officers of Coast Guard Activities Europe and Coast Guard Activities Guam, may appoint foreign claims commissions to consider claims not in excess of $2,500.

(4) The Commanding Officer of each Coast Guard Section may appoint foreign claims commissions to consider claims not in excess of $1,000.

(b) The authority to settle and pay foreign claims is delegated to the following:

(1) Any foreign claims commission may, without any other approval, settle and pay a claim when the amount of the payment does not exceed $2,500, except those appointed under (a)(4) of this section, whose authority is limited to $1,000.

(2) The Commander of each Coast Guard District, upon the receipt of the report of a foreign claims commission appointed by him or any of his subordinate commanders, may approve for payment a claim when the amount of the payment does not exceed $5,000.

(3) The Chief Counsel, upon the receipt of the report of a foreign claims commission appointed by him or referred to him, may settle and pay any claim where the amount to be paid does not exceed $25,000.

(4) In any case where a foreign claim is considered to be meritorious in an amount in excess of $25,000, the Chief Counsel may pay the claimant $25,000, and without the release or settlement authority required in § 25.415 certify the excess to Congress.

Subpart E—Non-Scope Claims

AUTHORITY: 10 U.S.C. 2737; 49 CFR 1.45(a)(2).

§ 25.501 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States under the Non-Scope of Employment Claims Act for death, personal injury, or damage to or loss of property incident to the use of a government vehicle or other government property.

§ 25.503 Claims payable.

Claims for death, personal injury, or damage to or loss of real or personal property are payable in an amount not to exceed $1,000 when caused by a member or a civilian employee of the Coast Guard—

(a) Incident to the use of a vehicle of the United States at any place;

(b) Incident to the use of any other property of the United States on a government installation.

§ 25.505 Claims not payable.

This subpart does not apply to a claim that—

(a) Is cognizable under any other provision of law or regulation administered by the Coast Guard;

(b) Results wholly or partly from the negligent or wrongful act of the claimant, his agent, or his employee;

(c) Is for any element of damage pertaining to death or personal injury other than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States;

(d) Is legally recoverable by the claimant under a compensation statute or an insurance policy; or

(e) Is a subrogated claim.

§ 25.507 Time limitations on claims.

A claim may be settled under this subpart only if presented in writing within two years after it accrues.

§ 25.509 Notification to claimant of action on claim.

If a claim is determined to be meritorious in any amount, a written acceptance and release or a claim settlement agreement must be signed by the claimant before payment.

§ 25.511 Delegation of authority.

The following officers may deny any claim and may settle and authorize payment of claims in which the amount of payment does not exceed $1,000:

(a) The Chief Counsel.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel.

(c) The Commander of each Coast Guard District.

(d) The Superintendent, U.S. Coast Guard Academy.

(e) The Commanding Officer of each Headquarters Unit having a permanent legal officer billet.

Subpart F—Admiralty Claims

AUTHORITY: 14 USC 646; 14 USC 633; 49 CFR 1, 45(d)(2).

§ 25.601 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States for death, personal injury, damage to or loss of property caused by a vessel or other property in the service of the Coast Guard, or a maritime tort committed by an agent of the Coast Guard, and for towage and salvage services rendered to such vessels or property.

§ 25.603 Claims payable.

The following claims are payable:

(a) Claims for death, personal injury, damage to or loss of real or personal property arising from a maritime tort caused by an agent or employee of the Coast Guard, or a vessel or other property in the service of the Coast Guard including an auxiliary facility operated under specific orders and acting within the scope of such orders.

§ 25.605 Claims not payable.

This subpart does not apply to a claim that—

(a) Arises from the activities of the Coast Guard while engaged in or preparing for combat;

(b) Is for death or personal injury of members of the Armed Forces of the United States incurred incident to their service, or of civilian employees of the United States to whom the Federal Employees Compensation Act applies; or

(c) Is payable under subpart G, the Military Personnel and Civilian Employees Claims Act.

§ 25.607 Time limitation on claims.

(a) Claims must be administratively settled and approved for final payment by the settlement authority within two years from the date the cause of action accrues or the claim is barred.

(b) If a complaint is filed in a federal district court before the expiration of the two years period, an administrative settlement may be negotiated by the settlement authority at any time with the consent of the Department of Justice. Payment will be made upon final dismissal of the complaint.

§ 25.609 Notification to claimant of action on claim.

If a claim is determined to be meritorious in any amount, a written acceptance and release or a claim settlement agreement must be signed by the claimant before payment.

§ 25.611 Delegation of authority.

(a) The Chief Counsel may deny any claim and may settle and authorize payment of claims in which the payment does not exceed $25,000.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel, may deny claims not exceeding $10,000 and may settle and authorize payment of claims in which the payment does not exceed $10,000.

(c) The following officers may deny claims not exceeding $5,000 and may settle and authorize payment of claims in which the payment does not exceed $5,000:

(1) The Commander of any Coast Guard District.

(2) The Superintendent, U.S. Coast Guard Academy.

(3) The Commanding Officer of each Headquarters unit having a permanent legal officer billet.

Subpart G—Military Personnel and Civilian Employees' Claims

AUTHORITY: 31 USC 241; 49 USC 1655 (b); 49 CFR 1.45(a)(2).

§ 25.701 Scope.

This subpart prescribes the requirements for the administrative settlement and payment of claims against the Coast Guard, under the Military Personnel and Civilian Employees' Claims Act, by members and civilian employees of the Coast Guard for damage to or loss of personal property incident to service where the possession of the property is reasonable, useful, and proper under the circumstances.

§ 25.703 Claims payable.

Only the following types of property damage are considered sustained incident to service, and claims arising therefrom are payable if the possession of the property is reasonable, useful, or proper under the circumstances, and where replacement in kind is not appropriate:

(a) *Losses in quarters or other authorized places.*

(1) Damage to or loss of personal property by fire, flood, hurricane, theft, or other unusual occurrence, while located at—

(i) Permanent quarters, including garages, carports, driveways, and attached structures, inside the 50 states and the District of Columbia, only if provided by the Government to the claimant;

(ii) All permanent quarters, including garages, carports, driveways, and attached structures, outside the 50 states and the District of Columbia occupied by the claimant, unless he is a civilian employee of the Coast Guard who is a local inhabitant;

(iii) Any warehouse, office, hospital, baggage storage area, or other place authorized for receiving or storing property. Storage of the personal property lost or damaged must have been authorized by competent authority and the claimant must comply with local regulations concerning storage.

(2) Claims for loss of money, currency, small items of substantial value, or articles of extraordinary value, by theft from quarters are payable only where definite proof of loss by larceny, burglary, or housebreaking is present, evidence establishes that the claimant exercised reasonable care for the protection of the property under all the circumstances, and the loss by theft was reported to the unit commanding officer within 24 hours of discovery.

(b) *Transportation and travel losses.*

(1) Damage to or loss of personal property incident to travel or transportation in connection with a permanent change of station, performance of temporary duty, or performance of other official duty. Losses incurred while property is stored at a commercial facility for the personal convenience of the claimant, at his expense, pursuant to a permanent change of station, are not compensable.

(2) Claims for damage to or loss of personal property incident to transportation in connection with a permanent change of station are subject to the limitations, exclusions, and depreciation contained in Appendix 1, Department of Transportation Order 2770.9, which is incorporated by reference as a part of this subparagraph.

(c) *Motor vehicle losses.* Notwithstanding any other provision of this subpart, damage to or loss of privately owned motor vehicles, including accompanying component parts, are payable only if—

(1) Shipped under permanent change of station orders;

(2) Located in quarters as defined in paragraph (a)(1)(i) of this section;

(3) Incident to TAD or TDY travel, limited to a maximum payment of $100; or

(4) Incurred in use necessary in the performance of official government business under circumstances in which the owner or operator is entitled to payment of local travel.

(d) *Housetrailer losses.*

(1) A "Housetrailer" is a residence designed to be moved overland, and includes all household goods, personal effects, and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member of his dependents.

(2) Claims for damage to or loss of housetrailers arising incident to shipment under orders are payable only if—

(i) Transported by the service member, an agent or agency of the government, or other carrier having operating rights approved by the Interstate Commerce Commission if interstate, or under applicable State regulations when the shipment is within a single state; and

(ii) The owner has placed the housetrailer, including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and other parts of the housetrailer and its contents, in fit condition to withstand the stress of normal transportation. Acceptance of a housetrailer for shipment by a carrier is presumptive evidence that the housetrailer was in condition to withstand the stress of normal transportation.

(e) *Losses in marine or aircraft disasters.* Damage to or loss of personal property carried on board any vessel or aircraft that results from a marine or aircraft disaster, excluding losses sustained in a leave status.

(f) *Losses due to hostile action.* Damage to or loss of personal property resulting from—

(1) Enemy action or threat of such action;

(2) Combat or performance of a combat mission;

(3) Foreign belligerant activities; or

(4) Unjust confiscation by a foreign power or its nationals hostile to the United States.

(g) *Losses of money deposited for safekeeping.* Loss of personal funds when accepted by responsible government personnel with apparent authority to receive them for the purpose of safekeeping, deposit, transmittal, or authorized disposition.

(h) *Losses of property incurred in the performance of official duties.*

(1) Damage to or loss of personal property incurred in use necessary in the performance of official government business; or

(2) Damage to or loss of personal property as a direct result of an unusual risk, one that is beyond the normal risks of everyday life, to which the property is subjected during the performance of official government business.

§ 25.705 Claims not payable.

A claim is not payable for—

(a) Money or currency except—

(1) When deposited for safekeeping under § 25.703(g) of this subpart;

(2) When lost incident to a marine or aircraft disaster under § 25.703(e) of this subpart;

(3) When lost incident to hostile action under § 25.703(f) of this subpart; or

(4) When lost by fire, flood, hurricane, or theft from quarters under § 25.703(a) of this subpart. Claims for loss of money or currency are not payable in excess of $150 when the loss arises under § 25.703 (a) or § 25.703(f) of this subpart.

(b) Small items of substantial value such as jewelry, cameras, electronic equipment, and binoculars; and articles of extraordinary value such as precious metals, paintings, and antiques, except when lost—

(1) Incident to a marine or aircraft disaster under § 25.703(e) of this subpart;

(2) Incident to the shipment of household goods that has been declared a "high value" shipment;

(3) Incident to hostile action under § 25.703(f) of this subpart;

(4) By fire, flood, hurricane, or theft from quarters under § 25.703(a) of this subpart.

(c) Articles or property worn or carried on the person, except under § 25.703 (e), (f), or (h) of this subpart.

(d) Property acquired by or in the possession of the claimant intended directly or indirectly for the use of others either by gift or through sale.

(e) Damage to or loss of property for use in a private or commercial business enterprise.

(f) Subrogated interests presented by, or on behalf of, insurers or other subrogees.

(g) Damage to or loss of property for which recovery has been, or can be, obtained from an insurer, carrier, or contractor, except under the concurrent claims procedure of § 25.707(c) of this subpart.

(h) Damage to or loss of property resulting wholly or partly from the negligence of the claimant, his agent, or employee.

(i) Fees for obtaining estimates of repair where such fee is deducted from the cost of repairs if the work is accomplished.

(j) Fees for the pick-up and delivery of property repaired except when proof of payment of such fees is presented by the claimant.

(k) Damage to or loss of motor vehicles except to the extent allowable under § 25.703(c) of this subpart.

§ 25.707 Time limitations on claims.

(a) A claim may be settled and paid only if presented in writing within two years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not more than two years after the termination of the war or armed conflict.

(b) For the purposes of this section, a war or armed conflict is one in which an Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict will be as established by concurrent resolution of Congress or by determination of the President.

§ 25.709 Procedure.

(a) Except as provided in paragraph (c) of this section, before submission of a claim under this subpart the following requirements must be met:

(1) Whenever property cognizable under § 25.703 of this subpart is damaged or lost, and is insured in whole or in part, the claimant must make a demand in writing against the insurer for reimbursement under the terms and conditions of, and within the time limit required by the insurance policy.

(2) Whenever property cognizable under § 25.703 of this subpart is damaged or lost while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier known to have handled or transported the property. If more than one bill of lading was issued, a separate demand must be made on the carrier known to have handled or transported the property on each bill of lading.

(b) Failure to make demand on a carrier, contractor, or insurer under paragraph (a) of this section, or failure to make all reasonable efforts to collect the amount recoverable from them, results in a reduction of the amount recoverable under this subpart by the maximum amount that would have been recoverable from the carrier, contractor, or insurer had claims been timely made or diligently prosecuted by the claimant. This paragraph does not apply in cases where the circumstances of the claimant's service precludes seasonable filing of such a claim or diligent prosecution, or evidence is presented by the claimant that a demand for reimbursement would have been impracticable or futile.

(c) To expedite the settlement of household effects claims, the claim presented to the Government under this subpart may be submitted concurrently with the demand made against the carrier, contractor, or insurer. The claimant must direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim against the Government was filed, to send any payment in settlement of the claim against the carrier, contractor, or insurer to that commanding officer and to make it payable to the claimant.

(d) Where collateral recovery is available to the claimant under paragraph (a) of this section, no claim is paid under this subpart until—

(1) a subrogation agreement in favor of the United States in the amount paid is executed by the claimant; and

(2) an agreement is signed by the claimant to return to the United States any recovery obtained by him from third parties up to the amount paid under this subpart.

(e) Claims are presented in writing to the commanding officer of the unit or activity with which the claimant is serving, or if no longer serving in or with the Coast Guard, the Commander of the nearest Coast Guard District.

(f) In any case involving damage to property that renders it a total loss, uneconomically repairable, the settlement authority, prior to payment, may require the claimant to surrender the property in return for payment. Any property so surrendered becomes property of the United States.

§ 25.711 Replacement in kind.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. The items issued in replacement need not be new and unused if they are in at least as good condition as the lost or destroyed items immediately before the incident causing the loss or destruction.

§ 25.713 Delegation of authority.

(a) The Chief Counsel may deny any claim and settle and authorize payment of any claim in an amount not exceeding $15,000.

(b) The Chief, Office of Personnel may deny any claim for damage to or loss of personal property incident to transportation in connection with a permanent change of station, and any claim arising under § 25.703(d) of this subpart, and may settle and authorize payment of any such claims in an amount not exceeding $10,000.

(c) The Chief, Claims and Litigation Division, Office of Chief Counsel, may deny claims not exceeding $5,000 and may settle and authorize payment of claims in which the amount of the payment does not exceed $5,000. This authority shall extend to all claims arising under this subpart except those for which authority has been delegated to the Chief, Office of Personnel and the Chief, Personnel Services Division.

(d) The Chief, Personnel Services Division may deny claims arising under § 25.703(d) of this subpart not exceeding $5,000 and may deny claims for damage to or loss of property incident to transportation in connection with a permanent change of station not exceeding $5,000, and may settle and authorize payment of any such claims in which the amount of the payment does not exceed $5,000.

(e) The Commander of each Coast Guard District, and the Superintendent, U.S. Coast Guard Academy, may deny claims not exceeding $1,000 and may settle and authorize payment of claims in which the amount of the payment does not exceed $1,000.

(f) The Commanding Officer of each Headquarters unit having a permanent legal officer billet may deny claims not exceeding $500 and may settle and authorize payment of claims in which the amount of the payment does not exceed $500.

(g) The officers to whom authority is delegated in paragraphs (a), (b), (c), (d), (e), and (f) of this section, and any commanding officer in the grade of Lieutenant Commander or above may settle claims of military personnel for replacement in kind arising under this subpart.

§ 25.715 Attorneys' fees.

Attorneys' fees for any claim settled and paid under this subpart are limited to not more than 10 percent of the amount paid in settlement.

Subpart H—Auxiliary Claims

AUTHORITY: 14 USC 830.

§ 25.801 Scope.

The regulations in this subpart prescribe the requirements for the administrative settlement of claims of members of the Coast Guard Auxiliary for damage to or loss of an Auxiliary facility or equipment.

§ 26.803 Claims payable.

Damage to or loss of an Auxiliary facility or equipment, including a trailered facility en route to or from the launching area, is payable if—

(a) There is in existence a current offer of use, accepted by the Coast Guard;

(b) At the time the damage or loss is incurred the facility was assigned to authorized specific Coast Guard duties and was operated within the scope of those duties; and

(c) All forms required by the Auxiliary Manual, CG-305, are on file and current.

§ 25.805 Claims not payable.

A claim is not payable if it—

(a) Is for damage to or loss of equipment if its possession was not reasonable under the circumstances;

(b) Is for damage to or loss of a facility or equipment, including a trailer, en route to or from a launching site caused wholly or partly by the negligence of the Auxiliarist;

(c) Results wholly or partly from the gross negligence or willful misconduct of the Auxiliarist;

(d) Has been, or can be, the subject of a claim by the Auxiliarist against his insurer to the extent of his reimbursable interest;

(e) Results from theft;

(f) Results from the failure of the Auxiliarist to properly maintain the facility or equipment;

(g) Is for repair or replacement of a facility or equipment attributable to normal wear;

(h) Is presented by, or on behalf of, insurers or other subrogees;

(i) Is for routine operational expenses such as fuel, oil, water, power, supplies, or provisions unless combined with a claim for damage or loss.

§ 25.807 Time limitations on claims.

A claim may be settled only if presented in writing to the District Director of the Auxiliary in the Coast Guard District where the claim arose within 60 days after it accrues unless good cause is shown for the delay.

§ 25.809 Procedure.

(a) Claims may be filed either as an endorsement to an Auxiliarist's original Coast Guard orders or by letter to the District Director of the Auxiliary. The amount of the claim must be clearly stated and the claim accompanied by the following:

(1) The original Coast Guard Auxiliary Operational Orders.

(2) The Certificate of Loss or Damage required by the Auxiliary Manual, CG-305.

(3) In cases of damage, two itemized estimates of the cost of repairs.

(4) In cases of loss, copies of original sales documents and proof of the salvage value.

(b) When a facility suffers loss of or damage to its hull, machinery, or equipment, the circumstances surrounding the damage or loss must be reported immediately to the command that issued the orders under which the facility was operating or to the District Director of the Auxiliary. Repairs to a facility may not be undertaken until after a Coast Guard investigator, or his designee, has inspected the damage. Failure to comply with this requirement will normally result in the denial of any claim.

(c) In any case where evidence of negligence on the part of the owner or operator of the Auxiliary facility is involved, the claim is referred to the Chief Counsel.

(d) Where the negligence of third parties has caused or contributed to the damage to or loss of an Auxiliary facility or equipment, no claim is paid to the Auxiliarist until—

(1) A subrogation agreement in favor of the United States in the amount paid is executed by the Auxiliarist; and

(2) An agreement is signed by the Auxiliarist to return to the United States any recovery obtained by him from third parties.

§ 25.811 Delegation of authority.

(a) The Chief Counsel may deny or settle and authorize payment of any claim regardless of the amount claimed.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel, may deny claims not exceeding $5,000 and may settle and authorize payment of claims in which the amount of payment does not exceed $5,000.

(c) The Commander of each Coast Guard District may deny claims not exceeding $2,500 and may settle and authorize payment of claims in which the amount of payment does not exceed $2,500 except where evidence of negligence on the part of the owner or operator of the Auxiliary facility is involved.

Subpart I—Article 139, Uniform Code of Military Justice (UCMJ)

AUTHORITY: 10 USC 939; 49 CFR 1.45 (a)(2).

§ 25.901 Scope.

This subpart prescribes the requirements for the administrative settlement of claims under Article 139, Uniform Code of Military Justice, against members of the Coast Guard for damage to or loss of property willfully caused by them.

§ 25.903 Claims payable.

Claims for damage to or loss of real or personal property caused by a member of the Coast Guard are payable when the damage or loss results from—

(a) Riotous, violent, and disorderly conduct or acts of depredation by an individual or group that evinces a reckless disregard of property rights;

(b) Willful or intentional acts constituting a crime under local law;

(c) Gross negligence demonstrating a conscious indifference to the property rights of others.

§ 25.905 Claims not payable.

A claim is not payable if it—

(a) Results from simple negligence;

(b) Is a subrogated claim;

(c) Is for damage to or loss of property resulting from the act or omission of a member of the Coast Guard acting within the scope of employment;

(d) Is for damage to or loss of property owned by the United States or property of a Nonappropriated Fund Activity;

(e) Is for damage to or loss of property where gross negligence of the claimant, his agent, or employee is involved;

(f) Has been paid by a third party;

(g) Is for indirect or remote damages;

(h) Is for personal injury or death;

(i) Extends to damage or loss that results from the owner's failure to mitigate his damages; or

(j) Exceeds the actual reasonable costs of repair or replacement of the property lost or damaged.

§ 25.907 Time limitation on claims.

A claim may be settled only if presented in writing within 60 days after it accrues unless good cause is shown for the delay.

§ 25.909 Limitation on payment of claims.

No member of the Coast Guard will be required to pay more than $1,000 for any single act or incident giving rise to a claim under this subpart.

§ 25.911 Authority.

(a) The commanding officer of the member responsible for the damage to or loss of property may deny any claim or approve for payment any claim where the amount to be paid does not exceed $1,000. No claim in excess of $300 is approved for payment by the commanding officer without prior approval of the Chief Counsel.

(b) Where members of more than one command are responsible for the damage to or loss of property, the commanding officer with jurisdiction over all members responsible is the approving authority.

(c) The determination of the commanding officer is final.

§ 25.913 Notification to claimant of action on claim.

When the commanding officer of the member responsible for the damage to or loss of property approves payment of a claim, the claimant is notified in writing of this action and the manner in which payment will be made.

§ 25.915 Payment of claims.

Claims are paid by the member responsible for the damage to or loss of property. Payment is made to the claimant either directly by the member responsible or withheld from his pay and forwarded to the claimant by a disbursing officer.

Subpart J—Pollution Removal Damage Claims

AUTHORITY: 33 USC 1321(j)(1)(A); 33 USC 1321(1); E.O. 11735, Sec. 5(a), (b) (3); 49 CFR 1.46(m).

§ 25.1001 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States for damage to or loss of property resulting from containment or removal activities during Phase III or IV of the National Contingency Plan of February 1975, under the Federal Water Pollution Control Act.

§ 25.1003 Claims payable.

Claims for damage to or loss of real or personal property are payable if—

(a) Caused by the United States, its employees, agents, or contractors, incurred in pollution response activities under Phase III or IV of the National Contingency Plan; and

(b) In the exercise of care reasonable under the circumstances, the action giving rise to the claim was necessary and the damage unavoidable.

§ 25.1005 Claims not payable.

A claim is not payable if it—

(a) Is for death or personal injury; or

(b) Arises out of activities to contain or remove a discharge of oil or other hazardous polluting substance from a U.S. or foreign public vessel or federally controlled facility.

§ 25.1007 Delegation of authority.

Claims cognizable under this subpart are a cost of response activities under Phases III and IV of the National Contingency Plan of February 1975, under the Federal Water Pollution Control Act; therefore, the delegations under Part 153 of this Title apply.

Subpart N—Property Damage Claims on Behalf of the Coast Guard

AUTHORITY: 14 USC 642; 14 USC 633; 49 CFR 1.45(a)(2).

§ 25.1401 Scope.

This subpart prescribes the authority for the administrative collection, compromise, and settlement of claims on behalf of the Coast Guard, under 14 U.S.C. 642, for the damage to or destruction of aids to navigation or other property belonging to the Coast Guard.

§ 25.1403 Aids to Navigation.

Claims for damage to or destruction of aids to navigation and related property maintained by the Coast Guard include the following:

(a) Direct costs incident to repairing or replacing damaged, destroyed, or lost aids to navigation, their appurtenances, or related property.

(b) Cost of returning a floating aid to navigation to its proper position regardless of damage to the aid.

(c) Cost of placing into operation and removing a temporary aid to navigation for that which is damaged, destroyed, or lost.

(d) Cost of locating, recovering, and removing a damaged, destroyed, or lost aid to navigation, or any of its appurtenances, or attempts to do so.

§ 25.1405 Other property belonging to the Coast Guard.

Claims for damage to or destruction of other property belonging to the Coast Guard may be administratively collected, compromised, and settled under this subpart only if the property damaged or destroyed is to be repaired or replaced, and only to the extent of the direct costs of repair or replacement.

§ 25.1407 Private repair or replacement.

The repair or replacement of an aid to navigation or other property belonging to the Coast Guard may be done by a private person only if the plans and schedule are acceptable to the Coast Guard. The Coast Guard does not pay for any enhanced value unless previously agreed to in writing.

§ 25.1409 Delegation of authority.

(a) The Chief Counsel may collect, compromise, and settle claims on behalf of the United States in any amount for damage to or destruction of aids to navigation and related property maintained by the Coast Guard, or for damage to or destruction of other property belonging to the Coast Guard which is to be repaired or replaced.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel may collect, compromise, and settle claims on behalf of the United States for damage to or destruction of aids to navigation and related property maintained by the Coast Guard, or for damage to or destruction of other property belonging to the Coast Guard which is to be repaired or replaced, where the amount of the claim does not exceed $20,000.

(c) The Commander of each Coast Guard District may collect, compromise, and settle claims on behalf of the United States for damage to or destruction of aids to navigation and related property maintained by the Coast Guard, or for damage to or destruction of other property belonging to the Coast Guard which is to be repaired or replaced, where the amount of the claim does not exceed $15,000.

§ 25.1411 Settlement agreement.

The person making restitution to the Coast Guard under § 25.1407 or § 25.1409 of this subpart, receives a settlement agreement executed by the officer authorized to collect, compromise, and settle the claim.

Subpart O—Admiralty Claims on Behalf of the Coast Guard

AUTHORITY: 14 USC 647; 49 USC 1655 (b); 14 USC 633; 49 CFR 1.45(a)(2).

§ 25.1501 Scope.

This subpart prescribed the authority for the administrative collection, compromise, and settlement of admiralty claims on behalf of the Coast Guard under 14 U.S.C. 647. This subpart does not extend to those claims on behalf of the Coast Guard arising in admiralty that are cognizable under subpart N of this Part.

§ 25.1503 Delegation of authority.

(a) The Chief Counsel may collect claims in full, and compromise and settle claims where the amount received does not exceed $25,000, arising in admiralty and not cognizable under subpart N of this Part for—

(1) damage to United States property under the control of the Coast Guard; and

(2) damage to property for which the Coast Guard has assumed any obligation to respond for damages thereto.

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel may collect claims in full, and compromise and settle claims, where the amount of the claim does not exceed $10,000, arising in admiralty and not cognizable under subpart N of this Part for damage to property described in paragraphs (a)(1) and (a)(2) of this section;

(c) The following officers may collect claims in full, and compromise and settle claims arising in admiralty and not cognizable under subpart N of this Part for damage to United States property under the control of their command, or for damage to property described in paragraph (a)(2) of this section, where the amount of the claim does not exceed $10,000:

(1) The Commander of each Coast Guard District;

(2) The Superintendent, U.S. Coast Guard Academy;

(3) The Commanding Officer of each Headquarters Unit having a permanent legal officer billet.

§ 25.1505 **Release.**

The person satisfying a claim under this subpart receives a release executed by the officer authorized to collect, compromise, and settle the claim.

Subpart P—Federal Claims Collection Act

AUTHORITY: 31 USC 952; 49 CFR 89.1.

§ 25.1601 **Scope.**

This subpart prescribes the authority and standards for the administrative collection, compromise, suspension or termination of action to collect, claims on behalf of the Coast Guard regardless of the source.

§ 25.1603 **Single claim.**

A debtor's total liability to the United States arising from a particular incident is a single claim in determining whether the claim is within the authority delegated under § 25.1609 of this subpart.

§ 25.1605 **Direct private payments.**

(a) When a person who is responsible for damage to government property, or his insurer, offers to have the property repaired to the satisfaction of the Coast Guard and to pay the cost of repairs directly to the repairer, direct payment is authorized where that procedure is in the best interests of the United States.

(b) The Coast Guard does not pay for any enhanced value unless previously agreed to in writing.

§ 25.1607 **Release.**

The settlement authority executes a release either upon receipt of agreed payment of the claim or upon completion of the repairs and receipt of evidence of payment in full to the repairer under § 25.1605 of this subpart.

§ 25.1609 **Delegation of authority.**

Any settlement authority may accept payment in full of any claim on behalf of the Coast Guard. The functions, powers, and duties of the Commandant, U.S. Coast Guard, to compromise, suspend or terminate action to collect claims on behalf of the United States arising out of Coast Guard activities, or matters referred to the Coast Guard, are delegated to—

(a) The Chief Counsel for any claim that does not exceed $20,000;

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel for any claim that does not exceed $10,000;

(c) The Comptroller, U.S. Coast Guard for any claim that does not exceed $5,000 arising out of activities under his cognizance;

(d) The Commander of each Coast Guard District, and the Commanding Officer of each Headquarters Unit having a permanent legal officer billet, for any claims that do not exceed $5,000 arising out of the activities of his command.

§ 25.1611 **Exceptions to delegated authority.**

The authority delegated in § 25.1609 does not apply to—

(a) Claims cognizable under subparts N or O of this Part;

(b) Claims against a foreign government unless specifically authorized by the Commandant;

(c) Claims involving an adjustment for unused passenger transportation services;

(d) Claims against a civilian employee as a result of an erroneous payment or overpayment of pay;

(e) The authority delegated in § 25.-1609(d) of this subpart does not extend to the compromise, suspension or termination of actions to collect claims arising out of erroneous payments or overpayments of military pay and allowances.

§ 25.1613 **Referral.**

(a) The Chief Counsel may refer any claim to the Department of Justice or the General Accounting Office;

(b) The Chief, Claims and Litigation Division, Office of Chief Counsel may refer any claim to the Department of Justice or the General Accounting Office that does not exceed $10,000;

(c) Any District Commander—

(1) may refer a claim within his delegated authority to the appropriate United States Attorney provided collection action has been taken and the claim cannot be compromised, suspended, or terminated in accordance with 4 CFR Chapter II;

(2) refers any claim in excess of his delegated authority which cannot be collected in full to the Chief Counsel;

(d) Any other settlement authority who is unable to compromise, suspend, or terminate collection action of a claim refers the claim to the Chief Counsel.

Effective date: These amendments become effective on March 4, 1976.

Dated: February 27, 1976.

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

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CHAPTER II—CORPS OF ENGINEERS

PART 209—ADMINISTRATIVE PROCEDURES: SHIPPING SAFETY FAIRWAYS AND ANCHORAGE AREAS

Gulf of Mexico

On 24 September 1975 the Department of the Army acting through the Chief of Engineers published proposed regulations in 33 CFR 209.135 to amend present regulation with respect to paragraphs (d) (41) through (d) (46) and the addition of (d) (47) through (d) (51). This regulation establishes safety fairways and anchorages in the Gulf of Mexico.

The comment period for this regulation expired on 24 October 1975. There were no objections to the proposed revision. However, an error was made in the Pensacola to Panama City Safety Fairway (43). The point location should be latitude 30°18'00", Longitude 86°20'00" in lieu of latitude 31°18'00", Longitude 86°20'00" as published.

The Department of the Army, acting through the Chief of Engineers is publishing the final regulation as follows: