

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

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Washington, DC 20593-0001
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COMDNOTE 5890
3 MAR 1993

COMMANDANT NOTICE 5890

Subj: CH-2 TO COMDTINST M5890.9, COAST GUARD CLAIMS AND
LITIGATION MANUAL

1. PURPOSE. This Notice publishes changes to Chapters 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, and to Enclosures (1), (2), (4), (10), (11), (12), (14), (15), (16), and (17); it also adds a new Chapter 19, as well as new Enclosures (18), (19), and (20).
2. SUMMARY. Language which has been modified or added is indicated by "alternate ribbon" highlighting. Not every change has been noted. The major changes are summarized as follows:
 - a. 1-B-3: Places responsibility for investigations on a "claims arising from the activities of a unit or its personnel" basis, vice the previous geographical basis.
 - b. 1-B-5: Recognizes the role of CCGD2 for processing Personnel Claims.
 - c. 1-B-7: Recognizes the role of the NPFC.
 - d. 1-E: Authorizes the continued use of other military services' published claims guidance where it does not conflict with Coast Guard policy or guidance.

- 2. e. 3-D-5: Provides guidance for handling claims arising from joint law enforcement activities.
- f. 3-H-3: Distinguishes between FTCA and Admiralty-based claims in terms of what information must accompany a claim denial.
- g. 5-B-2-c: Reinstates a subparagraph which had been inadvertently deleted by CH-1. The provision authorizes certain officers to settle certain Auxiliary claims by reimbursement in kind.
- h. 5-B-5: Reflects increased limits of settlement authority under the FTCA.
- i. 5-B-9: Reflects increased limits of settlement authority for Federal Claims Collection and Compromise.
- j. 5-B-10: Recognizes that G-LCL will normally handle all Federal Medical Care Recovery Act cases.
- k. 5-B-13: Reflects the existence of, and settlement limits for, the Oil Spill Liability Trust Fund.
- l. 5-B-14: Reflects the existence of, and settlement limits for, the Coast Guard's Environmental Compliance & Restoration Account.
- m. 5-C-1: Gives MLCs and CCGD2 the flexibility to utilize Chief Petty Officers as claims settlement officers within specified limits.
- n. Chap. 6: Portions rearranged for clarity and to reflect present practice.
- o. 8-D-2: Authorizes claims by Auxiliarists for damage to boat trailers under certain circumstances.
- p. 8-D-3: Authorizes claims by Auxiliarists for motor vehicle damage under limited circumstances.
- q. 8-E: Provides more specific guidance on what types of claims are not payable under the Auxiliary program.
- r. 9-E-4: Advises settlement authorities of the need to consider the Limitation of Liability Act.

- 2. s. 10-D-7: Clarifies that 28 U.S. Code subsection 2680(c), the "customs exception", does not apply to "innocent" vessel law enforcement boarding and detention damage claims.
- t. 11-F-8: Provides more specific guidance on the handling of investigations and claims involving medical care provided by USPHS personnel.
- u. 11-F-9: Provides more specific guidance on the handling of investigations and claims involving medical care by Coast Guard personnel.
- v. Chap. 14: Revised chapter, expanding on processing of oil pollution damage claims after OPA 90.
- w. 16-I-1-b: Eliminates the "certified or registered mail" requirement for giving notice of intent to release information regarding a debtor to a consumer credit reporting agency.
- x. 18-B: Provides expanded coverage on the topic of service of process on Coast Guard personnel and employees.
- y. 18-C: Provides expanded coverage on the topic of representation of Coast Guard personnel and employees.
- z. 18-G: Provides expanded coverage on the topic of Coast Guard personnel and employees as witnesses.
- aa. 18-H: Provides expanded coverage on the topic of the payment of legal fees for Coast Guard personnel and dependents in foreign tribunals.
- bb. Chap. 19: New chapter dealing with environmental compliance litigation and related issues.
- cc. Encl. (1): Revised Allowance List--Depreciation Guide for Personnel Claims.
- dd. Encl. (2): Latest Military-Industry Memorandum of Understanding on Loss & Damage Rules.
- ee. Encl. (4): Revised to reflect current Chapter 6 practice.

- 2. ff. Encl.(10): New Department of Justice guidance on the referral of debts for judicial collection.
 - gg. Encl.(14): Improved instructions for preparing a Certificate of True Copy locally.
 - hh. Encl.(15): Updated message format (reflecting G-LPD vice G-LLA) for requesting out-of-district witness travel in civil litigation.
 - ii. Encl.(18): Commandant's Environmental Compliance and Restoration (EC&R) Program Delegations.
 - jj. Encl.(19): Chief Counsel's EC&R Redelegation.
 - kk. Encl.(20): Environmental Fee/Tax guidance.
3. ACTION. Remove and insert the following pages:

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4. EFFECTIVE DATE. All changes are effective immediately, with the exception of the shift in responsibility from the MLCs to CCGD2 for the processing of non-household goods personnel claims. While this manual change reflects CCGD2 as being responsible for all Chapter 6 Personnel Claims, the MLCs will not actually relinquish (to CCGD2) responsibility for the non-household goods claims until 01 APRIL 1993.

/s/ P. E. VERSAW
Chief Counsel

Non-Standard Distribution: B:c MLCLANT, MLCPAC (6 extra); CGLO
GITMO(1); CGLO O'CHAMPUS(1); DOT (M-1) (1);
SJAs USA(1); USN(1); USAF(1); DAJAGS(1); NAVJUSTSCOL(1);
AFJAGSCOL(1)

(G-LCL)

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COMDTNOTE 5890
MAR 3 1993

CANCELLED: 2 sep 1993

COMMANDANT NOTICE 5890

SUBJ: CH-1 to COMDTINST M5890.9, Coast Guard Claims and Litigation Manual

1. PURPOSE. This Notice publishes changes to Chapters 1,2,3,5,6 and enclosure (2) of the CG Claims and Litigation Manual.
2. SUMMARY. Chapters and paragraphs which have been modified or added by this change are indicated by a vertical line in the margin. Editorial changes are not marked. The major changes are summarized as follows:
 - a. 1-A-3: Changes from local settlement authority to appropriate settlement authority.
 - b. 1-B-2-f: Clarifies that G-LCL is the normal processing point for personal property damage claims at Coast Guard Headquarters, Coast Guard Information Systems Center, Coast Guard Omega Navigation System Center, Coast Guard Marine Safety Center, Air Station Washington, ONSOD, the Intelligence and Coordination Center, and Activities Europe.
 - c. 1-B-3: Eliminates area commanders as responsible for processing claims.
 - d. 1-B-4: Eliminates district commanders as responsible for processing claims.

COMDTNOTE 5890
24 JUL 1990

- 2. e. 1-B-6: Eliminates commanding officers of Headquarters units as responsible for processing claims.
- f. 1-B-10: Delineates responsibility of MLCs to process claims.
- g. 1-C: Deletes definition of "approving authority". Modifies definition of "Legal Officer"
- h. 1-D-2: Adds reference to 18 USC 285.
- i. 2-A-3: Adds reference to the Administrative Investigations Manual (COMDTINST M5830.1(Series)) for claims investigations.
- j. 2-B-1-d: Clarifies impact of interdepartmental waiver.
- k. 2-B-2: Deletes reference to severity or extensiveness of damage as criteria in determining scope of investigation.
- l. 2-C-3: Clarifies role of the Legal Officer.
- m. 2-D-1: Deletes reference to Legal Officer.
- n. 2-D-3-a: Deletes reference to local settlement authority.
- o. 2-E-1: Adds requirement for Claims Investigating Officer to include a specific sentence in the preliminary statement or opening paragraph that the investigation is prepared in contemplation of litigation or for adjudication of a claim.
- p. 3-A-4: Clarifies what constitutes a claim.
- q. 3-C-3: Deletes reference to local settlement authority.
- r. 3-F-1: Deletes reference to local settlement authority.

- 2. s. Chapter 5: Adds delegations to maintenance and logistics commanders. Increases delegations for MPCECA claims to \$40,000. Consolidates claims files at maintenance and logistics command. Adds delegation for settlement of claims for damages to government owned or leased housing.
- t. 6-B-1: Increases the maximum amount authorized for a loss from one incident to \$40,000.
- u. 6-D-3: Corrects reference to JFTR.
- v. 6-D-6: Deletes note on increased valuation for certain MPCECA claims.
- w. 6-D-13: Adds provision for loss in transmitting electronic direct deposit of member's pay.
- x. 6-F-2-h: Encourages prompt submission of claims for household goods damage after delivery.
- y. 6-F-2-m: Corrects citation to JFTR.
- z. 6-H-1: Clarifies notice and claim requirements.
- aa. 6-H-2-b-(1): Deletes use of CG-4111 by itself as a notice to carrier. Claimant must state it is intended as a substitute for the DD1840R.
- bb. 6-H-2-b-(3): Deletes use of CG-4111 as equivalent to DD1840R.
- cc. 6-H-4: Clarifies use of a single submission for notice and claim.
- dd. 6-H-5-b: Changes name of office to contact from Personnel Service to Administration Division.
- ee. 6-H-7: Clarifies procedures for submitting a concurrent claim against the Coast Guard. Authorizes use of DOD forms.

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24 JUL 1990

- 2. ff. 6-H-9-b-(2)-(b): Deletes local settlement authority.
- gg. 6-H-9-b-(7)-(d)-2-c: Clarifies impact of reupholstering on set.
- hh. 6-H-9-d: Requires claims to be forwarded to MLCs.
- ii. 6-H-10-a: Deletes requirement for "sympathetic" treatment and substitutes "professional" treatment.
- jj. 6-H-10-c-(3)-(b)-1: Clarifies rules on estimates.
- kk. 6-H-10-c-(3)-(b)-2: Clarifies rules on estimates.
- ll. 6-H-10-c-(3)-(b)-3: Clarifies rules on estimates.
- mm. 6-H-10-c-(9): Adds requirement to determine if carrier submitted an estimate.
- nn. 6-H-10-f: Deletes local settlement authority and substitutes appropriate settlement authority.
- oo. 6-I-2: Clarifies prohibition on settlement of claims within the settlement authority's chain of command.
- pp. 6-K-2: Deletes local settlement authority and substitutes settlement authority at the appropriate MLC.
- qq. 6-L-2: Adds section explaining impact of cashing a carrier's check.
- rr. 6-O-4: Adds section on carrier's salvage right and restrictions.
- ss. 6-P-4-b: Adds section on inspection by carrier for damaged household goods.
- tt. 6-P-5: Adds section prohibiting claims against the carrier for less than \$25.
- uu. 6-P-9: Adds section explaining carriers' and insurers' right to appeal to the Government Accounting Office (GAO).
- vv. Encl. (2): Updates the appreciation table.

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/s/ P. E. VERSAW
CHIEF COUNSEL

Non-Standard Distribution: B:c MLCLANT, MLCPAC (6 extra); CGLO
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SJAs USA(1), USN(1), USAF(1); DAJAGS(1); NAVJUSTSCOL(1); AFJAGSCOL(1)

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2100 Second Street, S.W.
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17 MAR 1986
COMDTINST M5890.9

COMMANDANT INSTRUCTION M5890.9

Subj: COAST GUARD CLAIMS AND LITIGATION MANUAL

1. PURPOSE. This instruction prescribes policies, procedures, responsibilities, and standards regarding claims and matters related to civil litigation.
2. SUMMARY. This instruction replaces the Coast Guard Claims Manual, COMDTINST M5890.7. The major changes and additions requiring issuance of this instruction as a new manual are:
 - a. revision of procedures for handling claims on behalf of the Coast Guard mandated by the Debt Collection Act of 1982, P.L. 97-365;
 - b. revision of procedures for notifying household goods carriers of loss or damage to property while being shipped under a Government Bill of Lading;
 - c. designation of district commanders to be responsible for settlement of claims arising at Headquarters units without a law specialist or attorney assigned to a legal billet located within their district, except for Activities Europe and Headquarters units in the Washington, D.C. area; and

COMDTINST M5890.9
17 MAR 1986

2. d. promulgation of procedures for addressing civil litigation issues arising at the district and unit levels.
3. DIRECTIVES/FORMS AFFECTED.
 - a. Coast Guard Claims Manual, COMDTINST M5890.7 is cancelled. Those provisions saved by the Discussion section of this instruction are incorporated by reference.
 - b. Chapter VII of the Coast Guard Supplement to the MCM (CG-241) is suserseded, and will be deleted by future amendment.
 - c. DOT form 2100.1, Certificate of True Copy, (see Enclosure 14) is available from Supply Center Brooklyn, Stock Number 7530-01-GF3-0960.
4. DISCUSSION. Claims presented to the Coast Guard shall be adjudicated under Chapters 6 through 14 of the instruction in effect (either this instruction or the Claims Manual) at the time the claim arose. All claims presented after the effective date of this instruction shall be processed in accordance with the procedures of this instruction. The substantive provisions of Chapters 6 through 14 the Claims Manual shall remain in effect until the limitation period for each of the administrative claims authorities expires and any claims cognizable under those authorities have been adjudicated. Settlement authorities will therefore retain COMDTINST M5890.7 until expiration of all limitation periods and pending claims have been adjudicated. All claims on behalf of the Coast Guard and any requests for collection of claims by other federal departments and agencies shall be processed in accordance with this instruction regardless of the date the claim arose.
5. ACTION. District commanders, unit commanders, and officers in charge shall insure the provisions of this instruction are followed.
6. CHANGES. Any recommendation for improvement are encouraged and should be submitted to Commandant (G-LCL).

/s/ EDWIN H. DANIELS
CHIEF COUNSEL

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CHAPTER 1

INTRODUCTION

A. Policy.

1. Claims arising out of Coast Guard activities shall be promptly and justly considered. Within the parameters of the applicable statutes:
 - a. Each meritorious claim against the U.S. should be paid in the amount necessary to restore the claimant to the status which existed before the incident upon which each claim is based; and
 - b. Each claim in favor of the U.S. should be collected through timely assertion and vigorous follow up action.
2. Maximum use of the administrative procedures authorized by this Manual will avoid unnecessary litigation. This internal guidance for Coast Guard personnel is solely intended to promote efficiency and consistency in public service above and beyond the requirements of law or regulation. Any obligations discussed flow only to the Coast Guard, and Coast Guard personnel are expected to exercise broad discretion in performing the functions discussed. The Coast Guard retains the discretion to deviate from or change this guidance without notice. This document creates no duties, standard of care, or obligations to the public and should not be relied upon as a representation by the Coast Guard as to the manner of proper performance in any particular case.
3. Coast Guard activities which damage private property or injure private persons often receive widespread publicity. Coast Guard personnel investigating a claim that involves private individuals should be particularly tactful and courteous to ensure that good public relations are maintained. Any correspondence, letters of claim, or demands received should be forwarded expeditiously to the appropriate settlement authority.

B. Organization.

1. The Secretary of Transportation delegated responsibility to the Commandant for the administrative settlement of claims by and against the U.S. arising out of Coast Guard activities. The Commandant re delegated this authority to the Chief Counsel. This Manual further re delegates responsibility for settlement of administrative claims and establishes procedures for handling claims.
2. The Chief, Claims and Litigation Division, exercises overall supervision of Coast Guard claims matters. The Chief, Claims and Litigation Division, under the general direction of the Chief Counsel, shall:

CH-2

- 1.B.2. a. Formulate claims policy;
 - b. Resolve questions of jurisdiction and responsibility for the investigation and processing of claims;
 - c. Provide claims liaison with other governmental departments and agencies;
 - d. Maintain a record of significant claims;
 - e. Answer inquiries concerning the interpretation and application of this Manual. When it is considered to be in the best interest of the U.S., the Chief, Claims and Litigation Division may grant authority to deviate prospectively from the specific requirements contained in this Manual, if the deviation is not contrary to regulation or statute;
 - f. Process any claims referred by the Maintenance and Logistics commands (MLCs) or, in the case of personnel claims under Chapter 6, any claims referred by the Commander, Second Coast Guard District;
 - g. Process medical care recovery claims (see Chapter 17); and
 - h. Process cases for referral to the Department of Justice (DOJ) for litigation, and provide ongoing litigation support to DOJ.
3. The commanding officer or officer in charge of a unit is primarily responsible for investigating claims arising from the activities of that unit or its personnel. There are, however, situations where it may be inappropriate for the claims investigation to be conducted at the unit level. See, for instance, paragraphs 1-G-1 & 2, Administrative Investigations Manual (COMDTINST M5830.1). In such a case, the matter will normally be referred to an appropriate superior in the chain of command for investigation. A claim cognizable under Chapter 6 (Personnel Claims) will be considered to have arisen from the activities of the claimant's present unit at the time the claim is filed, regardless of the location and timing of the incident giving rise to the claim.
 4. A foreign claims commission (see Chapter 12) is responsible for investigating and processing claims within the constraints of its appointing order.
 5. Commander, Second Coast Guard District (CCGD2) is responsible for processing and adjudicating all Coast Guard-wide claims cognizable under Chapter 6 (Personnel Claims), including those for members attached to Department of Defense units or other federal agencies. CCGD2 is also responsible for

- | 1.B.5. (cont'd) asserting and pursuing affirmative carrier recovery
| claims resulting from household goods or privately owned
| vehicle (POV) damage claims. CCGD2 will provide liaison with
| the other military services and carrier industry groups on
| issues unique to Chapter 6 claims.
- | 6. Maintenance and Logistics Command Pacific is responsible for
| processing and pursuing all affirmative collection claims
| resulting from unpaid civil penalties assessed by the Coast
| Guard. Collection of FWPCA penalties are coordinated with
| the National Pollution Funds Center (NPFC) and Commandant
| (G-LCL), as appropriate.
- | 7. The NPFC, in appropriate coordination with Commandant (G-L),
| is responsible for processing and adjudicating all claims
| against, and for pursuing all affirmative claims for the
| benefit of, the Oil Spill Liability Trust Fund.
- | 8. Maintenance and Logistics Commands (MLCs) are responsible for
| processing and adjudicating all other non-Chapter 6 claims
| arising within their geographic area of responsibility,
| whether originating from the activities of District, MLC,
| Area, or Headquarters units. In the case of MLC Atlantic,
| this includes responsibility for claims arising from the
| operations of Activities Europe (ACTEUR) or its personnel.
- | 9. The MLCs, CCGD2, and NPFC are encouraged to promulgate local
| guidance, as deemed necessary, to implement the goals and
| provisions of this Manual. Copies of such locally
| promulgated guidance shall be forwarded to Commandant
| (G-LCL).
- | 10. Other settlement authorities may promulgate local guidance to
| supplement this Manual. The settlement authority shall
| forward a copy of any supplement to Commandant (G-LCL).

C. Definitions.

1. Civilian Employee. Except for the purposes of Chapter 6,
this term includes any person working for the Government who
is compensated from appropriated funds. The term may also
include volunteers who serve the Coast Guard without
compensation. The term should be distinguished from the term
"independent contractor," for whose actions the Government is
generally not liable. The determination of who is a civilian
employee is a federal question determined under federal law
and not under local law.
2. Claim. A written notification of an incident accompanied by
a demand for the payment of a sum certain of money, other
than for ordinary obligations incurred for services,
supplies, or equipment. A letter of grievance stating only a
cause of injury or damage but not a sum certain is not a
claim.

1.C.3. Claimant. A country, state, territory, or their political subdivisions, or an individual, partnership, or association having capacity to enter into enforceable agreements. The term does not include the U.S. Government or any of its instrumentalities except in certain claims in favor of U.S. for damage to real property. Claimant includes owner, mortgagor, or mortgagee, if the person can maintain a cause of action in the local courts involving a tort to that specific property. For personal property, claimant includes owner, bailee, lessee, mortgagor, and conditional vendee but does not include a mortgagee, conditional vendor or other person having title for purposes of security only. For personal injury the claimant shall be the injured person. For medical, hospital, or burial expenses, the claimant shall be any person who by reason of family relationship or contractual relationship has, in fact, incurred the expenses. For a claim based on a death, the claimant shall be the legal representative of the person deceased or any person determined to be legally or beneficially entitled. For claims concerning the Oil Spill Liability Trust Fund, "claimant" is defined by the Oil Pollution Act (OPA) 1001 (4) to mean "any person or government who presents a claim for compensation" under OPA Title I.

4. Day. When not otherwise modified, this word refers to calendar days. Rule 6 of the Federal Rules of Civil Procedure shall be used in computing time periods. The day of the act, event, or default from which the designated period of time begins to run is excluded in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period prescribed or allowed is less than 11 days, intermediate Saturday, Sundays, and legal holidays are excluded in the computation. As used in this definition, "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the U.S., or by the state in which the receiving entity is located.

5. Legal Officer. The law specialist or attorney advising a settlement authority designated in section 5-B of this manual.

6. Military Personnel. For the purposes of creating liability against the U.S., this term includes uniformed members of the Coast Guard assigned to units performing active service, including active duty for training or inactive duty training. The determination of who are military personnel is a federal question determined under federal law and not under local law.

- 1.C.7. Non-Combat Activities. Authorized activities essentially military in nature, with little parallel in civilian pursuits, or those which historically have been considered as furnishing a proper basis for payment of tort claims.
8. Scope of Employment. Conduct expressly directed, implied, or authorized by competent authority, or conduct within the mission, design, aim or purpose of a unit.
9. Settle. To consider, ascertain, adjust, determine, compromise (when specifically authorized by law) and dispose of a claim by disapproval or approval in whole or in part.
10. Settlement Authority. A person authorized to settle a claim. See Chapter 5.
11. Small Claim. A claim for personal injury or death that may be settled by payment of \$1,000 or less, or a claim for property damage that may be settled by payment of \$750 or less.

D. Information and Assistance.

1. Military personnel and civilian employees are prohibited from acting as agents, attorneys, or otherwise representing a claimant in presenting and prosecuting a claim before any federal agency, except as provided in Title 18 U. S. Code Section 205 and paragraph 8-2-1-A(6) Coast Guard Regulations (COMDTINST M5000.3 Series).
2. Military personnel and civilian employees are prohibited from disclosing information that may be the basis of a claim or any other evidence in any record concerning any claim matter, except in the course of their official duties. See 49 CFR Part 99, and 18 U.S.C. 285.
3. Each person who indicates a desire to file a claim against the U.S. shall be furnished the telephone number or mailing address of the appropriate settlement authority. In addition, the potential claimant shall be furnished claim forms and, when necessary, assisted in completing the claim forms.
4. Except under the circumstances described for claims under Chapter 12 (Foreign Claims) or Chapter 7 (Article 139, UCMJ), a claimant who presents an oral report of damage or loss shall be advised of the requirements for claim presentation. (See paragraph 3-A-4.)
5. A settlement authority should ordinarily not disallow a claim on initial presentation, because the claimant has failed to present it in the proper form or not included adequate supporting information, or both. As long as a claimant may present a claim and has attempted to do so, the claimant

1.D.5. (cont'd) normally should be advised of what additional information is necessary and that the claim cannot be processed until the information is received. (See paragraph 3-A-4).

| E. Use of Other Military Services' Claims Regulations, Manuals, and
| Guidance.

- | 1. Because of the greater volume of claims processed by the
| other military services, they have tended to develop more
| extensive and detailed guidance in the form of manual type
| regulations. Two excellent examples of this are: Army
| Regulation 27-20 entitled "Claims" (which is complemented by
| Army Pamphlet 27-162, also entitled "Claims"), and Air Force
| Regulation 112-1 entitled "Claims and Tort Litigation."
- | 2. These manuals have proven to be an invaluable source of
| guidance for Coast Guard legal offices on how to handle
| analogous Coast Guard claims. Coast Guard settlement
| authorities may utilize the most recent versions of other
| services' claims manuals where that guidance is consistent
| with the provisions and intent of this Manual. Questions
| regarding apparent conflicts should be referred to the Chief,
| Claims and Litigation Division, for resolution.

CHAPTER 2

INVESTIGATION

A. General.

1. Each incident that results in a claim or is likely to result in a claim shall be promptly investigated and evidence, which may be necessary to prosecute an affirmative claim by the U.S. or defend a claim against the U.S., preserved. A prompt investigation is the most important phase of the claims process. The investigation provides the basis for every step in the administrative settlement of a claim and the preparation for the defense or prosecution of a lawsuit. Without timely and thorough investigation, a settlement authority cannot determine who is liable and to what extent. Promptness is the key. With the passage of time physical appearances change and witnesses may become forgetful, develop a partisan view of the facts, become reluctant to give statements, or become unavailable because they can no longer be located.
2. The sole purpose of a claims investigation is to ascertain the facts needed to properly settle a claim or defend or prosecute a law suit. Evidence should be gathered and recorded without regard to whether or not it may prove adverse or favorable.

3. For any claims investigation, the Administrative Investigations Manual (COMDTINST M5830.1(Series)) will be reviewed for supplemental guidance. The Administrative Investigations Manual mandates the use of the following language:

"This investigation is (appointed) (being conducted and this report is being prepared) in contemplation of litigation and to assist attorneys, acting on behalf of the Chief Counsel, representing interests of the United States in this matter." (See COMDTINST M5830.1, Part 4-A-3-d).

See, particularly, enclosures 10-18 of the Administrative Investigations Manual for check-off lists pertaining to the different types of incidents.

B. Requirements.

1. An investigation is specifically required whenever:
 - a. A claim is made against the Coast Guard;
 - b. The Coast Guard is notified of a potential claim;

- 2.B.1. c. An accident or incident involving the Coast Guard results in personal injury or death of a civilian (other than personal injury to a civilian employee of the U.S. sustained while in the performance of duty), or in damage, loss, or destruction of property;
- d. Loss, damage, or destruction of Coast Guard property or other U.S. property in the possession of the Coast Guard occurs under circumstances that may give rise to a claim in favor of the U.S. (Note, however, that if the property is owned by the U.S. and used by a different department or agency, the interdepartmental waiver concept as developed by the Comptroller General may obviate the need for a claim investigations. The cognizant command should discuss the situation with the legal officer before initiating a claims investigation); or
- e. Hospital care and treatment is furnished under circumstances that may give rise to a claim in favor of the U.S. (e.g., a negligent civilian motorist injures a Coast Guard member.)
2. The scope of the investigation depends upon the extent of the damage or injury and is determined by the legal officer.
3. To the extent possible, investigations required by other directives or prepared for other purposes should be used or adopted by the Claims Investigating Officer to avoid duplication of effort. If another investigation can be used to fulfill the purpose expressed in paragraph 2-A-2, a separate claims investigation is not required. This includes investigations prepared by non-Coast Guard activities.

C. Responsibility.

1. The commanding officer or officer in charge of the military member or civilian employee involved in the incident, or in the absence of personnel involvement, the commanding officer or officer in charge of the unit on which the incident occurred shall investigate the incident. If this results in two or more units having investigative responsibility (e.g., an accident involving a ship's vehicle occurs on a support center), the next higher superior in the chain of command shall determine which command shall investigate the incident. If appropriate, a settlement authority may request any other federal agency to investigate an incident that has resulted or may result in a claim.

- 2.C.2. The driver of a government motor vehicle (including a rental vehicle or privately owned vehicle being used in the performance of official duties) involved in an accident shall complete an Operator's Report of Motor Vehicle Accident (Standard Form 91) and Data Bearing Upon Scope of Employment of Motor Vehicle Operator (Optional Form 26). If the operator is either unavailable or unable to complete this report, the operator's supervisor shall complete an Investigative Report of Motor Vehicle Accident (Standard Form 91-A) and Data Bearing Upon Scope of Employment of Motor Vehicle Operator (Optional Form 26) (see the Motor Vehicle Manual, COMDTINST M11240.9A). A copy of the applicable forms shall be filed at the operator's unit and the original forwarded to the local settlement authority within 48 hours of the accident. (There is also an independent requirement to provide the General Services Administration with a copy of the applicable form(s).)
3. The responsible legal officer supervises each claim investigation convened by commanding officers, officers in charge, MLC commanders, District commanders, or Area commanders within their respective areas of responsibility. For purposes of this subparagraph, the legal officer for Headquarters units not having a specifically designated legal officer billet, filled by a law specialist or attorney, is the legal officer for the MLC in which the Headquarters unit is located.

D. Procedure.

1. Selection of the individual (Claims Investigating Officer) to investigate the incident, like the scope of the investigation, depends upon the claims potential of the incident. Ordinarily, a Claims Investigating Officer should be, at least, a petty officer or an equivalent civilian employee. District commanders may designate Auxiliarists to investigate Auxiliary facility damage claims.
2. A Claims Investigating Officer's investigation shall have priority over other collateral duties.
3. A Claims Investigating Officer gathers facts in an impartial manner and organizes them into an accurate and concise format. This includes:
 - a. Gathering all relevant information from any previous investigation, report, or inquiry into any aspect of the incident (if another report, investigation, or inquiry is ongoing, the appropriate settlement authority shall determine whether and to what extent a separate claims investigation is required; see paragraph 2-B-3);

- 2.D.3. b. Conducting further investigation, if necessary, giving emphasis to any phase of the incident which may have a bearing on potential claims against, or in favor of, the U.S.;
 - c. Obtaining an interview with principal witnesses;
 - d. Obtaining written and signed statements from:
 - (1) Claimants or potential claimants; and
 - (2) Non-Coast Guard witnesses;
 - e. Obtaining written unsigned statements from Coast Guard witnesses;
 - f. Obtaining negative statements (e.g., "I did not see it happen.") which can be just as important as positive information;
 - g. Inspecting and describing property damage;
 - h. Obtaining photographs, maps, sketches, or diagrams of the accident scene and damaged property, as appropriate;
 - i. Obtaining all pertinent repair bills or estimates, or medical, hospital, and associated bills as are necessary to properly support a claim in favor of the U.S. (Refer to Title 33 Code of Federal Regulations 25.115-25.119 and the legal officer for guidance);
 - j. Recording the name and mailing address of any person who expresses a desire to make a claim against the U.S. as a result of the incident under investigation (A claim should never be solicited. See paragraph 1-D-1.); and
 - k. Advising Coast Guard personnel and civilian employees involved that they shall consult the nearest legal officer before making a requested written or oral statement or volunteering information in any form to third parties or persons representing third parties involved in the incident.
4. A Claims Investigating Officer gathers facts and need not produce opinions or recommendations. If a claims investigation is combined with an investigation required by another directive, any requirement for opinions or recommendations contained in the other directive remains in effect. Since issues of legal negligence and liability are matters for resolution by settlement authorities and courts, Claims Investigating Officers shall not include

2.D.4. (cont'd) their personal opinions concerning these matters in their reports but should concentrate their efforts on describing accurately those facts and circumstances that may give rise to a claim against the Government.

E. Report..

1. A Claims Investigating Officer shall prepare a written report of the investigation identifying the persons, places, and things involved and describing what occurred. The format, length, and formality of the report depend upon the complexity of the incident and the scope of the investigation. The preliminary statement or opening paragraph shall clearly state that the investigation is prepared in contemplation of litigation or adjudication of a claim. The Administrative Investigations Manual (COMDTINST M5830.1 (Series) Part 4-A-3-d) requires that the use of the following sentence:

"This investigation is (appointed) (being conducted and this report is being prepared) in contemplation of litigation and to assist attorneys, acting on behalf of the Chief Counsel, representing interests of the United States in this matter."

2. Specific facts contained in statements or regularly kept records or reports included with the report of the investigation need not be repeated in the report unless necessary to make the report understandable (e.g., if a corroborated or uncontradicted statement of a witness aptly describes a sequence of events, the Claims Investigating Officer need not separately describe this sequence of events as findings of fact.) The report shall include the following whenever applicable:

- a. Identification of all persons involved in the incident, including each person's name, and for a member of the armed forces their social security number;
- b. Description of all U.S. property involved and the nature and amount of damage supported by itemized repair bill(s) or estimate(s);
- c. Description of all privately owned property involved and the nature and amount of the damage or loss;
- d. Time, date, and exact place of the incident, specifying for motor vehicle incidents the intersection or position along a street or highway with relation to an existing landmark (e.g., block number along a street or mileage from specific point on the ramp of a controlled access highway);

- 2.E.2. e. Weather and visibility conditions and how they were determined;
- f. Nature and extent of personal injury sustained by Coast Guard personnel and the cost of these injuries to the U.S. to date;
- g. Nature and extent of personal injury sustained by persons other than Coast Guard personnel and civilian employees together with any information as to the degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital and burial expenses actually incurred; and
- h. If the incident involved a government vehicle:
- (1) Organization to which the government vehicle was assigned;
 - (2) Purpose for which the vehicle was being used;
 - (3) Place of origin and destination of the government vehicle and the geographic relationship of the scene of the incident to the designated and authorized route;
 - (4) Age and operating experience of any operator involved; the experience information should distinguish between overall experience and experience in the particular type of vehicle involved in the incident; and
 - (5) Any conditions placed on an individual's ability to operate a vehicle (e.g., corrective lenses, type of vehicle, medication);
- i. Whether any arrests were made or charges preferred as a consequence of the incident, and the result of those actions;
- j. Any evidence indicating that a person involved in the incident was under the influence of liquor or drugs;
- k. If there is a likelihood of a claim in favor of the U.S., whether the other party is insured, the name and address of the insurance company, and the policy number;

- 2.E.2. 1. If it is possible that the incident was caused by the failure of a manufactured product to serve the purpose or use for which it was intended, identify the product (serial number, lot number, or other available identification; name and address of the manufacturer; date, place, and source of acquisition by the Coast Guard) and chain of possession and nature and extent of maintenance after acquisition by the Coast Guard;
 - m. Any pertinent reports, investigations, or inquiries prepared by the Coast Guard or any other entity (e.g., local police report), identified in a manner facilitating later retrieval of the document;
 - n. The location of real evidence that cannot be enclosed with the report due to size, shape, weight, or other reason;
 - o. Date of receipt of any claim resulting from the incident, identity of the claimant, and amount of the claim; and
 - p. A chronological, which may be in narrative form, listing specific findings of facts. Each finding is to be followed parenthetically by reference to an enclosed report, statement, photograph, or real evidence, whether enclosed or not, that supports the finding.
3. A Claims Investigating Officer shall prepare each enclosure to a report as follows:
 - a. Witness statements shall include or have attached to them the date on which the statement was given, the witness' surname, first name, middle initial, if any, permanent mailing address (also, residence address if the mailing address is other than a residence), employer's address or other means by which the witness can most likely be located at a date 2 years after the incident occurs; rank and social security number for a member of the armed forces;
 - b. Witness location in relation to the scene of the incident and activity at the time of the incident shall be described, if not contained in the witness statement;
 - c. Photographs and diagrams shall include or have attached to them the photographer's or drawer's first name, middle initial and surname, a short description of the scene it represents, the time and date the picture was taken or diagram drawn, and the location of the negative, if any;

- d. Copies of any significant photograph, chart, map, sketch, or diagram shall be made, if possible, and labeled or annotated appropriately to aid the settlement authority's review of the investigation;
 - e. Copies of other reports, investigations, and inquiries shall include the storage location of the originals before being shipped to the Federal Records Center; and
 - f. Each enclosure shall be attached to a standard size sheet of paper if the enclosure is less than three-quarters of the standard size.
4. A Claims Investigating Officer shall submit the report to the commanding officer or officer in charge as promptly as circumstances permit. Generally, this should be within fifteen working days of the incident. The report should not be delayed awaiting nonessential documents (e.g., bills or stable prognosis in cases involving extended hospitalization); however, the probable existence of such items shall be listed and the missing items submitted with a supplementary report.
5. The commanding officer or officer in charge shall review the report for completeness and forward it to the local settlement authority via the chain of command. No comment by the commanding officer, officer in charge, or intermediate commands is required. However, if a claims investigation is combined with an investigation required by another directive, any comment requirement contained in the other directive remains in effect.

CHAPTER 3

PROCESSING OF CLAIMS

A. The Claim.

1. Restrictions on who may be a claimant are set forth in the regulations for each particular claim statute (See Title 33, Code of Federal Regulations, Part 25) and also in Chapters 6-14 of this Manual.
2. All demands for payment including those for property, personal injury, and wrongful death damage arising out of a single incident ordinarily constitute a single claim. If local law permits presenting a split claim for property damage and personal injury or death, the settlement authority shall settle such a claim pursuant to subparagraph 3-E-5-e.
3. An insurer or other subrogee may present a claim in the name of the insurance company or other subrogee if authorized by local law where the incident resulting in the claim occurred, and if subrogation is not barred by the regulation applicable to the type of claim involved.
 - a. A subrogor and subrogee may present a claim either jointly or separately. If the total of the separate claims is within the monetary limit of the local settlement authority, settlement may be effected. If a subrogee presents a claim separately, the settlement authority shall ensure that local law prohibits the subrogor from presenting a claim for the same property damage even though the subrogor has been compensated by the subrogee. If the subrogor may present a separate claim, a release should be obtained from the subrogor and subrogee before approving payment of the subrogee's separate claim. Similarly when an injured claimant has accepted workmen's compensation benefits, no settlement should be reached without approval, if required by local law, of the carrier. Also, some states prohibit an insurer from presenting a subrogated claim for medical payments paid to its insured.
 - b. The Anti-Assignment Statute (Title 31 U.S. Code Section 3727) prohibits the transfer or assignment of a claim or any portion of a claim against the U.S. This statute is aimed at voluntary assignments and does not affect transfers or assignments made by

3.A.3. b. (cont'd) operation of law. Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by local law.

| 4. A claim is simply a written notification of an incident and
| demand for payment of a sum certain. Anything less is not a
| claim and the term "claim" should not be used when referring
| to anything less. (Note: Oral demands may stop the running
| of the statute of limitations when presented under Chapter
| 12 (Foreign Claims) or Chapter 7 (Article 139, UCMJ).) In
| order to be considered a complete administrative claim, the
| claimant must also submit sufficient information for the
| settlement authority to evaluate the claim. With the
| exception of claims under Chapter 6 (Personnel Claims), each
| claimant shall be encouraged to present a claim on Standard
| Form 95. The format of a "claim" is important for
| determining whether:

a. The claim was presented within the statute of limitations; and

b. The claimant has exhausted administrative remedies.

5. The claim shall be signed in ink by the claimant or claimant's duly authorized agent. If the claimant's signature does not include full first name, middle initial, if any, and surname, this information shall be included elsewhere on the claim. If a claim is signed by an agent for the claimant, the agent shall indicate the agent's title or capacity along with evidence of authority to present the claim. A married woman should sign her name as Mary A. Doe rather than Mrs. John Doe. If a corporation is the claimant, a corporate officer must sign the form showing the officer's title or capacity and affixing the corporate seal, if any. If a person other than an officer of the corporation signs the claim on behalf of the corporation, the signer must attach to the claim a certification by a corporate officer that the signer is authorized to present and settle the claim.

6. It is essential that the claimant submit evidence to substantiate the claim. Only one copy of documentary evidence need be submitted. Refer non-Coast Guard claimants to Title 33 Code of Federal Regulations ^25.115.

a. It is the responsibility of the claimant to submit sufficient evidence to support the claim.

- 3.A.6. b. Title 33, Code of Federal Regulations, Subpart 25A specifies the documentation required, generally, for all claims. The other Subparts of Title 33, Code of Federal Regulations, Part 25 and other Chapters of this Manual provide additional information concerning documentation.
7. Appraisals and estimates. (See also Chapter 4 (Small Claims) and Chapter 6 (Personnel Claims).)
- a. A receipt, statement, appraisal, estimate, or bill of repair is not a "receipt, statement, appraisal, estimate, or bill of repair" for the purposes of this Chapter unless it conforms to the following:
- (1) An itemization of the total cost showing the amount attributable to each item (a piece of paper listing two broken items and only one total price is not an estimate or bill of repair for either item);
 - (2) An itemization of the total cost showing the amounts attributable to labor and materials unless it is clear that materials were an inconsequential portion of the total;
 - (3) An itemization of any portion of the total cost attributable to charges for pickup or delivery; or
 - (4) If a fee is charged for the appraisal or estimate, the appraisal or estimate shall include a statement as to whether or not this fee will be or has been deducted from the cost of replacement or repair.
- b. The number of appraisals or estimates necessary depends upon the availability of local merchants or repair services which provide appraisals or estimates, the availability of free appraisals or estimates in the community, and the amount to be proven by the appraisal or estimate. These rules apply to each item rather than the total items claimed. Although this subparagraph uses the terms appraisal and estimate, a sales receipt or receipt for repairs, or a similar generally accepted commercial statement can be substituted for one of the required appraisals or estimates.
- (1) If the claimant can obtain two or more free appraisals or estimates in the local community, the settlement authority should insist that the claimant provide at least two

- 3.A.7. b. (1) (cont'd) when the cost of replacement or cost of repair exceeds \$200.
- (2) If two free appraisals or estimates are not available in the local community and the cost of replacement or repair exceeds \$200, the settlement authority should weigh the benefit to be gained by a second appraisal or estimate against the cost of that second appraisal or estimate (If the charge for the lower of two appraisals or estimates may be set off against the cost of replacement or repair, that appraisal or estimate is considered to be free.)
- (3) If the cost of replacement or cost of repair does not exceed \$200, the settlement authority may:
- (a) Waive the requirement for appraisals or estimates if free appraisals or estimates are not available and the amount claimed can be reasonably substantiated by referral to catalog prices or conversations with local repair services; or
- (b) Waive the requirements for a second appraisal or estimate if the claimant provides a sales receipt or receipt for repairs.
- (4) If the cost of replacement or repair does not exceed \$50, the settlement authority may waive these requirements.
8. Amendment of a claim is permitted at any time before either final Coast Guard action on the claim or the exercise of the claimant's option to file suit under Title 28 U.S. Code Section 2675(a) or a similar statute, whichever occurs first. A claim may be amended by changing the amount, basis of liability, or elements of damage. A claimant may be added only if the additional claimant could have presented a joint claim initially. If the additional claimant has a separate cause of action that portion of the claim may not be treated as an amendment but only as a separate claim which must independently meet all the requirements of an administrative claim. The amended claim shall comply with the requirements for an original claim under the applicable statute.

B. Statute of Limitations.

1. A claim accrues on the date the alleged wrongful act or omission results in the injury or damage for which the claim is made. If the claim involves medical malpractice, it accrues when the claimant discovers or in the exercise of reasonable diligence should have discovered the act or omission constituting the alleged malpractice. In claims for indemnity or contribution, the claim accrues on the date of the payment for which indemnity is sought, or on which contribution is based.
2. To determine whether the period of limitation has expired, exclude the date on which the claim accrues and include the date on which the claim is received (See Section 1-C).
3. The statute of limitations for settlement of a claim is not tolled by:
 - a. Infancy or incompetency;
 - b. Filing a suit based upon the same incident in state or local court against the U.S. or other parties;
 - c. Presenting an administrative claim to state, county, or municipal agency; or
 - d. Filing suits in Federal court without first complying with administrative requirements, if any.

C. Receipt of Claim.

1. Each potential claimant presenting an oral report of damage or loss should be advised that the Coast Guard only considers "claims" in writing (for exceptions see Chapters 7 and 12). Each person making an oral report, which appears to fit within the cognizance of Chapter 6 (Personnel Claims), shall be directed to that person's commanding officer or the staff component of the settlement authority that investigates such claims. All others should be provided with copies of Standard Form 95 (See Section 1-D).
2. The first unit receiving a claim shall date stamp, or otherwise clearly mark the date of receipt, upon the first page of the claim form or other writing presented by the claimant. With regard to an oral claim made pursuant to Chapter 12 (Foreign Claims) or chapter 7 (Article 139, UCMJ) the receiving command shall prepare a memorandum of conversation, which includes the nature of the claim; the name, address, and telephone number of the claimant; the date of the conversation; the status of any investigation; and any other pertinent information.
3. The receiving unit shall immediately forward the claim or memorandum of conversation to the appropriate settlement authority. If an investigation in accordance with Chapter 2 has not been conducted, the settlement authority shall ensure one is initiated, if appropriate.

D. Forwarding a Claim.

1. If a claim is forwarded within the Coast Guard by the U.S. Postal Service, a copy of the forwarding letter shall be sent to the claimant unless the letter discusses the merits of the claim. In the latter case an Acknowledgment/Referral Card (CG-4217) shall be sent to the claimant.
2. If a claim is forwarded within the Coast Guard by means other than the U.S. Postal Service, both the sending office and the receiving office shall maintain a log or a file of forwarding correspondence. Such log or file includes the number assigned to the claim (or the date of original receipt by the Coast Guard, nature of the claim, and name of the claimant), as well as the date of receipt and date forwarded. An Acknowledgment/Referral Card (CG-4217) is used to notify the claimant.
3. An Acknowledgment/Referral Card (CG-4217) is not sent until a claim is forwarded.
4. Chapter 6 (Personnel Claims) contains special rules for forwarding such claims.
5. Processing and adjudicating claims arising from law enforcement operations involving "joint" U.S. military activities (e.g., CG boardings from U.S. Navy platforms):
 - a. General Rule. Claims directly related to the boarding or the embarkation or debarkation of the Coast Guard boarding team will normally be adjudicated by the cognizant MLC (even if the claimed damage was caused by Navy smallboat).
 - b. However, if the claim is for serious personal injury or property damage which necessitates a review or investigation of another service's actions, procedures, or personnel, the claim should be referred to the other service for processing and adjudication. (E.g., collision with Navy ship, damage inflicted by Navy gunfire, apparent gross negligence by Navy smallboat coxswain.)
 - c. Good rule of thumb is: Is this a claim for routine, reasonable damage typically occurring during boardings, and can it be evaluated and adjudicated based on information obtained primarily from Coast Guard witnesses? If so, the claim will normally be processed and adjudicated by the Coast Guard. If not, it should be forwarded to the other service for action.

E. Action by Settlement Authority.

1. If a document is received that does not constitute a claim, the settlement authority shall return the document to the presenting party with an explanation of why the document does not constitute a claim. (For exceptions see Chapters 7 and 12). This is not a disapproval, as there is no "claim" to disapprove.
2. The settlement authority shall assign a number to each claim. This number should be placed at the lower left hand corner of the Standard Form 95 or other document constituting the claim. The number is used on all correspondence dealing with this claim.
3. Each settlement authority shall be responsible for maintaining a record of all claims received. This record should be designed to facilitate the retrieval of information for responses to inquiries concerning the number, type, and dollar amount of claims received.
4. If a claim does not contain sufficient information to allow proper settlement, the settlement authority shall so inform the claimant and afford the claimant an opportunity to submit the needed additional information. Ensure that the claimant does not mistake such action as disapproval of the claim.
5. After investigation in accordance with Chapter 2 and the submission of sufficient evidence by the claimant the settlement authority determines whether the claim should be disapproved or approved in whole or in part.
 - a. Each settlement authority may disapprove any claim regardless of the amount claimed.
 - b. Each settlement authority may approve any claim in part regardless of the amount claimed as long as the amount approved for payment is within the authority delegated to the settlement authority. (But see 3-E-5-e.)
 - c. Each settlement authority may approve in whole any claim in which the amount claimed is within the authority delegated to the settlement authority. (But see 3-E-5-e.)
 - d. If the settlement authority determines that a claim should be approved in an amount in excess of the settlement authority's delegated authority, the settlement authority forwards the claim to the next higher settlement authority.
 - e. Except as applied to claims arising under OPA 90 and presented to the Oil Spill Liability Trust Fund, if the settlement authority determines that two or more claims

- 3.E.5. e. (cont'd) arising from the same incident should be approved and that the aggregate of these approved claims would be an amount in excess of the settlement authority's delegated authority, settlement action on all claims is withheld until liability has been affirmed by the settlement authority having jurisdiction over the aggregate amount.
6. If a claim is forwarded to the next higher settlement authority in accordance with paragraph 3-E-5:
- a. The claimant shall be advised using Coast Guard Form CG-4217 (Do not send the CG-4217 until the letter discussed in subparagraph 3-E-6-c is mailed.);
 - b. The original claim with supporting documents, a copy of CG-4217, and the original investigation done in accordance with Chapter 2 with all enclosures or a copy of the investigative report which is being substituted for the Chapter 2 investigation shall be forwarded; and
 - c. The letter forwarding the claim shall include:
 - (1) An analysis of the facts;
 - (a) Distinguish the following:
 1. Favorable facts;
 2. Potentially adverse facts;
 3. Facts yet unresolved which will be obtained by the command preparing this letter. This includes all facts within the knowledge of Coast Guard persons under the operational control of the command preparing the letter; and
 4. Facts as yet unresolved which can only be obtained from the claimant or another person believed to favor a resolution of the claim adverse to the Coast Guard's interests;
 - (2) A review of the applicable law; (Include copies of any statute, ordinance, regulation, decision, or local Coast Guard directive not readily available to the next higher settlement authority.)
 - (3) An evaluation of liability;
 - (a) Include here any potential impact that approval or disapproval of the claim or an adverse decision would have on local Coast Guard activity; and
 - (4) The recommended disposition.

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3.E.7. If three months pass since the claimant last contacted the settlement authority, or the settlement authority last contacted the claimant - except when the settlement authority's last contact was a written request for action by the claimant and the settlement authority has proof (e.g. return receipt) that the claimant received the request, the settlement authority shall inform the claimant that the claim is still pending and explain in writing the reason for the delay in resolution.

F. Settlement.

1. When a settlement authority determines a claim to be meritorious in an amount within the authority delegated, that settlement authority may approve the claim even though the claim may have been presented under the wrong statute or originally been for an amount greater than the officer's settlement authority.
2. While many claims may be settled solely by correspondence, others may require personal negotiation, either face-to-face or by telephone.
 - a. If there is personal negotiation, correspondence shall be used as necessary to document any agreement reached.
 - b. A written position concerning U.S. liability should not be provided to the claimant without reserving the right to take a different position in subsequent litigation.
3. Generally, the settlement amount for property damage or loss claims should not exceed:
 - a. Depreciated replacement value less salvage value, if any, for total property losses, or
 - b. Repair cost less betterment, if any, for damaged property that can be economically repaired.

G. Claim Approval.

1. The settlement authority shall forward an approved claim directly to the Coast Guard Finance Center (FINCEN), ATTN: Accounts Payable, for payment from appropriations designated for that purpose. (But see, paragraphs 3-G-2 and 11-F-7 for approval and handling of FTCA claims in excess of \$2,500, and paragraph 3-G-7 for approval and handling of OPA 90 claims.)
 - a. Normally, a settlement agreement incorporated in the claim is all that is needed for a property damage or loss claim. While such an agreement is not required in all cases, such as a claim adjudicated under the MPCECA, or for a claim for personal injury or death approved for less than \$1,000, a separate settlement agreement is required if a claim for a personal injury or death is

- 3.G.1. a. (cont'd) approved in an amount exceeding \$1,000. A Voucher for Payment (SF-1145), or that form amended to reflect the applicable statute, may be used.
- b. The approved claim is forwarded to the FINCEN by letter, enclosing, if possible, the original claim (SF-95 or substitute document(s)), and the original settlement agreement (SF-1145 or substitute document(s)), if any. Copies of any such documents may be forwarded in lieu of any originals should the settlement authority require the originals or should they otherwise be unavailable. In either case the letter should contain the identification and mailing address of the claimant, the applicable statute under which payment is authorized, and the specific amount approved for payment. If not already contained in an accompanying SF-95, SF-1145, or equivalent document, the letter should also contain a brief synopsis (typically one or two sentences) of the facts giving rise to the claim.
2. When a claim under the Federal Tort Claims Act is approved for payment of more than \$2,500, a Voucher for Payment (SF-1145) shall be completed without a fund citation and forwarded to General Government Division, Claims Section, General Accounting Office, 441 G Street, N.W., Washington, D.C. 20548.
3. When the claimant is a minor or incapable, difficulty often arises in obtaining a binding settlement agreement.
- a. If the amount to be paid is \$1,000 or less and the cost of obtaining a court-appointed guardian would materially deplete the award, the parent, next-of-kin, or next friend may sign the settlement agreement. The agreement shall state the reason from this action and the Coast Guard's and the signer's desire to protect the interest of the minor.
- b. If the payment is greater than \$1,000, local law shall be consulted to determine whether a court-appointed guardian is required. The requirement to appoint a guardian is not imposed until the settlement authority determines the claim meritorious in an amount which will probably require the appointment of a guardian.
4. When the settlement authority determines the claim to be meritorious in an amount less than the amount claimed, the settlement authority:
- a. Notifies the claimant in writing of the determination;
- b. If the claimant does not desire to accept the offer, advises the claimant to reply within 45 days of the date of the settlement offer giving his or her reasons for rejection; or

- 3.G.4. c. If the claimant accepts, obtains from the claimant written acceptance and release using a Voucher for Payment (SF-1145) modified as appropriate, or a claim settlement agreement for payment of the claim in the reduced amount. Refer to paragraph 3-G-3 when the claimant is a minor or incapable.
5. Unless there is good cause for non-acceptance of a proposed settlement within 45 days of the date of offer, the settlement authority treats the non-acceptance as a rejection. Rejection by a claimant of an offer of settlement renders the offer void.
6. When a claimant rejects an offer of a reduced amount or fails to reply thereto within 45 days of the date of the offer, the settlement authority should review the file and, if justified, make further efforts to settle the claim. If further efforts to settle are unproductive or unwarranted, the settlement authority notifies the claimant in writing by registered mail or certified mail, return receipt requested, that the claim is disapproved because the amount demanded is excessive.
7. When a claim under OPA 90 is approved for payment, the NPFC forwards a payment authorization letter to FINCEN.

H. Claim Disapproval.

1. Disapproval means denial of an entire claim.
2. Only a settlement authority may disapprove a claim.
3. Notification shall be in writing, by certified or registered mail, return receipt requested, to the claimant or the person authorized by the claimant to present the claim.
- a. FTCA Claims. 28 CFR ^14.9, addressing denial of claims under the Federal Tort Claims Act, states that: "the notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification."
- b. Admiralty Claims. The above requirements of 28 CFR ^14.9 apply to FTCA claims only. The 6 month "window" for filing suit does not apply to claims arising under the Suits in Admiralty Act or Public Vessels Act, which require filing of suit within two years of the incident giving rise to the claim, notwithstanding the filing or pendency of an administrative claim. Additionally, the Admiralty Extension Act has a similar, but somewhat unique, statute of limitations provision. Thus,

3.H.3. b. (cont'd) inclusion in a denial letter of the statement that suit may be filed within 6 months, might well be inaccurate in a given admiralty case, and could create difficulties for the U.S. in subsequent litigation. For claims which are clearly in admiralty, there is no need for discussion (in the denial letter) of the claimant's recourse if dissatisfied, except to point out that "the filing of this administrative claim has in no way tolled the requisite time period for filing suit under pertinent statute(s), which should be consulted for specific requirements." For claims which could be considered to fall within admiralty, but for which there is arguable merit either way, the denial must be carefully worded to avoid misleading the claimant regarding filing requirements. The following is suggested substitute language for denial of claims which may lie in admiralty: "This claim was submitted by you under the Federal Tort Claims Act, but since it does not appear to us to fall within the coverage of that statute, it has also been considered under other possible relevant statutory authorities. To the extent that this claim may fall within the Federal Tort Claims Act, you may consider this denial to be final agency action, and, if you are dissatisfied with this decision, you may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of this denial letter. However, requirements for filing suit under other claims statutes, such as the Suits in Admiralty Act or the Public Vessels Act, differ considerably and the applicable statute(s) should be consulted for specific requirements."

I. Reconsideration.

1. A settlement authority may on its own initiative reconsider any claim before the filing of a suit. See also paragraph 3-I-6.
2. A claimant may request the settlement authority who acted upon the claim to reconsider the claim. A request need not be considered unless it specifies the relief requested and includes the legal or factual grounds supporting the relief requested. Refer to Title 28 Code of Federal Regulations Part 14 for the effect of reconsideration under the Federal Tort Claims Act.
3. The settlement authority shall initiate supplemental investigation, or other action, as necessary for an informed disposition of the request.
4. The settlement authority may approve the relief requested in whole or part if the original action was incorrect in law or fact based on the evidence. The settlement authority may also reassess the appropriateness of earlier actions in light

- 3.I.4. (cont'd) of the request. If the settlement authority determines the original action incorrect or inappropriate, the settlement authority will proceed in accordance with section 3-G. If this procedure is unproductive, the settlement authority shall proceed in accordance with paragraph 3-I-5. The basis for any modification to the original action shall be stated in a memorandum to the claim file.
5. If a request for reconsideration does not warrant approval, the settlement authority shall notify the person requesting reconsideration by certified or registered mail, return receipt requested, that the relief requested cannot be granted. This denial shall be responsive to grounds specified in the request.
6. In addition to the cut off discussed in paragraph 3-I-1, the following rules apply to purely administrative claims such as Military Claims Act, and Military Personnel and Civilian Employees' Claims Act claims. If reconsideration is based upon newly discovered evidence, a request may be acted upon if received within 6 years of the date the incident arose. If reconsideration is based upon legal or factual grounds other than newly discovered evidence, a request may be acted upon if received within 6 months of the date of the settlement authority's original action on the claim. These time limits are consistent with the statutory intent of finality and conclusiveness.
- J. Appeal. There is no appeal unless it is specifically authorized by statute. See paragraph 10-E-3.

CHAPTER 4

SMALL CLAIMS

A. Policy.

1. This Chapter provides a procedure for expeditious investigation and approval of any claim for property loss or damage which is likely to result in payment of \$750 or less. It may also be used for any claim for personal injury or death which is likely to result in payment of \$1,000 or less. The use of this procedure is not mandatory; however, settlement authorities are encouraged to use it whenever the circumstances warrant. This procedure applies to claims within the cognizance of Chapters 6-14.
2. If payment will exceed the above limits or a settlement authority contemplates disapproval, the procedures of Chapters 2 and 3 shall be used.
3. Payment to a claimant results in a subrogation claim in favor of the U.S. After payment, a claimant may still be required to provide the information required for the processing of a subrogation claim under Chapter 17.
4. If a single claim may be settled by payment of \$750 or less for property damage or loss and of \$1000 or less for personal injury or death, the claim may be processed as a small claim.

B. Investigation of Small Claims.

1. An investigation shall be initiated in the same manner as any other claim (sections 2-D and 2-E).
2. A Claims Investigating Officer shall expeditiously provide the facts necessary to determine whether the claim is meritorious and in what amount. Evidence of liability may be obtained from previously prepared reports (i.e. Standard Form 91 or police reports) or telephone conversations between the Claims Investigating Officer and a witness. (This authorizes deviation from the "written" requirement of subparagraphs 2-D-3-d and 2-D-3-e.). Written appraisals of value or estimates of cost of repairs are not required if the amount can be reasonably substantiated by referral to catalog prices or a telephone conversation with a local merchant or repair service and the cost of replacement or repair is \$200 or less. Substantiation of cost may be waived if the cost of replacement or repair is \$50 or less.

- 4.B.3. Refer to paragraph 6-H-10 for specific information concerning the handling of a small claim arising from the loss of or damage to household goods, housetrailer, privately owned vehicles, and unaccompanied baggage arising from a Permanent Change of Station move or any other move for which the U.S. provides a carrier or contractor to move the personal property of Coast Guard military personnel or civilian employees.
4. The Claims Investigating Officer should maintain contact with the claimant during the investigation and resolve disparities as quickly as possible.
5. The investigative report prepared by the Claims Investigating Officer shall include:
 - a. A list of all material witnesses including their surname, first name, middle initial, if any, and telephone number or address; and
 - b. An itemized list of the amount of damages including a notation to the authority substantiating the amount (e.g. telecon with Mr. Smith, Bill's Furniture Repair, (213) 467-6808).
6. If the investigative report includes enclosures, comply with paragraph 2-E-2.

C. Procedure for Small Claims.

1. A small claim is receipted (section 3-C), forwarded (section 3-D), and assigned a number (paragraph 3-E-2) in the same manner as any other claim.
2. Approval of a small claim is the same as any other claim (section 3-G) except a settlement agreement is not necessary if the claimant agrees to accept a lesser sum than originally claimed and accordingly amends the claim by changing the total amount claimed on Standard Form 95. The claimant shall sign any such change to Standard Form 95.
3. If at any time, disapproval appears to be the appropriate settlement action, the claim is processed in accordance with Chapters 2 and 3 without regard to the claim's dollar amount.

CHAPTER 5

DELEGATIONS

A. Authority.

1. Various statutes authorize the Secretary of Transportation to settle and pay or collect administrative claims. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations 1.45, 1.46, and 89.1, including certain specific authority through the Chief Counsel in Title 49 Code of Federal Regulations 1.46(j).
2. The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131, as authorized by Title 49 Code of Federal Regulations 1.45(b), and, for pay and allowances, to the Chief, Office of Personnel and Training. The Chief Counsel is authorized to redelegate his authority (Title 33 Code of Federal Regulations 25.133). The Commandant also redelegated certain authority to the Director, National Pollution Funds Center (NPFC), by delegation letter 5402 of 19 March 1992, as authorized by Title 49 Code of Federal Regulations 1.45(b) (See Chapter 14).
3. Except for the authority conferred to the Director, NPFC and the Chief, Office of Personnel and Training, primary responsibility for claims settlement and collection activities has been consolidated in the two Maintenance and Logistics commands (MLCs) and, in the case of Chapter 6 (Personnel Claims), the Second Coast Guard District. While section 5-B redelegates necessary and appropriate authority to the commanders of the MLCs and the Second Coast Guard District, it also preserves preexisting delegations to all the District commanders, the Superintendent, U.S.C.G. Academy, and the commanding officers of certain headquarters units. This preservation of preexisting delegations is intended to afford a degree of flexibility to local commanders, after consultation with the primary settlement authority, in meeting special or contingency situations. It is expected that most claims will normally be processed at the MLCs or, in the case of Chapter 6 (Personnel Claims), at CCGD2.
4. In any case in which a claim is processed and ultimately settled and closed by a local settlement authority, the original claim file will be forwarded to the respective MLC, or CCGD2, as appropriate. This file transmittal allows for maintaining centralized claims files, and facilitates the rapid extraction of statistical data, as necessary.

B. Redelegation of Authority by the Chief Counsel.

1. Personnel Claims, Title 31, U.S. Code, Section 3721
(Chapter 6).

- a. The following officers are delegated authority to settle any claim and authorize payment that does not exceed \$40,000:
 - (1) The commander of each Coast Guard Maintenance and Logistics Command;
 - (2) The commander of each Coast Guard district;
 - (3) Superintendent, U.S.C.G. Academy;
 - (4) The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet; and
 - (5) The Chief, Claims and Litigation Division, Office of the Chief Counsel.
- b. The officers to whom authority is delegated in subparagraph 5-B-1-a and any commanding officer in the grade of lieutenant commander or above are redelegated authority to settle claims of military personnel by replacement in kind.

2. Auxiliary Claims, Title 14, U.S. Code, Section 830,
(Chapter 8).

- a. The commander of each Coast Guard Maintenance and Logistics Command and the Chief, Claims and Litigation Division, Office of the Chief Counsel are delegated authority to settle any claim and authorize payment of \$50,000 or less;
- b. The commander of each Coast Guard district is delegated authority to settle any claim and authorize payment of \$25,000 or less; and
- c. Officers with authority to issue operational orders to Auxiliaries are redelegated authority to settle claims of \$200 or less by replacement in kind.

3. Admiralty Claims, Title 14, U.S. Code, Section 646
(Chapter 9).

- a. The commander of each Coast Guard Maintenance and Logistics Command and the Chief, Claims and Litigation Division, Office of the Chief Counsel, are delegated authority to settle any claim and to authorize payment of \$50,000 or less.

- 5.B.3. b. The following officers are delegated authority to settle any claim and to authorize payment of \$25,000 or less;
- (1) The commander of each Coast Guard district;
 - (2) Superintendent, U.S.C.G. Academy; and
 - (3) The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet.

4. Military Claims Act, Title 10, U.S. Code, Section 2733 (Chapter 10).

- a. The following officers are delegated authority to settle any claim and authorize payment of \$25,000 or less:
- (1) The commander of each Coast Guard Maintenance Logistics Command;
 - (2) The commander of each Coast Guard district;
 - (3) Superintendent, U.S.C.G. Academy;
 - (4) The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet; and
 - (5) The Chief, Claims and Litigation Division, Office of the Chief Counsel.

5. Federal Tort Claims, Title 28, U.S. Code Section 2672 (Chapter 11).

- | a. The Chief, Claims and Litigation Division, Office of the
| Chief Counsel, is delegated authority to settle any claim
| and to authorize payment of \$100,000 or less.
- | b. The commander of each Coast Guard Maintenance and
| Logistics Command is delegated authority to settle any
| claim and to authorize payment of \$50,000 or less.
- | c. The following officers are delegated authority to settle
| any claim and to authorize payment of \$25,000 or less:
 - | (1) The commander of each Coast Guard district;
 - | (2) Superintendent, USCG Academy; and
 - | (3) The commanding officer of each headquarters unit
| having a law specialist or attorney assigned to a
| permanent legal officer billet.

5.B.6. Foreign Claims Act, Title 10, U.S. Code, Section 2734
(Chapter 12).

- a. The following officers are delegated authority to appoint foreign claims commissions to consider any claim.
 - (1) The commander of each Coast Guard Maintenance and Logistics Command;
 - (2) The commander of each Coast Guard district;
 - (3) Superintendent, U.S.C.G. Academy; and
 - (4) The Chief, Claims and Litigation Division, Office of the Chief Counsel.
- b. With the exception of the Chief, Claims and Litigation Division, each officer with authority under Paragraph 5-B-6-a to appoint a foreign claims commission is redelegated authority to authorize payment of \$25,000 or less for any claim within its cognizance. The Chief, Claims and Litigation Division, Office of the Chief Counsel, is redelegated authority to settle any claim in which the amount paid is \$50,000 or less.
- c. Commander, Activities Europe is delegated authority to appoint foreign claims commissions to consider any claim that does not exceed \$10,000.
- d. The commanding officer of each Coast Guard section is redelegated authority to appoint foreign claims commissions to consider any claim of \$10,000 or less.
- e. Each Foreign Claims Commission may settle claims and authorize payment of \$10,000 or less.

7. Claims Not Cognizable Under Other Law, Title 10, U.S. Code, Section 2737 (Chapter 13).

- a. The following officers are delegated authority to settle any claim and to authorize payment of \$1,000 or less:
 - (1) The commander of each Coast Guard Maintenance and Logistics Command;
 - (2) The commander of each Coast Guard district
 - (3) Superintendent, U.S.C.G. Academy;
 - (4) The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet; and

5.B.7. a. (5) The Chief, Claims and Litigation Division, Office of the Chief Counsel.

8. Admiralty Claims on Behalf of the Coast Guard, Title 14, U.S. Code, Section 647, (Chapter 15).

a. The Chief, Claims and Litigation Division, Office of the Chief Counsel is delegated authority to settle any claim in full or to compromise and settle any claim in which the net amount of the claim is \$100,000 or less.

b. The commander of each Maintenance and Logistics Command is delegated authority to settle any claim in full or to compromise and settle any claim in which the net amount of the claim is \$50,000 or less.

c. The following officers are delegated authority to collect any claim in full or to compromise and settle any claim in which the net amount of the claim is \$25,000 or less:

(1) The commander of each Coast Guard district;

(2) Superintendent, U.S.C.G. Academy;

(3) The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet.

9. Federal Claims Collection and Compromise, Title 31, U.S. Code, Section 3711 (Chapter 16)

a. The Chief, Claims and Litigation Division, Office of the Chief Counsel, is delegated authority to collect any claim in full or to compromise, suspend, or terminate action to collect any claim of \$100,000 or less, exclusive of interest.

b. The Director, National Pollution Funds Center (NPFC) is delegated authority to collect any claim on behalf of the Oil Spill Liability Trust Fund in full or to compromise, suspend, or terminate action to collect any claim of \$100,000 or less, exclusive of interest. Any claims action involving significant legal or policy issues shall be coordinated with the Chief Counsel.

c. The commander of each Coast Guard Maintenance and Logistics Command is delegated authority to collect any claim in full or to compromise, suspend, or terminate action to collect any claim of \$50,000 or less, exclusive of interest.

d. The following officers are delegated authority to collect any claim in full or to compromise, suspend, or terminate action to collect any claim of \$25,000 or less, exclusive of interest:

- | 5.B.9. d. (1) The commander of each Coast Guard district;
- | (2) Superintendent, USCG Academy; and
- | (3) The commanding officer of each headquarters unit
| having a law specialist or attorney assigned to a
| permanent legal officer billet.

- | 10. Federal Medical Care Recovery Act Claims, Title 42, U.S. Code
| Section 2651-2653 (Chapter 17).

| a. The Chief, Claims and Litigation Division, Office of the
| Chief Counsel, is delegated authority to collect any
| claim in full or to compromise, settle, or waive action
| to collect any claim in which the amount of the claim is
| \$100,000 or less.

- | 11. Title 49, Code of Federal Regulations, Section 1.45(a)(11).

| a. The following officers are delegated authority to approve
| for payment any voucher for \$25 or less when the
| authority for payment of the claim is questioned by a
| certifying or disbursing officer:

| (1) The commander of each Coast Guard Maintenance and
| Logistics Command;
- | (2) The commander of each Coast Guard district;
- | (3) Superintendent, U.S.C.G. Academy;
- | (4) The commanding officer of each headquarters unit
| having a law specialist or attorney assigned to a
| permanent legal officer billet; and
- | (5) The Chief, Claims and Litigation Division, Office of
| the Chief Counsel.

- | 12. Claims for Damage to Military Housing, Title 10, U.S. Code,
| Section 2775.

| a. The following officers are delegated authority to waive
| or compromise any claim of the United States for damage
| to a family housing unit or an unaccompanied personnel
| housing unit:

| (1) The commander of each Coast Guard Maintenance and
| Logistics Command; and
- | (2) The Chief, Claims and Litigation Division, Office of
| the Chief Counsel.

- | b. Because this waiver and compromise authority is granted
| by separate statute, the limitation of the Federal Claims

5.B.1. b. (cont'd) Collection Act are inapplicable to claims for damage to military housing.

13. Claims Involving the Oil Spill Liability Trust Fund, 33 U.S.C. 2701, et seq.

a. The Director, National Pollution Funds Center (NPFC):

(1) In accordance with the separate delegation from the Commandant (see Chapter 14), settles any claim against the Fund. Any claim in which the amount to be paid exceeds \$100,000 and any claim, regardless of amount, which raises significant legal or policy questions shall be coordinated with the Chief Counsel.

(2) May, on behalf of the Fund, collect any claim in full and compromise, suspend or terminate action to collect any claim of \$100,000 or less. Any claim which raises significant legal or policy questions shall be coordinated with the Chief Counsel (see paragraph 5-B-9).

b. The Chief, Claims and Litigation Division:

(1) May settle any claim and authorize payment of \$100,000 or less.

(2) May collect affirmative claims in accordance with the authority delegated for Federal Claims Collection and Compromise (see paragraph 5-B-9).

14. Claims Involving the Environmental Compliance and Restoration Account, Title 14, U.S. Code Section 692 (Chapter 19).

a. The Chief, Environmental Law Division, Office of the Chief Counsel, is delegated authority to:

(1) Settle any claim and to authorize payment of \$100,000 or less; and

(2) Collect any affirmative claim in full, or to compromise, suspend, or terminate action to collect any claim of \$100,000 or less, exclusive of interest (see Enclosure 19);

b. For additional information regarding the scope of delegated authority pursuant to 14 U.S.C. 690-693, see Enclosures (18) & (19).

C. Further Redlegation of Authority.

1. The officers to whom authority was delegated in section 5-B may not redelegate that authority except as specified herein.
 - a. The commander of each Coast Guard Maintenance and Logistics Command may redelegate the authority specified in paragraph 5-B to the Chief, Legal Division, or any law specialist or attorney in an assigned legal billet and may authorize further re delegation by the Chief, Legal Division. Authority may be redelegated to military personnel at the E-7 level or higher, and to non-attorney civilian personnel at the GS-7 level or higher, assigned to the Claims Branch of the Maintenance and Logistics Command, pursuant to the limitations and conditions set forth in paragraph 5-D below. In addition, the Commander of each Coast Guard Maintenance and Logistics Command may redelegate the authority specified in Paragraph 5-B-11, as well as the authority to compromise claims described by 5-B-9 by waiving not more than \$100 of the total due (to cover check handling fees, etc.), to the Chief, Finance Division. This authority may be redelegated to the Chief, Accounting Section.
 - b. The commander of each Coast Guard district may redelegate the authority specified in section 5-B to the district legal officer, any law specialist or attorney in an assigned legal billet, or the commanding officer of any district unit having a law specialist or attorney in an assigned legal billet. Commander, Second Coast Guard District may authorize further re delegation by the district legal officer to military personnel at the E-7 level or higher, and to non-attorney civilian personnel at the GS-7 level or higher, pursuant to the limitations and conditions set forth in section 5-D below, provided those personnel are assigned to the Second Coast Guard District legal office. In addition, the commander of each Coast Guard district may redelegate the authority specified in paragraphs 5-B-11 and 5-B-12 to the Chief, Administrative Division.
 - c. Superintendent, U.S.C.G. Academy may redelegate the authority specified in section 5-B to the Academy legal officer or any law specialist or attorney in an assigned legal billet. In addition, the Superintendent may redelegate the authority specified in paragraph 5-B-9 to the Academy Comptroller.
 - d. The commanding officer of each headquarters unit having a law specialist or attorney assigned to a permanent legal officer billet may redelegate the authority specified in section 5-B to the law specialist or attorney assigned to the permanent legal officer billet. In addition, the commanding officer may redelegate the authority specified

- 5.C.1. d. (cont'd) in paragraph 5-B-9 to the comptroller assigned to the headquarters unit.
- e. The Chief, Claims and Litigation Division, Office of the Chief Counsel may redelegate the authority specified in section 5-B to any law specialist or attorney assigned to the Division.
- f. The Director, National Pollution Funds Center (NPFC) may redelegate the authority specified in section 5-B within the NPFC (the authority to pay claims, conferred by separate delegation, may be redelegated as conferred - see Chapter 14).
2. Except for redelegations to personnel at the E-7 or GS-7 level or higher (pursuant to section 5-D below), redelegation of authority should, whenever practicable, be directed to the holder of an organizational title rather than an individual. Redelegation pursuant to section 5-D should be directed to the specific individual involved. Each command redelegating authority shall send a copy of the redelegation document(s) to Commandant (G-LCL) and to the Finance Center, ATTN: Accounts Payable.

D. Special Redelegations by MLC Legal Officers and CCGD2 (dl). The commander of each MLC may permit the Chief of the Legal Division, and CCGD2 may permit the Legal Officer, to further redelegate claims settlement authority as follows:

1. To military personnel at the E-7 level or higher, and to civilian personnel at the GS-7 level or higher, functioning as Claims Settlement Officers, the authority:
- a. To settle any claim under Title 31 U.S.C. 3721 (Military Personnel & Civilian Employees' Claims Act) in which payment does not exceed \$5,000;
- b. To settle any claim under Title 14 U.S.C. 830 (Auxiliary Claims) in which payment does not exceed \$2,500;
- c. To settle any claim under Title 10 U.S.C. 2733 (Military Claims Act) in which payment does not exceed \$5,000;
- d. To settle any claim under Title 10 U.S.C. 2737 (claims not cognizable under other law) in which payment does not exceed \$1,000; and
- e. To collect any claim under Title 31 U.S.C. 3711 (Federal Claims Collection Act) in full, or to compromise, suspend, or terminate action to collect any such claim of \$20,000 or less, exclusive of interest, when the amount of the compromise, suspension, or termination, does not exceed \$2,500 from the total amount owed, exclusive of interest, penalties, or administrative costs.

- E. Request for Additional Delegation of Authority. Request for additional delegation authority shall be forwarded to Commandant (G-LCL) via the chain of command. The request shall contain justification and recommendations, including the length of time that the delegation is to last and the dollar amount of the delegation.

CHAPTER 6

PERSONNEL CLAIMS

A. Authority.

1. The Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 3721), as amended, (MPCECA) provides statutory authority for the settlement of claims for the loss of, damage to, or destruction of certain property of military personnel or civilian employees occurring incident to their service. The MPCECA is not a substitute for personal property insurance.
2. Delegation of the authority created by the MPCECA may be found in 49 CFR 1.45(a)(9), 33 CFR 25.131, and paragraph 5-B-1 of this Manual.

B. Scope.

1. The MPCECA authorizes settlement and payment of substantiated claims for the loss of and/or damage to, personal property occurring incident to service, when possession of the property was reasonable or useful, and when the claimant did
| maximum amount payable to an individual claimant for any loss
| of and/or damage to personal property, as a result of a
| single incident, is \$40,000.
2. This chapter supplements D.O.T. Order 2770.9. Any claim cognizable under the MPCECA shall be considered under this chapter before it is considered under any other chapter. If a claim is meritorious and cognizable under this chapter but not payable, the settlement authority shall consider the claim under other chapters before it is disapproved.
3. The MPCECA does not authorize payment for damage to or loss of real property (land, house, etc.), loss of use, carrying charges, inconvenience costs, attorney fees, telephone calls, or insurance premiums.
4. If any requirement of Chapters 2, 3, or 4 conflicts with this chapter, this chapter governs.

C. Claimants.

1. A claim may be presented by:
 - a. A member of the Coast Guard;

- 6.C.1.
 - b. A member of the Coast Guard Reserve engaged in training;
 - c. A civilian employee of the Coast Guard;
 - d. Officers of the Public Health Service detailed for service with the Coast Guard;
 - e. The authorized agent or legal representative of a, b, c, or d above (see paragraph 6-C-3); and
 - f. The survivors of a, b, c, or d above in the following order of precedence:
 - (1) Spouse,
 - (2) Child or children,
 - (3) Father or mother, or both;
 - (4) Brother(s) or sister(s), or both.
2. A claim may not be presented by:
 - a. Insurance companies, subrogees, assignees, conditional vendors, and similar third parties. Their claims are barred from consideration or payment. Note: Claims for losses of subrogees and similar third parties are barred from consideration or payment under other chapters, if the property owner could have presented a cognizable claim for the loss under this chapter.
 - b. Auxiliaries, or their representatives; or
 - c. Employees of government contractors.
3. No more than ten percent of the amount paid in settlement of each individual claim presented and settled under this Chapter may be paid or delivered by or on behalf of the claimant to any agent or attorney for services rendered in connection with the claim. Any amount representing a higher percentage is unlawful without regard to any contract between the agent or attorney and the claimant. The MPCECA provides a criminal sanction.
- D. Cognizable Claims. A cognizable claim is for damage to, loss of, or destruction of personal property of a military member or civilian employee sustained incident to the service of the military member or civilian employee. The following is a nonexclusive list of claims that are presumed to be incident to service unless such a presumption would be unreasonable under the particular circumstances:

- 6.D.1. Property damaged or lost by fire, flood, hurricane, lightning, typhoon, tornado, cyclone, earthquake, or other unusual occurrence, including loss of electrical power not due to the fault of the claimant, or by theft or vandalism while located at:
 - a. Housing accommodations assigned to the claimant or otherwise provided in kind by the U.S. including substandard quarters for which the claimant pays the U.S. a fixed rental while drawing BAQ, and privately owned mobile homes located in an authorized mobile home parking space on a military reservation or other space provided by the U.S.;
 - b. Transient housing accommodations, wherever situated, such as hotels, motels, guest houses, transit barracks, or other places of lodging occupied by the claimant in conjunction with the performance of temporary duty or similar authorized military assignment of a temporary nature;
 - c. Housing accommodations occupied by the claimant outside the U.S. but not assigned or otherwise provided in kind by the U.S. If the claimant is a civilian employee who is a local inhabitant, the claim for damage to or loss of claimant's property located in claimant's housing accommodations is not cognizable unless the housing accommodations were assigned or otherwise provided in kind by the U.S.;
 - d. Any warehouse, office, hospital, baggage holding area, or other place authorized, or apparently so authorized, for the reception or storage of the particular property damaged or lost; and
 - e. With respect to privately owned vehicles, in addition to locations stated in paragraphs 6-D-1-a through d, any authorized place on a military installation. "Unusual occurrence" does not include hit-and-run incidents involving vehicles. See paragraph 6-E-1-j for limitation of damage claims for private vehicles cognizable under this chapter.
2. Property damaged or lost in transportation or storage pursuant to orders, in connection with travel under orders, or in performance of official duties, including property:
 - a. In the custody of the claimant or while in a private or public conveyance in which the claimant is traveling in performance of official duties;
 - b. In the custody of the claimant, while awaiting imminent assignment to government quarters; or

6.D.2. c. In private storage when necessitated by military reasons, such as extended continuous temporary duty periods for which no entitlement for storage at government expense exists.

- | 3. Mobile home, which is generally a residence designed to be
| moved over land and includes the contents of the trailer
| owned or intended for use by the member or member's
| dependents (see the JFTR App. A for complete definition),
| damaged or lost incident to shipment under orders if:
 - a. Transported by the 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
 - b. The owner has placed the mobile home, including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and other parts of the house trailer and its contents in fit condition to withstand the stress of normal transportation. Acceptance of a mobile home for shipment by a carrier raises the presumption that the mobile home was in a condition to withstand the stress of normal transportation.
- 4. Property carried on board a vessel or aircraft damaged or lost as a consequence of perils of the sea or hazards connected with the operation of an aircraft.
- 5. Property damaged or lost in use that is necessary for the performance of official duties and at the express direction or request of superior authority.
- | 6. Property damaged or lost as a direct result of hostile
| activity including:
 - | a. Enemy action or threat of such action;
 - | b. Combat or performance of a combat mission;
 - | c. Confiscation that is unjustified by a foreign government or its nationals; or
 - | d. The quieting of a civil disturbance.
- 7. Property damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official duties, including:

- 6.D.7. a. Performance of duty in connection with an attempt to alleviate a public disaster; or
- b. Efforts to save human life or U.S. property when the situation was such that the claimant could have saved the property damaged or lost had the claimant not acted to save human life or U.S. property.
8. Loss of money delivered to and accepted by a Coast Guard member or civilian employee authorized, or apparently authorized, to receive such money for the purpose of safe keeping, deposit, transmittal or authorized disposition. Payment of interest is authorized only in claims involving lost of money specifically delivered for the purpose of deposit in a savings program.
9. Property lost as a direct result of theft of the property from the possession of the claimant, if it is established that the theft occurred by use of force, violence, threat to do bodily harm, snatching or pickpocketing. The theft has to occur on a military installation, while the claimant was using a facility operated or sponsored by the military, or while the claimant was performing official duties.
10. Property damage or loss that is not payable under the Federal Tort Claims Act because of Feres v. United States, 340 U.S. 135 (1950), and not payable under 10 U.S.C. 2733 as provided in paragraph 6-E-1-j.
11. Loss of and/or damage to property in the possession of a laundry operated by the Coast Guard.
12. Reasonable fees for obtaining estimates or appraisals in connection with presenting a claim if:
 - a. An estimate or appraisal (3-A-7-b) is required by this Manual;
 - b. The claimant could not obtain a required estimate or appraisal without paying a fee; and
 - (1) The fee will not be or was not credited to the cost of repair or replacement, or
 - (2) The fee was charged for a second higher estimate or an estimate accompanying a lower paid bill of repair.

| 6.D.13. Late deposit or late payment charges incurred by a military
| member when direct deposit of pay is not properly sent to the
| member's financial account due to an error by the Government.
| (10 U.S.C. 1053).

E. Claims Not Cognizable.

1. The following is a nonexclusive list of claims that are not considered incident to service under the Act:
 - a. Attorney fees or other costs of preparing a claim, with the exception of certain estimate fees;
 - b. Carrying charges;
 - c. Financial losses resulting from cancelled or modified orders;
 - d. Inconvenience expenses;
 - e. Insurance premiums for personal property;
 - f. Interest, except as provided in paragraph 6-D-8;
 - g. Labor costs for work performed by a claimant in the repairing of damage;
 - h. Personal injury or death;
 - i. Real property damage or loss; and
 - j. Damage to personal property, including privately owned vehicles, caused by Coast Guard members or employees acting within the scope of their employment under circumstances that allow the claim to be payable pursuant to 10 U.S.C. 2733.

- 6.E.2. The following is a nonexclusive list of items whose possession is not considered to be reasonable, useful, or proper under the MPCECA:
- a. Government property;
 - b. Enemy property or war trophies;
 - c. Articles acquired, purchased, possessed, or transported for persons other than the claimant or members of the claimant's immediate family, except as reasonable bona fide gifts;
 - d. Articles acquired or held for sale or disposition by other commercial transaction, or for use in a private profession or business enterprise;
 - e. Money in excess of one-half of one month's basic pay and allowances, except as provided in paragraph 6-D-8;
 - f. Money shipped or stored with baggage or household goods;

- 6.E.2. g. Property acquired, possessed, or transported unlawfully or in violation of Coast Guard directives;
- h. Property stored at a commercial facility for the convenience of the claimant and at the claimant's expense; and
- i. Items in excess of the maximum dollar amounts payable found in Enclosure (1) unless the application of this maximum creates an injustice in a particular case. (See subparagraph 1-B-2-e.)

Prior to interviewing a claimant concerning the items listed in paragraphs 6-E-2-a, b, c, d, and g, a legal officer shall be contacted for advice.

- 3. Subparagraphs 6-E-2-g & h do not bar payment for the sole reason that the item was part of a shipment of household goods in which the total weight exceeded the maximum weight allowance for which the claimant was eligible by paygrade.

F. Claims Payable.

- 1. Any cognizable and substantiated claim is payable except as specifically prohibited by paragraph 6-F-2.
- 2. The following claims are not payable:
 - a. A claim arising from an incident caused, wholly or partly, by a negligent or wrongful act of the claimant, an immediate family member, or an agent or employee of the claimant. (A claimant has a heavy burden of proof when money or other small items, which are attractive to thieves or vandals, mysteriously disappear);
 - b. A claim arising from an incident that occurs at quarters occupied by the claimant within the fifty States or the District of Columbia that was not assigned to him or otherwise provided in kind by the U.S.;
 - c. A claim for loss or damage to intangible property;
 - d. Property damage or loss for which recovery has been or can be obtained from an insurer, carrier, or contractor, except when the concurrent claim procedure found at section 6-H is used;
 - e. A claim for an amount that would have been recovered from a carrier, insurer, or contractor but for an act or omission of the claimant. (e.g. (1) Claimant has private insurance covering \$100.00 of a \$200.00 loss and claimant's insurer demands that notice be given within

- 6.F.2. e. (cont'd) 90 days. Claimant does not give the insurer notice. Claimant's recovery from the U.S. will be reduced by \$100.00. (2) Claimant claimed \$200.00 damage on a household goods shipment. Recovery would have been limited to \$180.00, depreciated replacement value. However, since the claimant did not give the carrier notice, the \$180.00 recovery will be denied in its entirety.)
- f. A claim for collision damage to a privately owned vehicle unless incident to:
- (1) Shipment under permanent change of station orders;
 - (2) TAD or TDY travel in which POV is specified, as the authorized mode of travel; or
 - (3) Use necessary in the performance of official duties under circumstances in which the owner or operator is entitled to payment for local travel.
 - (4) An act or omission of the member or employee creating liability under the Federal Tort Claims Act precludes payment of the claim under paragraph 6-F-2-a.
- g. A charge for pick-up or delivery of property repaired, except when proof of payment of such charge is included.
- h. A claim not presented in writing within two years after it accrues, except that if a claim accrues in time of war or armed conflict or if war or armed conflict intervene within two years after it accrues and if good cause is shown, the claim may be presented not more than two years after termination of the war or armed conflict. An armed force of the U.S. must be engaged in the war or armed conflict. The dates of commencement and termination of an armed conflict shall be as established by concurrent resolution of Congress or by determination of the President.
- (1) Claims for damage to household goods during shipment under orders should be submitted as soon as possible. Service members are encouraged to do so to ensure that they are promptly compensated for the damage incurred during their PCS moves.
- i. A claim arising from a theft which was not promptly reported to appropriate police or security authorities (the passage of 24 hours after the discovery of the theft raises the presumption that the claimant did not report the theft promptly);

- 6.F.2. j. A claim for time spent by the claimant in preparation of, or for the literary or artistic value of, notes, theses, manuscripts, and similar items;
- k. A claim payable under the Federal Employees' Compensation Act (5 U.S.C. 8101);
- l. A claim for the cost of servicing or tuning an item, which would otherwise be cognizable under paragraph 6-D-2, is not payable as damage during transit if servicing or tuning is due to the inherent nature of the item. Should servicing or tuning be necessary in conjunction with repairs of payable external or internal damage, then such costs are compensable; or
- m. Charges by rent-a-car companies for damage to the rental vehicle occurring while under a rental agreement entered into by a member or employee under orders authorizing travel by such rental vehicle. See JFTR 3415-C-2-(b). (If the charge is paid under the JFTR, payment may give rise to an affirmative claim for collection under Chapter 16.)

G. Procedure for Claims Other Than Those Arising from the Shipment of Household Goods, Mobile Homes, Privately Owned Vehicles, and Unaccompanied Baggage Under Permanent Change of Station Orders or Any Other Orders for which the U.S. Provides a Carrier or Contractor to Move the Personal Property of the Claimant.

- 1. Follow the procedures found in Chapters 2, 3, or 4 as applicable with the exception that Coast Guard forms CG-4112, CG-4112A, and the reverse side of CG-4111 are used in lieu of Standard Form 95.
 - a. Before conducting an investigation or preparing an investigative report, the Claims Investigating Officer should be familiar with sections 6-D, 6-E, and 6-F. Facts that tend to fit a claim into, or exclude a claim from, those sections are extremely important.
 - b. Sections 6-D, 6-E, and 6-F should be used as a checkoff sheet to insure that all relevant matters have been addressed in the investigative report.
- 2. Refer to subparagraph 6-H-9-b-(6) concerning replacement in kind.
- 3. Refer to subparagraph 6-H-9-c concerning the Allowance List-Depreciation Guide, Enclosure (1).
- 4. Claims may be submitted on CG Forms CG-4111 and CG-4112 or the equivalent DOD forms (DD1842, Claim for Personal Property, and DD1844, Schedule of Property).

H. Procedures for Claims Arising from Shipment of Household Goods, Mobile Homes, Privately Owned Vehicles, and Unaccompanied Baggage Under Permanent Change of Station Orders or Any Other Orders for which the U.S. Provides a Carrier or Contractor to Move the Personal Property of the Claimant.

1. In order for the claimant to receive the maximum recovery, the claimant should notify the carrier of property which was damage or lost within 75 days of the delivery date. As a matter of practice, claimants should then strive to document and submit their claims as soon as possible.
2. There are two primary methods to notify the carrier of property which was damaged or lost:
 - a. The best manner of notifying the carrier of property damage or loss is notation made on the day of delivery and hand-delivered to the unpackers or delivery personnel. Carriers are responsible for providing the claimant a Joint Statement of Loss or Damage at Delivery (DD1840) at the time of delivery. Notation of loss or damage should be made in section B. The driver, as the carrier's agent, is required to sign the DD1840 at the time of delivery. The claimant should keep 3 copies of the form for future use of the reverse side, Notice of Loss or Damage (DD1840R), used to report damage or loss discovered after delivery.
 - b. Property which was damaged or lost but which was not noted on the day of delivery must be reported to the carrier within 75 days of the delivery date (or the date it should have been delivered if it had not been lost). This 75 days is based on the Military-Industry Memorandum of Understanding on Loss and Damage Rules [see, Enclosure (2) to this Manual], as well as the Military Traffic Management Command (MTMC) rate solicitations which are incorporated into the government bill of lading.
 - (1) The only allowable method of providing notice of loss or damage discovered after delivery is by timely dispatching a DD1840R within the 75 day notification period. It is acceptable to attach a CG-4111 to the DD1840R with a notation, such as "See the attached CG-4111 for list of damages." If the claimant does not have a DD1840R, and cannot obtain one from the unit investigating officer, the CG-4111 or other list may be used to provide written notice but must be labelled as a substitute for the DD1840R. A suggested wording is "No DD1840R available. CG-4111 (or attached list) submitted as substitute." When using a CG-4111 for notice, do not complete the Demand on Carrier/Contractor side of the form;

- | 6.H.2. b. (1) (cont'd) complete blocks 23a-d only. The reason for
| the recommended labels and limited completion of the
| CG-4111 is so that the carrier does not treat it as a
| claim and process it as such.
- (2) A claimant is responsible for filling out Section A
of the DD1840R. Section B may be filled out by
either the claimant or the Claims Investigating
Officer designated in accordance with paragraph
6-H-5. The signature block may be filled out by
either the claimant or the Claims Investigating
Officer. If the claimant does not obtain assistance,
the DD1840R must be dispatched to the carrier within
75 days of delivery. If the claimant does obtain
assistance, the DD1840R must be submitted and
received by the Claims Investigating Officer within
70 days of the date of delivery. If submitted to the
Claims Investigating Officer within 70 days of
delivery, then the Claims Investigating Officer shall
be responsible for forwarding the DD1840R to the
carrier by registered or certified mail within 75
days of the delivery. The claimant should obtain a
dated receipt for the DD1840R from the Claims
Investigating Officer, whenever possible.
- (3) The notification, whether dispatched by the claimant
or the Claims Investigating Officer, must be by a
method documenting delivery, such as Certified Mail -
Return Receipt Requested. Claims investigating
officers shall maintain a dispatched log which records,
at a minimum for each claim, the claimant's name, GBL
number for the affected shipment, certified mail
number, date of dispatch, and the date the return
receipt was delivered. The return receipt shall be
filed with the unit copy of the claim.
- (4) Failure to dispatch the DD1840R within the 75 day
timeframe usually results in a denied claim.
However, claimants and Claims Investigating Officers
should still dispatch the form even if the claimant
did not dispatch it within the 75 day deadline or if
the claimant did not deliver it to the Claims
Investigating Officer within the 70 day deadline.
The Military-Industry Memorandum of Understanding on
Loss and Damage Rules provides for certain good cause
exceptions to the notice requirement which may be
available to claimants who cannot meet the deadlines.
Claimants should contact their unit investigating
officers before relying on this exception.

| 6.H.3. Notifying the carrier of damage or loss is not the same as
| making a claim.

| a. Claimants may submit their claims directly to the
| carrier. Such claims are not covered under the Military
| Personnel and Civilian Employees Claims Act, but may be
| required where the member has purchased increased
| valuation insurance or full replacement protection
| insurance from the Coast Guard. It may also be to the
| claimant's advantage, if the carrier offers a rapid and
| fair settlement.

| (1) If the claimant elects to negotiate a settlement
| directly against the carrier, the claimant:

| (a) Should contact the unit Claims Investigating
| Officer or the claims settlement authority, as
| appropriate, for assistance in submitting or
| negotiating claims directly with a carrier and
| for advice on the effect of cashing a carrier
| recovery check upon any claim against the Coast
| Guard.

| (b) Should contact the carrier to determine which
| forms and what documentation the carrier requires
| for claim submission. If the claimant uses the
| CG-4111. Demand on Carrier/Contractor, the
| claimant should complete blocks 1 to 23f.

| (c) May not submit a claim against the Coast Guard,
| except for items or amounts for which the carrier
| would not be liable in any recovery action which
| the claims settlement authority could bring
| against the carrier. (Exception: A concurrent
| claim may be submitted to the Coast Guard where
| the carrier delays settlement beyond a reasonable
| time, usually 120 days. Claims investigating
| officers are encouraged to contact the claims
| settlement authority on the claimant's behalf
| with regard to concurrent claims.)

| (d) Should follow the guidance below and in
| enclosures (4) and (5), as applicable, in
| preparing a claim.

| (2) The act of giving notice may be combined with the act
| of presenting a claim against the carrier if the
| claim and notice are both submitted within the 75 day
| notification period. The claim should include the
| required notice and demand forms and should be
| clearly marked as such: "This is a notice and a
| claim."

6.H.3. a. (3) Caution: when a claimant receives, and cashes, a check from the carrier which releases the carrier from further liability on the claim, Coast Guard liability will be limited to amounts which would have exceeded the carrier liability. This would include, for example, estimate fees, amounts based upon differences in carrier and Coast Guard depreciation rates, and amounts based upon carrier liability limits by type of shipment and weight of item. It may preclude, for example, claims for damage not included in the settlement with the carrier.

b. Where submitting a claim to the carrier would result in delay or an unfair settlement, the claimant may submit a claim against the Coast Guard under the Military Personnel and Civilian Employee's Claims Act. At present, industry practice favors settling demands for recovery from centralized claims offices over receiving claims directly from military or civilian personnel. As a result, claims submitted directly to the carrier may not be promptly processed unless the claimant had discussed the submission with the carrier before submitting the claim.

(1) To submit a claim against the Coast Guard, the claimant should use Coast Guard forms CG-4111 and CG-4112 or the equivalent DOD forms (DD form 1842 Claim for Personal Property, DD form 1843 Demand on Carrier, and DD form 1844 Schedule of Property). Instructions for completing the Demand on Carrier (CG-4111) and the Personal Property Claim (CG-4112) are provided below and in enclosures (4) and (5).

(2) As noted in subparagraph 6-F-2-h, claimants are encouraged to present their household goods damage claims to the Coast Guard as soon as possible. This frequently avoids the need for additional documentation and reinvestigation where estimates and evidence of damage may be outdated. For items in storage, the member will be considered as being on notice of damage or loss for the purpose of applying the two-year limitation on the date the storage became the member's responsibility, either by carrier delivery to storage at the member's expense, termination of entitlement to storage at government expense, or other means.

| 6.H.4. [VACANT]

5. Each command shall designate one or more individuals to assist claimants in the preparation of claims arising from damage to or loss of personal property under permanent change of station or other orders for which the U.S. provides a carrier or contractor to move personal property.
 - a. For the purposes of this chapter, this individual is the Claims Investigating Officer.
 - b. Inquiries from claimants who are no longer on active duty should be directed to Chief, Administration Division, of the district where they reside.

| 6. [VACANT]

| 7. [VACANT]

8. Claims Investigating Officer.

- a. When a claimant first notifies the Claims Investigating Officer of the property damaged or lost the Claims Investigating Officer ensures that the claimant knows of the requirement to provide the carrier with written notification within 75 days. The Claims Investigating Officer should also discuss the possibility of using the small claims procedure with the claimant.

(1) If the amount likely to be paid by the Coast Guard in settlement of the claim is \$750 or less or if the claimant agrees to accept payment that does not exceed \$750, the Claims Investigating Officer and the claimant can agree to use the small claims procedure.

(2) If the amount likely to be paid by the Coast

| [CONTINUED ON PAGE 6-13]

- 6.H.8. a. (2) (cont'd) Guard in settlement of the claim exceeds \$750 or it is unlikely that the claimant will accept an amount of \$750 or less, the small claims procedure is not appropriate and the regular claim procedure is used.
- b. If the small claims procedure is appropriate refer to paragraph 6-H-10.
- c. If the small claims procedure cannot be used, provide the claimant with copies of Coast Guard Forms CG-4111 and CG-4112, instructions for the completion of these forms, and explain the time within which these forms are to be completed. See Enclosures (4) and (5).
- d. At any time the claims investigating officer has doubt as to the correct procedure or other matters involving the claim, the claim settlement authority should be contacted for guidance.

9. Regular Claim Procedure.

- a. When the claimant presents an original and two copies of Coast Guard Form CG-4112, the Claims Investigating Officer:
- (1) Receipt stamps the original and each copy of Coast Guard Form CG-4112 and returns one copy to the claimant;
 - (2) Determines the status of notification of and claim against the carrier;
 - (a) Whether the claimant notified the carrier of all property damage or loss within 75 days of the delivery date;
 - (b) Whether the claimant presented a claim against the carrier, Coast Guard Form CG-4111 or Carrier Claim Form (The claimant must submit a copy of the CG-4111 and evidence of dispatch to the carrier.); and
 - (c) If the claimant has failed to notify the carrier of all property damage or loss the Claims Investigating Officer shall assist the claimant in preparing a form DD1840R, and forward the DD1840R to the carrier within 75 days of delivery;
 - (3) Determines from the claimant whether any

- 6.H.9. a. (3) (cont'd) insurance applicable to the loss or damage exists and the status of any claim. If there is doubt as to the applicability of insurance a copy of the policy should be attached to the claim file;
- (4) Attaches one of the Coast Guard Forms CG-4111 to the claim if that form was completed and mailed by the Claims Investigating Officer;
- (5) Ensures that all required documents are attached to Coast Guard Form CG-4112. Although an original and two copies of Coast Guard Form CG-4112 are required, only one copy of each of the following is required:
- (a) The Orders authorizing shipment;
 - (b) The Government Bill of Lading or other shipping documents;
 - (c) The actual inventory (not a photostatic copy) which indicates the quantity and condition of the property shipped;
 - (d) The actual unloading inventory (not a photostatic copy), DD1840, DD1840R, or other form indicating the quantity and condition of property when delivered (include all of these forms which are available);
 - (e) Any correspondence indicating efforts to locate missing property (Claims Investigating Officer shall attach Coast Guard initiated correspondence pertaining to this subject);
 - (f) Coast Guard Form CG-4111 or other demand on carrier if accomplished by the claimant;
 - (g) Required repair estimates, bills or appraisals giving evidence of value;
 - (h) Any correspondence with insurers or other third parties; and
 - (i) Any document not included above which claimant used to notify carrier or to present a claim against the carrier; and
- (6) If the claimant has failed to comply with the instructions concerning the completion of

- 6.H.9. a. (6) (cont'd) Coast Guard Form CG-4112, return the original of that form, to the claimant with specific directions concerning those portions of the instructions with which the claimant has failed to comply. If the errors on Coast Guard Form CG-4112 are minor, the claimant may be orally informed and may authorize corrections. The Claims Investigating Officer should attach a memorandum of (telephone) conversation to the copy of Coast Guard Form CG-4112 retained in the unit file of the claim.
- b. In the examination of Coast Guard Forms CG-4111 and CG-4112, the Claims Investigating Officer:
- (1) Compares the date the carrier was notified in block 3a of the DD1840R or other notification, with the date the shipment was unloaded, block 17 of CG-4111. Compare the items listed on the DD1840 and DD1840R with the items listed on block 23 of the CG-4111. Compare the items listed on the DD1840 and DD1840R with the items listed on block 23 of the CG-4111. If the carrier was not notified within 75 days of delivery, the Coast Guard liability for those unreported items may be reduced by the amount which otherwise would have been recoverable from the carrier. (See subparagraph 6-F-2-e).
 - (2) Inspects the damaged property if column 23d of the CG-4111 indicates that the damage shown in column 23c was not reported at the time of unloading.
 - (a) While inspection is encouraged in all cases, inspection is not mandatory, if the damage was reported within 75 days of delivery and the amount of damage is;
 1. Fifty dollars or less, or
 2. Supported by two written estimates.
 - (b) An inspection is also not mandatory if the geographic location of the damaged items makes travel costs prohibitive in relation to the expected benefit. The Claims Investigating Officer shall seek guidance from the settlement authority regarding the proof necessary to support amounts claimed in excess of \$50 in those instances in which inspection is not possible, or request that the inspection be done by the Coast Guard unit closest to the claimant's current residence.

- 6.H.9. b. (3) Compares any damage noted on any previous inventory with the damage noted in column 23c of the CG-4111. The Coast Guard does not pay for preexisting damage. See note 2 to enclosure (1) concerning internal damage.
- (4) Comments on the availability of a second estimate (appraisal) in the community, if the claimant has failed to comply with a requirement for two estimates (appraisals). If the cost of replacement or repair is \$200 or less per item and small claims procedures are being used, the Claims Investigating Officer and claimant may agree on an appropriate cost. Otherwise, estimates are required. Note: that even under small claims procedures, estimates are required for items valued at \$200 or more. (See subparagraph 3-A-7-b).
- (5) If there are two or more estimates or appraisals, ensures that column 23f of the CG-4111 indicates the lowest.
- (6) Discusses replacement in kind with the claimant's command, if appropriate. For the purpose of this Chapter, a claimant's command is the first command with a commanding officer, who is a lieutenant commander or above, in the claimant's chain of command. If the command intends to replace an item in kind, place the initials "RIK" in columns 23k and 1 and ensure that the command knows that the claimant will receive no monetary compensation for these claims.
- c. The Claims Investigating Officer should be familiar with the following principles which may be applied to settle a claim. Where appropriate, the claimant or the Claims Investigating Officer should submit additional documentation to substantiate the application of the principle to the claim.
- (1) If an item cannot be economically repaired (depreciated replacement value is less than cost of repair), Coast Guard liability is limited to depreciated replacement value.
- (2) Depreciated replacement value is the present cost of a new item which is identical to or a suitable replacement for the item which was lost or damaged with an adjustment for the age and length of time the original item has been in use.
- (3) If an item, or a suitable replacement item can be obtained by a claimant, who is on active duty, at available Armed Forces Exchange for less than

- 6.H.9. c. (3) (cont'd) it would cost in the civilian community, the cost of a new item shall be the Armed Forces Exchange price.
- (4) Repair of preexisting damage is not compensable unless the repair of that damage is not separable from the repair of new damage. (e.g., origin inventory shows that 1 leg of a chair is scratched and rubbed and destination inventory shows that 4 legs are scratched and rubbed. If the lowest repair estimate to refinish the chair legs is \$60, the amount for which the Coast Guard may be liable would be \$45.)
- (5) Allowance for repair or replacement of component parts.
- (a) Repair or replacement of a component part or portion of a single item (picture tube of a television) is computed on the basis of the cost of replacing or repairing the part as follows:
1. If the part does not normally require replacement during the useful life of the item (e.g., wooden leg of a chair), allowance is permitted up to, but not in excess of, the actual value of the item at the time of damage; or
 2. If the part normally requires replacement during the useful life of the item (e.g., material covering a stuffed sofa), allowance is the actual replacement cost of the part involved less any depreciation applicable.
- (b) Repair or replacement of a component of a set (e.g., 1 chair of a matching set):
1. Allowance will be made for the cost of repairing or replacing the individual item, and
 2. An allowance will be made for the diminution in value of the entire set, if after repair or replacement the component no longer matches the rest of the set. The diminution in value of the set must be measurable and substantiated before an allowance will be made. Occasionally, an item will have to be reupholstered because the fabric cannot be matched and the item cannot be repaired without a noticeable, visible defect

6.H.9. c. (5) (b) 2. (cont'd) that would affect the value of the item for its intended purpose. In such circumstances, it may be necessary to authorize reupholstering of the item and, if the item is part of a set, the entire set. However, whenever the item is reupholstered, the fabric will be depreciated. See Note 3 to Enclosure 1.

(6) Many household goods decrease measurably in value from time of acquisition due to wear and tear, natural deterioration, obsolescence, perhaps lack of care, and depletion. Enclosure (1) establishes:

a. Standard yearly rates of depreciation for the types and categories of items which have generally recognized periods of useful life; and

b. Standard flat rates of depreciation for certain kinds of items which decrease in value primarily because they are no longer new and unused but do not continue to depreciate on a yearly basis.

Variation of established rates of depreciation shall be documented by the Claims Investigating Officer. An obvious reason for variation would be when inspection of the property reveals that it was in better than average condition before damage. Similarly, if an item was in poorer than average condition at the time of damage, a higher rate of depreciation is appropriate. The documentation referred to require more than a conclusion that "the (item) is in poorer (better) than average condition." The statement must explain the particular factors which led to that conclusion.

d. The Claims Investigating Officer refers to Enclosure (6) concerning the completion of Coast Guard Form CG-4112A. The investigation report, if applicable, shall specifically address the following items:

(1) Any errors discovered in forms DD1840, DD1840R, and Coast Guard Forms CG-4111 or 4112 and the efforts made to correct these errors.

(2) The documents required by subparagraph 6-H-9-a-(4):

(a) Missing, or incomplete;

(b) Errors or omissions; or

(c) Alterations (i.e. Does a carbon copy form have original ink entries?).

- 6.H.9. d. (3) The claimant's status as a "proper" claimant (paragraph 6-C-1), and the required documentation for authorized agents presenting claims (paragraph 3-A-5).
- (4) Facts discovered during the inspection of damaged items. See subparagraph 6-H-9-b-(2). Each statement shall reference the applicable number from column 23a Coast Guard Form CG-4111.
- (5) A recommendation concerning replacement in kind. See subparagraph 6-H-9-b(6).

| e. When the claim and the investigation are complete, the
| Claims Investigating Officer shall copy and forward the
| claim as follows:

| (1) Forward the original claim with attachments to:

| Commander (dl-1)
| Second Coast Guard District
| Attn: Claims Office
| 1222 Spruce Street
| St. Louis, MO 63103-2832

| (2) Return a complete copy of the claim to the claimant.

| (3) Retain a copy of the claim for the unit files.

| *If the claim is forwarded to the settlement authority by*
| *mail, a copy of the forwarding letter shall be placed in*
| *the claim file. If the claim is not mailed, a memorandum*
| *shall be placed in the file which indicates how and when*
| *the claim was forwarded. Alternatively, the Claims*
| *Investigating Officer may maintain a log which shows the*
| *method of forwarding and the forwarding date for each*
| *claim.*

| 10. Small Claims Procedure for Claims Presented to the
| Coast Guard.

a. While all military personnel and civilian employee claims should receive professional and expeditious treatment, this procedure aims at hastening the settlement of claims for which payment will be \$750 or less. The necessity of building a case for recovery against a carrier or other third party is neither an acceptable excuse for failing to make maximum use of the small claims procedure in appropriate cases nor an acceptable excuse for delaying the settlement of a small claim.

- 6.H.1. b. This procedure may require travel by the Claims Investigating Officer to the location of either the damaged items, the claimant, or both. It may also require travel by the claimant to the office of the Claims Investigating Officer. If geography makes these travel costs prohibitive in relation to the expected benefit, the Claims Investigating Officer may direct the claimant to use the regular claims procedure. Note: Paragraph 6-E-1 prohibits reimbursement of travel expenses connected with the presentation of a claim.
- c. If the amount likely to be payable on a claim makes it appropriate for small claims procedure, the Claims Investigating Officer shall:
- (1) Determine the present status of the notification of and claim against the carrier; and
 - (2) Provide the claimant with Coast Guard Forms CG-4111 and CG-4112 and instruct the claimant to complete:
 - (a) Blocks 2-17 excluding 11 and columns a-f of block 23 on Coast Guard Form CG-4111, if possible, and
 - (b) Blocks 2-7, 9-14, 16 and 17 on Coast Guard Form CG-4112.
 - (3) Arrange to meet with the claimant as soon as possible to mutually complete form DD1840R and Coast Guard Forms CG-4111, CG-4112, and CG-4112A. This date should permit notification within the 75 day period (paragraph 6-H-2). If an inspection is warranted, subparagraph 6-H-9-b-(2), the inspection can coincide with the meeting to complete forms DD1840R, CG-4111, CG-4112 and CG-4112A.
 - (a) On meeting with the claimant, the Claims Investigating Officer shall confirm the preliminary entries made on form DD1840R and Coast Guard Forms CG-4111 and CG-4112 and CG-4112A.
 - (b) The Claims Investigating Officer should complete Coast Guard Forms CG-4112A at the scheduled meeting.
 1. Block 8 of Coast Guard Form CG-4112A may be completed by reference to current local catalog prices or by telephone conversations with local dealers if the total claim is under \$750, or less than \$200 per item.

- 6.H.1. c. (3) (b) 2. Block 8 of Coast Guard Form CG-4112A may also be completed by telephone conversation with local repair services if the total claim is under \$750, or less than \$200 per item. In seeking carrier recovery such estimates may later be confirmed in writing or proved by paid repair bill.
3. If the cost of repair or replacement is less than \$50, the Claims Investigating Officer is permitted to agree with the claimant on a reasonable amount to be claimed for repairs in lieu of an independent estimate by a repair service. If they cannot agree, an estimate is required. See subparagraph 3-A-7-b.
4. The Claims Investigating Officer shall discuss insurance coverage with the claimant and have the claimant complete block 15 of Coast Guard Form CG-4112. If a question arises concerning the applicability of claimant's insurance, the claimant must file a claim with the insurer and provide the Claims Investigating Officer with a copy of that claim and all ensuing correspondence.
5. If an item is questioned because it may not be reasonable, useful, or proper under the MPCECA, the Claims Investigating Officer and the claimant should agree whether or not the item in question is one of those listed in paragraph 6-E-2. If they cannot agree, the Claims Investigating Officer makes a determination. See paragraph 6-E-2 concerning Legal Officer advice prior to initiating any interview of the claimant.
- | 6. The Claims Investigating Officer shall
| insert the agreed total of the claim at block
| 9b of Coast Guard Form CG-4112A and at the
| bottom of column 23f of Coast Guard Form
| CG-4111. The total of column 23f should
| reflect the lowest total of replacement
| and repair estimates contained in column 23f.
- a. If the total exceeds \$750 or the claimant cannot agree with the total arrived at by the Claims Investigating Officer, the small claims procedure cannot be used and the claimant shall be directed to obtain the documents necessary for the regular procedure for household goods claims.

6.H.1. c. (3) (b) 2 b. If the small claims procedure is still applicable, the claimant completes blocks 1, 8, and 18 and signs block 19 of Coast Guard Form CG-4112. If no items are replaced in kind, the total of column 23f of Coast Guard Form CG-4111, of block 8 of Coast Guard Form 4112, and of block 9b of Coast Guard Form CG-4112A should be identical.

7. The Claims Investigating Officer shall complete Coast Guard Form CG-4112A and then sign and date blocks 14 and 15 of Coast Guard Form CG-4112A.

8. The Claims Investigating Officer shall determine if the carrier has inspected the items and submitted an estimate of repair costs or offered to repair the items. If the carrier has provided the claimant with a written estimate or an offer to perform the required work, it will be included with the claim.

d. The Claims Investigating Officer shall copy and forward the claim as indicated in subparagraph 6-H-9-e.

e. If "RIK" appears in column 231 of Coast Guard Form CG-4111 and the claimant's command differs from the command of the settlement authority, the Claims Investigating Officer forwards the claim package to the settlement authority via the claimant's command for completion of block 16 on Coast Guard Form CG-4112A.

f. It is the duty of the appropriate settlement authority to determine that:

(1) The claimant is a proper claimant;

(2) The claim is cognizable under section 6-D;

(3) The evidence substantiates:

(a) The claimant's right to shipment, or possession, or both of the property;

(b) The loss, damage, or destruction alleged;

(c) The amount claimed; and

(4) The claim is payable under paragraph 6-F-1.

- 6.H.1. g. If the settlement authority determines that any additions are necessary and this addition raises the total above \$750, the settlement authority shall expeditiously contact the claimant and discuss the change.
- (1) If the claimant agrees to forsake the amount over \$750, the settlement authority notes this in a memorandum to file and proceeds with the approval of a \$750 claim.
 - (2) If the claimant demands the amount over \$750, the small claims procedure cannot be used and the entire claim package shall be returned to the claimant. The settlement authority will direct the claimant, in writing, to begin the regular procedure for personal property claims (subparagraph 6-H-8-c).

I. Settlement Procedure.

1. Each settlement authority shall maintain a record of all claims received. At a minimum, such record shall include:
 - a. A claim number;
 - b. Claimant's rate or grade and surname;
 - c. Unit or office from which the claim was received, if claims are received from multiple sources; and
 - d. The date on which the claim was received by the settlement authority.
2. To avoid the appearance of conflict of interest, a settlement authority may not settle his or her own claim or the claim of a senior in the settlement authority's immediate performance evaluation rating chain. Any claim of the settlement authority or his or her seniors, to and including the MLC or District Commander, should be forwarded to Commandant (G-LCL) following full investigation and documentation locally.
3. A settlement authority shall make these findings for all proper claims:
 - a. The claimant is a proper claimant;
 - b. The claim is cognizable under section 6-D;
 - c. The evidence substantiates:
 - (1) The claimant's right to shipment or possession or both of the property;
 - (2) The loss, damage, or destruction alleged;
 - (3) The amount claimed; and

6.I.3. d. The claim is payable under paragraph 6-F-1.

4. Replacement in kind.

- a. In addition to monetary settlement, a claim may be settled by replacement in kind. The findings discussed in paragraph 6-I-3 must be made before replacement in kind may be authorized.
- b. Each commanding officer in the rank of lieutenant commander or above is authorized to replace items in kind. A commanding officer initiates this procedure by completing block 16 of Coast Guard Form CG-4112A. A commanding officer indicates the specific items replaced in kind by endorsement to the investigative report, if any, and insertion of "RIK" in columns 23k and 1 of Coast Guard Form CG-4111.
- c. Commands are encouraged to use this procedure to benefit claimants by reducing paperwork and eliminating the necessity for review by the settlement authority. For example, replacement in kind of uniform items following a barracks fire may expeditiously return claimants to their status before the fire.
- d. Settlement authorities may also authorize replacement in kind.

5. Settlement authorities shall consider the following principles when determining an appropriate settlement:

- a. For repairs, apply the correct depreciation to any costs and tax for materials, and then add all repair costs and, if paid, tax attributable to labor, nonrefundable estimate fees, and pickup and delivery fees. For example, if the only repair cost is for labor, as in fixing a clock in which no materials are expended, do not depreciate the repair.
- b. If the loss or damage is covered by private insurance, determine if the settlement should be offset by any insurance proceeds which the claimant may have received or may have been eligible to receive. For example, if \$1,500.00 of a claimant's \$2,000.00 loss was paid under the claimant's \$500.00 deductible policy, determine an initial allowance by applying settlement rules to the total \$2,000.00 loss. The settlement is the lesser of the amount determined as an initial allowance or the claimant's deductible.
- c. As described in the preceding subparagraphs, there are numerous methods which may be applied to arrive at the number for column 23k. The three most common methods are:

- 6.I.5. c. (1) If column 23f contains a replacement price, 23k equals 23f minus the applicable depreciation (23j) determined in accordance with Enclosure (1);
- (2) If column 23f contains an acceptable labor only repair estimate which is less than the depreciated replacement value of the damaged item, 23k equals 23f; or
- (3) If column 23f contains a repair estimate which is greater than the depreciated replacement value of the damaged item, 23k equals the item's depreciated replacement value. The facts establishing the item's depreciated replacement value must be specified in the Claims Investigating Officer's report.
6. If the claim is approved in any amount and the approval reflects an authorized deviation from the depreciation portion of the Allowance List-Depreciation Guide, Enclosure (1), or other established policy, a memorandum shall be attached to the file explaining, supporting, and justifying the action taken.
7. When it is necessary to disallow a claim or allow a sum less than the amount claimed for reasons other than reductions due to depreciation, the settlement authority shall inform the claimant in writing of the factual and legal basis for decision. The explanation shall address the actions taken on an item by item basis in a concise and unambiguous format. The settlement authority shall also inform the claimant of the reconsideration process. See Enclosure (3).
8. A settlement agreement is not required.
9. An approved and certified claim is forwarded to the Authorized Certifying Officer for payment.
10. In the absence of fraud or mathematical errors in computation, the determination of the settlement authority is final and conclusive and not subject to review by any administrative or accounting officer.

J. Reconsideration.

1. A settlement authority shall reconsider a claim upon timely request of the claimant or someone acting in the claimant's behalf. The settlement authority may reconsider a claim on its own initiative.
2. Any reconsideration shall be in accordance with section 3-I. Note the time limits.

K. Recovery of Property Following Payment of a Claim.

1. In completing block 13 of Coast Guard Form CG-4112, the claimant agreed to contact the settlement authority upon recovery of property. The claimant may:
 - a. Accept the property and return the payment awarded by the Coast Guard;
 - b. Examine the property and select certain items for retention. If the travel expense is not prohibitive, this examination is made in the presence of the Claims Investigating Officer. The claimant then returns to the Coast Guard the payment awarded to him for the particular items retained. It is not the claimant's responsibility to physically move property not selected from its present location; or
 - c. Disclaim an interest in the property recovered and request that it be turned over to the Coast Guard. It is not the claimant's responsibility to physically move the property from its location.
2. If lost property is recovered, the Claims Investigating Officer, if the travel expense is not prohibitive, shall inspect the recovered property to insure it meets the description by the claimant in columns 23b and 23e of Coast Guard Form CG-4111. Any significant discrepancy between the recovered property and the description of the property provided earlier by the claimant raises the potential of a false claim. This possibility shall be reported immediately to the settlement authority. The Claims Investigating Officer is prohibited from discussing the matter further with the claimant until authorized by the settlement authority.

L. Application of Recovery from Carrier, Insurance, or Other Additional Protection.

1. Itemized settlements. (This refers to the form of the carrier's or other third party's settlement. A one item claim always results in an itemized settlement.)
 - a. Before settlement by the Coast Guard;
 - (1) The amounts recovered and inserted in column 23i of Coast Guard Form CG-4111.
 - (2) If the carrier's (or other third party's) payment for a particular item is equal to or less than the amount allowed by the Coast Guard the carrier's payment for that item will be retained by the Coast Guard. The figure in column 23k is placed in column 231.

- 6.L.1. a. (3) Where the carrier's (or other third party's) payment for a particular item is greater than the amount allowed by the Coast Guard (including cases where Coast Guard payment in any amount was precluded), the amount in excess of the amount that would be paid by the Coast Guard is paid to the claimant. The figure in column 23i is placed in column 231.
- (4) In either of the above cases, if the figure in column 23k is an amount limited by statute or regulation rather than a value of the loss then the figure put in column 231 should be the lesser of:
- (a) the total by adding column 23k and 23i, or
 - (b) the amount in column 23f (that has been substantiated) reduced by appropriate depreciation.

b. After settlement by the Coast Guard:

- (1) The settlement authority shall retrieve the original Coast Guard Form CG-4111 or a copy thereof and complete column 23i.
- (2) If an amount in column 23i is greater than that allowed by the Coast Guard (column 231 or 23m as applicable), the difference is paid to the claimant. This may be accomplished by means of a supplementary payment.
- (3) If an amount in column 23i is less than or equal to that allowed by the government, the amount is retained by the Coast Guard.
- (4) In either of the above cases, if the figure in column 23k is an amount limited by statute or regulation rather than the value of the loss then the claimant should, by means of a supplemental payment, be paid the lesser of;
 - (a) the amount in column 23i, or
 - (b) the amount in column 23f (that has been substantiated) reduced by appropriate depreciation and further reduced by the figure in column 231 or column 23m, as applicable.

2. Nonitemized settlements.

a. Before settlement by the Coast Guard:

- (1) The amount recovered from a carrier, insurer, etc., will be applied in such a manner as to first

- 6.L.2. a. (1) (cont'd) compensate the claimant for an otherwise meritorious loss that is not allowable in whole or part due to statutory or regulatory limitations.
- (a) Without regard to the amount recovered, the correct figure for each item in column 23k and column 231 should be determined.
- (b) For those items in which the figure in column 231 is not the value of the loss (column 23f, as substantiated) adjusted by depreciation but is a lower amount due to:
1. a maximum allowable limit;
 2. a determination that the item is payable under the regulations; or
 3. another reason,
- the difference between the value of the loss reduced by depreciation and amount allowable in column 231 will be placed in column 23i. Column 23m will be the sum of column 23i and 231. (e.g., a claimant has demanded \$1,000 in column 23f for the loss of a two year old air conditioner and column 231 indicates a Coast Guard maximum payment of \$750. Since a depreciated claim would result in payment of \$800 if not restricted by the maximum payment found in Enclosure (1), a "+ \$50" shall be added to column 23i. Column 23m shall reflect the sum of column 231 and column 23i, in this instance, \$800.) This rule also applies when an otherwise meritorious claim was disallowed due to the statutory maximum limitation (paragraph 6-B-1) or due to any of the prohibitions in paragraph 6-E-2.
- (c) The remainder of the recovery is retained by the Coast Guard.
- b. After settlement by the Coast Guard.
- (1) The settlement authority shall retrieve the original Coast Guard Form CG-4111 or a copy thereof and use columns 23f, 23i, 231, or 23m, and Enclosure (1) to determine, in accordance with the guidance of paragraph 6-L-2-a, whether any portion of the recovery is eligible for a supplementary payment to the claimant.

| 6.L.2. b. (2) If the claimant received and cashed a check from the
| carrier in payment for any loss or damage which
| releases the carrier from further liability on the
| claim, Coast Guard liability will be limited to
| amounts which would have exceeded the carrier
| liability. This would include, for example, estimate
| fees, amounts based upon differences in carrier and
| Coast Guard depreciation rates, and amounts based
| upon carrier liability limits by type of shipment and
| weight of item. Claimants are encouraged to contact
| the settlement authority to determine the effect of
| this limitation prior to cashing carrier recovery
| checks.

N. Recovery Against Claimant.

1. If at any time a claimant receives payment from a carrier or other third party in settlement of the claim, and the Coast Guard is entitled to all or a portion of the amount received, the settlement authority shall initiate prompt action under Chapter 16 to recover the amount due to the Coast Guard. See block 11 on Coast Guard Form CG-4112.
2. The settlement authority should be sensitive to the potential criminal aspects of this situation.

O. Surrender of Property.

1. In each case in which the claimant accepts a settlement for the depreciated replacement value of a damaged item, the settlement authority is permitted to order the claimant to surrender the property.
 - a. If the claimant does not surrender the property, the claimant shall return that portion of the payment representing the depreciated replacement value of the damaged item or the settlement authority will reduce an unpaid settlement by the amount of the depreciated replacement value of the damaged item.
 - b. The surrender of property refers to title to the property. The settlement authority cannot require the claimant to physically move the property from its present location.
2. Any property so surrendered becomes the property of the U.S.

6.0.3. If there is a readily available market which provides a measure of salvage value (e.g., wreckers willing to pay for a wrecked automobile), that amount may be deducted from the award as an alternative or requiring the surrender of the property. The settlement authority shall comply with the requirements of Paragraph 6-0-4.

4. Carrier's Right to Salvage.

- a. In domestic household goods shipments released at a value of \$1.25 per pound, or higher, the carrier is entitled to all items on which it has paid, or agrees to pay, a claim for the total depreciated replacement value of the item, or which are offered as salvage by the military.
- b. In instances where the carrier elects to exercise salvage rights, the carrier will take possession of salvage items, at the service member's residence, or other location acceptable to the member and carrier not later than 30 days after receipt of the Government's claim against the carrier. However, in no case will the 30 day period for carriers to take possession end until after the period for carrier's right to inspect the property has terminated. The 30 day pickup period can be extended by agreement of the carrier, service member, and claims office. Refusal by the service member to cooperate with the carrier in its exercise of salvage rights should be referred to the claims office for prompt resolution. Acceptance of an item by a carrier when offered as salvage does not establish the value of the item nor liability for the damage.
- c. Carriers have agreed not to exercise their salvage rights:
 - (1) When the depreciated replacement value of all salvageable items in a shipment totals less than \$100, or a single item is less than \$50. If a shipment has more than one salvageable item, one of which has a value of \$50 or more, yet the total of all salvageable items is \$100 or less, the carrier may exercise its salvage rights;
 - (2) When the item involved is hazardous or dangerous to the health and safety of the military member's family (e.g., broken mirrors, spoiled foodstuffs, broken glass, moldy mattresses). However, antiques figurines, and crystal with a single item value of \$50 or more will be retained for exercise of salvage rights by the carrier.
- d. In the event a carrier is unable to exercise its salvage rights due to the disposal of an item(s) by the military member, the carrier's liability shall be reduced based

- 6.0.4. d. (cont'd) upon the following method of determining the salvage value of the item(s):
- (1) For a single, individual item which has a depreciated replacement value of less than \$50, the carrier will receive no credit for salvage.
 - (2) For any claim containing a salvageable item of \$50 or more, or multiple salvageable items which have a combined total of \$100 or more, the item's (items') salvage value credited to the carrier will be 25 percent of the item's (items') depreciated replacement value based upon the Joint/Military Industry Depreciation Guide (See enclosure 1).

P. Recovery from Third Parties.

1. Although the term carrier will be used throughout this section, the third party from which recovery is sought may be a warehouseman, packing and crating contractor, mobile home carrier, insurer, or other third party under appropriate circumstances. In any case, this section concerns the recovery from the party who is liable for a loss which gives rise to a section 6-H claim.
2. To initiate a successful recovery process, the claimant must notify the carrier of the loss as provided in section 6-H.
3. When the Coast Guard settles a claim, it has an interest in recovering the amount paid from the carrier, subject to carrier liability limits. Occasionally this recovery exceeds the original settlement to the claimant. In such cases, any additional recovery would be forwarded to the claimant under section 6-L. Once the Coast Guard has a subrogated claim against the carrier, collection will be in accordance with Chapter 16, as modified by this section.
4. The claims process imposes certain obligations upon the claimant which may affect the Coast Guard's settlement with the claimant. For example, the Coast Guard's recovery from the carrier may also be limited by the claimant's failure to provide timely notice or to submit a timely claim. In such cases, in the absence of extenuating circumstances, the claimant's settlement may be reduced by the amount which would have been recoverable from the carrier. Other obligations include:
 - a. Allowing the carrier to inspect the property upon the carrier's request within 45 days of delivery or dispatch of each DD1840R, whichever is later.
 - b. Forwarding all correspondence between the claimant and the carrier or an insurer including certified or registered mail return receipts to the claims settlement authority,

- 6.P.4. c. Forwarding all recovery checks which may be received from the carrier to the claims settlement authority when a claim has been asserted against the Coast Guard,
- d. Making damaged items available for salvage, and
- e. When a claim arising out of the same incident (e.g., one household goods shipment) has been submitted to both the carrier and to the Coast Guard for settlement, obtaining written authorization from the claims settlement authority before cashing any carrier recovery check which is less than the amount the Coast Guard could have recovered from the carrier.

Claimants are encouraged to contact their Claims Investigating Officer for guidance.

5. Once payment has been approved, the settlement authority shall assert the subrogated claim of the U.S. against the carrier. No demand against a carrier will be made if the value of the damage to the household goods was \$25.00 or less. The carrier shall be informed that interest, administrative costs, and late payment penalties will be assessed. For these subrogated claims, payment is due 120 days from the date of the settlement authority's first demand upon the carrier. The carrier will also be advised of the Government's intent to collect the claim by administrative offset, if available, or use other appropriate collection methods. See Enclosure (3) and Paragraph 16-H. An opportunity to request review of the validity and amount of the debt will be provided. See Enclosure (9).
- a. If the carrier's liability to the claimant exceeds the subrogated interest of the U.S. (the amount paid to claimant by the COast Guard), the settlement authority shall insure that the carrier knows that the claim of the U.S. represents only a portion of the carrier's outstanding liability arising from the incident. (Compare column 23h of Coast Guard Form CG-4111 with block 17 of Coast Guard Form CG-4112A.)
- b. The claim settlement authority will inform the Finance Center of the existence of the claim for recording as an account receivable.
6. If recovery is unsuccessful, initiate appropriate collection action pursuant to Chapter 16.
7. A recovery from a carrier is processed in accordance with section 6-L. A carrier recovery sent directly to the claimant is addressed in section 6-N.

6.P.8. Decisions as to the method of collection, or to compromise, suspend, or terminate these subrogated claims will remain with the settlement authority. Settlement authorities are encouraged to use Coast Guard transportation offices, Coast Guard contracting offices, the Coast Guard Finance Center, and other Government entities in asserting claims against carriers by means of offset.

9. Appeals to GAO.

- a. The carrier or insurer under the provisions of 4 CFR Part 31 and 31 U.S.C. (^)3702 may appeal a final determination of its indebtedness to the General Accounting Office (GAO). The agency is responsible for submitting the administrative record. All submissions to GAO must be approved by the Chief, Claims and Litigation Division.
- b. Settlement authorities receiving a request from a carrier or written notice that the carrier wants the matter referred to GAO will prepare an administrative record for submission to GAO. GAO submissions will include a brief stating the relevant facts, issues, analysis with cites to applicable statutes, regulations, contract provisions, cases, or GAO decisions.
- c. An original and two copies will be forwarded to G-LCL for review. If acceptable, the package will be forwarded with a cover letter indicating that final agency action has been taken. If the submission is not acceptable, the package will be returned to the settlement authority with comments.
- d. All appeals of carrier indebtedness should be addressed to:

Claims Group (GGD)
Room 5446
General Accounting Office
441 G Street., NW
Washington, DC 20548

CHAPTER 7

CLAIMS UNDER ARTICLE 139, UNIFORM CODE OF MILITARY JUSTICE

A. Authority.

1. Unlike other administrative claims, the statute authorizing this administrative claim, Title 10, U.S. Code, Section 939 (Article 139, Uniform Code of Military Justice (UCMJ)), provides each commanding officer with authority similar to that of a settlement authority.
2. Article 139, UCMJ authorizes the Secretary to promulgate regulations to carry out the mandate of the Article. This authority has been delegated to the Commandant in Title 49 Code of Federal Regulations 1.46(pp). The Commandant re delegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131. The regulations for carrying out the mandate of Article 139, UCMJ are contained in 33 Code of Federal Regulations, Part 25, Subpart G, and as supplemented by this chapter.

B. Scope.

1. Article 139, UCMJ neither creates any U.S. liability nor authorizes the expenditure of federal funds for the payment of claims. Article 139, UCMJ instead provided the authority to administratively determine whether or not a Coast Guard member is liable to a claimant and provides a means for compensating the claimant from the pay of the responsible Coast Guard member.
2. Due to the unique nature of this claim other Chapters of this Manual and Title 33 Code of Federal Regulations Part 25 (other than Subpart G) are not applicable unless specifically referenced. Title 33 Code of Federal Regulations 25.701 - 25.709 apply.

C. Claimants. The following persons may not be claimants:

1. A subrogee and
2. A department, agency, or instrumentality of the U.S.

D. Claims Cognizable. A claim for damage to, or loss or destruction of, property that has been willfully damaged or destroyed, or wrongfully taken by a Coast Guard member.

E. Claims Not Payable. A claim is not payable if it:

1. Results from death or personal injury;

- 7.E.2. Results wholly or partly from the grossly negligent, or reckless act of the claimant, or the claimant's agent or employee;
3. Results from negligence on the part of Coast Guard personnel;
4. Is for indirect or remote damages;
5. Results from acts or omissions of military personnel while acting within the scope of their employment;
6. Extends to damage or loss that results from the claimant's failure to mitigate damages;
7. Has been paid by a third party;
8. Is a subrogated claim; or
9. Is for damage to or loss of property owned by the United States or by a Nonappropriated Fund Activity.

F. Assessment Limitation on Claims. A claim is permitted in any amount; however, assessment is limited to an amount equal to one-half of one month's basic pay of the offender. If there is more than one co-offender the amount assessed against each offender shall be based on the basic pay of the co-offender receiving the lowest monthly pay. The total award may be assessed in this maximum amount against each co-offender. A lesser amount may be assessed individual co-offenders if the fact finding body determines the various co-offenders to have differing liabilities.

G. Procedure.

1. Time Limitation. A claim may be settled under this Chapter only if presented within 90 days after it accrues unless good cause is shown for the delay.
2. Claim form.
 - a. An oral complaint is sufficient notice.
 - b. The oral complaint shall comply with section 3-A before further action is taken on the complaint. The first Coast Guard command receiving the oral or written complaint in an insufficient format shall assist the claimant, if necessary, in the preparation of the claim form. Before the claimant is advised to go to any expense in proving damages, he should be advised of the maximum amount allowable under section 7-F. (e.g. If a complaint is against two Coast Guard personnel in pay

- 7.G.2. b. (cont'd) grade E-2, the maximum the claimant can receive under this chapter is two times one-half of one month's basic pay of an E-2.)
3. Once the claim is documented, it shall be forwarded to the commander of the units to which the alleged Coast Guard offenders were attached at the time of the damage or loss. If difficulties arise in determining the appropriate commander, inquiries should be directed to Commandant (G-LCL). The claimant shall be informed of any forwarding of the claim by Coast Guard Form CG-4217. If the identity of the alleged offenders and their units are unknown, the claim shall be forwarded to the Commander of the Coast Guard District within which the incident occurred.
 4. Upon receipt of the claim, the commander of the unit or units to which the alleged offenders are attached or the cognizant district commander shall convene an appropriate fact-finding board of at least one, but no more than three, commissioned officers, to investigate the complaint, and if appropriate, to assess the damages sustained.
 5. A fact finding board required for any other reason which meets the requirements of subparagraph 7-G-4 may also serve as the fact-finding board conducted for the purposes of Article 139, UCMJ. (See paragraph 7-G-3 concerning notifying the claimant.) The command to which an offender is attached at the time the fact-finding board submits its report shall be the command which takes action on the report of an investigation and assesses, if appropriate, any damages.
 6. The board shall be guided as appropriate, by the Administrative Investigations Manual (COMDTINST M5830.1).
 7. The board may refer to other Chapters of this Manual or Title 33 Code of Federal Regulations Part 25 for guidance in determining the measure of damages.
 8. A determination of damages and the liability of each alleged offender shall be stated as findings of fact or opinions as appropriate. The report shall recommend the amount, if any, to be assessed and charged against the pay of each alleged offender.
 9. Action by the command upon the report of the fact-finding board.
 - a. If an offender is no longer attached to the command ordering the investigation when the investigation is completed, the investigation shall be immediately

- 7.G.9. a. (cont'd) forwarded by the convening command to the offender's new command or the common superior of each command to which the offenders are presently attached.
- b. The command shall specifically approve in whole or in part or disapprove the assessment or nonassessment against offenders or alleged offenders attached to the command.
- c. If the command's action is an approval in part or a disapproval of the fact-finding board's recommendation concerning assessment against an offender, it shall be supported by a detailed endorsement which discusses the factual and legal matters supporting the action.
- d. If the command determines that the claim be disapproved (that no member of the command is responsible), the claimant is informed in writing by certified or registered mail, return receipt requested.
- e. If the command determines that an assessment shall be charged against a member of the command;
- (1) The command shall inform the offender in writing of the amount assessed, and that an appeal may be submitted within 15 days to the next superior in the chain of command via the command approving the assessment.
- (2) On the sixteenth day after notice to the offender if the offender does not appeal the assessment or upon receipt of the reviewing authority's action on appeal, the command shall:
- (a) Inform the claimant in writing by certified or registered mail, return receipt requested, that the claim is disapproved; or
- (b) Inform the claimant in writing of the amount in which the claim is approved, as applicable and direct the Authorized Certifying Officer to check the members pay in the amount of the approved assessment and remit payment to the claimant.
10. There is no appeal available to the claimant. The claimant may request reconsideration by the command

CHAPTER 8

AUXILIARY CLAIMS

A. Authority.

1. Title 14 U.S. Code Section 830 authorizes the Coast Guard to pay members of the Auxiliary for specified damage to or loss of a facility. This authority was vested in the Secretary of the Treasury by Section 1 of Reorganization Plan No. 26 of 1950 pursuant to the Reorganization Act of 1949 (63 Stat 203). This authority was vested in the Secretary of Transportation by Title 49 U.S. Code Section 108.
2. This authority has been delegated to the Commandant in Title 49 Code of Federal Regulations ?1.46(b). The Commandant redelegated this authority to the Chief Counsel via Title 33 Code of Federal Regulations ?25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities established by the Chief Counsel. (Title 33 Code of Federal Regulations ?25.133).
3. Redelegations are in paragraph 5-B-2.

B. Scope.

1. This chapter prescribes procedures for administrative settlement of claims by Auxiliarists for damaged or lost facilities or related equipment. In case of conflict between the provisions of this chapter and the provisions of any Auxiliary Manual, this chapter governs.
2. This chapter does not address death, personal injury compensation, or claims for medical expenses of Auxiliarists injured on duty. Such claims are processed within the Auxiliary program pursuant to the authority of 14 U.S.C. ?832 and ?707 (which incorporates by reference the compensation scheme of the Federal Employees' Compensation Act, 5 U.S.C. ??7901-7903 and ??8101-8193).
3. This chapter does not address reimbursement or compensation for traveling expenses, subsistence, routine operational expenses such as fuel, oil, water, power, supplies, or provisions. Such claims are processed within the Auxiliary program.
4. For tort suits against Auxiliarists arising from incidents arguably or allegedly occurring while they were performing official duties (i.e., within the scope of employment), see Section 18-C of this manual regarding personal representation of Coast Guard personnel.

C. Claimants.

1. A claim may be presented by an Auxiliarist who has sustained loss or damage to a facility and/or related equipment while assigned, in accordance with Article 3-A of the Auxiliary Operations Policy Manual, COMDTINST M16798.3 (series), to authorized specific Coast Guard duty.

D. Claims Payable.

1. Unless otherwise prohibited, a claim is payable if:
 - a. At the time the damage or loss was sustained, the facility was assigned, by specific orders, issued in accordance with Chapter 3 of the Auxiliary Operations Policy Manual, COMDTINST M16798.3 (series), to authorized Coast Guard duties and was operated within the scope and limitations of those orders; and
 - b. All forms required by the Auxiliary Operations Policy Manual, COMDTINST M16798.3 (series), are on file and current.
2. In the case of a trailed Auxiliary facility, the trailer is equipment for which a claim may be made. Such a claim will be payable only if the trailer is damaged under the following circumstances: (1) while towing the vessel from its normal storage or mooring location on a reasonably direct route to a launching ramp appropriate for the assigned area; or (2) during a similar trip to return the vessel to storage; or (3) while the trailer is parked at the launching facility during the assigned mission.
3. A motor vehicle which incurs damage either towing a trailed facility or transporting a mobile radio facility, pursuant to official orders, is equipment for which reimbursement may be made, but only if:
 - a. The damage was incurred while traveling in a reasonably direct route to or from an appropriate launching ramp, the point of duty, or while being used during the assigned mission; and
 - b. No third party was involved in the causation of the damage. If a third party was responsible for the damage, payment may still be made if:
 - (1) Reasonable efforts to identify or locate the third party have been unsuccessful; or
 - (2) The third party is both uninsured and insolvent.

E. Claims Not Payable. A claim is not payable if it:

1. Is for damage to, or loss of, equipment which was not reasonable for the claimant to possess given the duties assigned;
2. Results wholly or partly from the gross negligence or willful misconduct of the claimant;
3. Has been the subject of a claim by the Auxiliarist against the Auxiliarist's insurer to the extent the Auxiliarist has been reimbursed by the insurer;
4. Is presented by, or on behalf of, insurers or other subrogees;
5. Results from the failure of the claimant to properly maintain the facility or equipment;
6. Is for the repair or replacement of a facility or equipment attributable to normal wear; [Discussion: to be compensable, the damage or loss must be due to some specific and identifiable cause in the patrol operations or evolution engaged in when the damage occurred. The mere fact that the Auxiliarist was under official orders at the time of the damage is not sufficient reason to pay the claim. If the damage or loss has no such identifiable "patrol" cause, it is presumed that it arose from normal wear, a defect in the facility or equipment, or failure to maintain the facility or equipment.];
7. Is for routine operational expenses such as fuel, oil, water, power, supplies, or provisions;
8. Is for damages resulting from a latent defect in the facility; although, consequential damages which are arguably more severe due to the nature of the duties may be reimbursed (e.g., hull damage resulting from an allison which occurs when a faulty fuel pump fails may be reimbursed, since the orders placed the vessel in the vicinity of the object with which it allided);
9. Is for insurance premiums;
10. Is for moorage or dockage expenses, except as may be specifically attributable to emergency docking or the cost of surveying or repairing otherwise compensable damage to the facility or equipment; or
11. Is for loss or damage to personal property, other than a facility and its equipment, incurred while the Auxiliarist was eligible for travel expense reimbursement. [Discussion: To be compensable, the lost or damaged item must fairly fall within the category of "facility equipment" (i.e., PFD,

| 8.E.11. (cont'd) binoculars, compass, boat-hook, etc.). Personal
| property such as eyeglasses, jackets, wristwatches, boat-
| shoes, wallets, etc., are not facility equipment.
| Auxiliaries are not military or civilian employees within
| the meaning of the Military Personnel & Civilian Employees'
| Claims Act.]

F. Procedure.

- | 1. Claims must be submitted in writing to the order issuing
| authority within six months of the incident giving rise to
| the claim.

- | 2. Claims shall be submitted and processed in accordance with
| the guidance published by the cognizant Maintenance &
| Logistics Command.

CHAPTER 9

ADMIRALTY CLAIMS

A. Authority.

1. The authority for this Chapter is Title 14 U.S. Code Sections 646 and 633. These statutes authorize the Secretary to settle certain administrative claims and to promulgate regulations for the administrative settlement of such claims.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations 1.46(b). The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities established by the Chief Counsel. (Title 33 Code of Federal Regulations 25.133.)
3. Redelegations are in paragraph 5-B-3.
4. In addition to the information in this Chapter, regulations may be found at Title 33 Code of Federal Regulations 25.201 - 25.207.

B. Scope.

1. This Chapter prescribes procedures for administrative settlement of maritime tort claims. Claims may be presented for death, personal injury, or property damage caused by a vessel in the service of the Coast Guard, or the result of a maritime tort committed by an agent of the Coast Guard. Acceptance of payment by the claimant is final and conclusive settlement for all purposes. Examples of potential maritime torts include:
 - a. Fire or explosion on a Coast Guard vessel which affects others;
 - b. Damage to fish nets or traps, shellfish traps, oyster beds, clam flats;
 - c. Oil spills, paint spray, or blowing tubes from a Coast Guard vessel which affect others;
 - d. Personal injury or death of non-Coast Guard personnel (including longshoremen, harbor workers, repair services, visitors, passengers, and guests); or
 - e. Swell wash or wake damage.

9.B.2. This Chapter also applies to claims for towage and salvage assistance rendered to Coast Guard vessels or property.

3. A claim also cognizable under Chapter 12, Foreign Claims, shall be considered under this Chapter unless consideration under Chapter 12 is specifically authorized by Commandant (G-LCL).

C. Claims Not Payable. A claim is not payable if it:

1. Results from action by an enemy or directly or indirectly from an act of the Armed Forces of the U.S. in combat;
2. Is purely contractual in nature;
3. Is for death or personal injury of a U.S. employee for whom benefits are provided under the Federal Employees' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the U.S. on behalf of the injured employee;
4. 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;
5. Arises from private or domestic obligations as distinguished from governmental obligations; or
6. Is for damage to or loss of personal property of military personnel or civilian employees which is cognizable under Chapter 6, Personnel Claims.

D. Investigation.

1. In addition to the general guidance provided in Chapter 2, the following information concerning marine surveys is relevant to admiralty claims.
 - a. In certain, significant admiralty cases, such as those involving major collision or grounding damage, surveys of damage are essential to eliminate later controversy. A survey is a formal, technical, joint inspection by representatives of all interested parties, not a simple one-party appraisal or estimate often used in the settlement of other claims. Failure to permit opposing interests to survey damage may result in a heavy burden of proof when later seeking to establish damages. In addition to local marine surveyors, settlement authorities

- 9.D.1. a. (cont'd) should consider using the United States Salvage Association, Inc., the contract surveyor for the Navy. Because a survey may be required on short notice, settlement authorities should determine in advance what surveyors are available within their geographic area.
- b. If a claim has been made or will obviously be made, the local settlement authority should insure that the (potential) claimant or claimant's representative receives timely notice of the Coast Guard's desire for an immediate survey and the name of the surveyor who will represent U.S. interests.
- (1) Oral notification shall be confirmed in writing.
 - (2) Five working days after oral notification another oral request shall be made, and a second letter sent the same day by certified or registered mail.
- c. A survey report lists the items of damage and the recommended repairs. It may also include an estimate of the reasonable cost of repairs. The surveyor(s) may also be retained as the repair work is accomplished to insure that the time and money being expended are for the damage identified by the survey and not preexisting or later received damage.
2. Investigators should preserve original navigation and other operational records, and the actual charts and publications used which may be pertinent to a claim. These documents shall be preserved "as is" (no erasures or alterations). Corrections which are operationally necessary should be made in such a way that any relevant, original entry is still legible.
 3. Problems often arise because of differences between clocks used by different individuals in making entries (e.g. the engine room and pilot house clocks). Whenever an incident may result in a claim, the various clocks should be compared and this comparison noted as soon as possible.
 4. In addition to the concept of interdepartmental waiver discussed in paragraph 2-B-1, treaties provide for the waiver of damages arising out of maritime torts involving certain public vessels. Incidents involving public vessels of foreign countries should be brought to the attention of the local settlement authority who will discuss the facts with Commandant (G-LCL).

E. Procedure.

1. Except as noted below, a claim shall be processed in accordance with Chapter 3 or 4 as applicable.
2. The limitations period for admiralty claims is unique.
 - a. The claimant must agree to accept the settlement and the settlement must be approved for payment by the settlement authority within two years of the date that the cause of action accrues. Without regard to the merits of the claims, payment is prohibited unless these requirements are met.
 - b. Neither the presentation of a claim to the Coast Guard nor its consideration by the Coast Guard waives or extends the two year statute of limitations period. Similarly, a pending administrative claim has no effect on the two year period within which the claimant must file suit or be barred from litigation under the Public Vessels Act or Suits in Admiralty Act (46 U.S. Code Section 745).
 - c. Once a suit is filed in Federal District Court, the Coast Guard will no longer attempt administrative settlement. However, in conjunction with defending the litigation, settlement negotiations may continue, with the consent of the Department of Justice.
 - (1) Requests to continue negotiation shall be included with the litigation report submitted to the cognizant Department of Justice office.
 - (2) Request shall include a summarization of negotiation efforts to date, an outline of future negotiation efforts, and enclosures of pertinent portions of the claim file.
 - d. If the Department of Justice consents to further negotiation, and agreement is reached, the terms of the settlement are incorporated into a consent judgment, or stipulation, upon which payment will be made upon adoption by the court.
3. For claims for certain damages sustained on or to land the Admiralty Jurisdiction Extension Act (46 U.S. Code Section 740) has its own statute of limitations which contains a unique relationship between the right to file suit and a prerequisite administrative claim.

| 9.E.4. When an incident involving a public vessel may give rise to
| claims, or when an actual claim is received, settlement
| authorities should be cognizant of the provisions of the
| Limitation of Liability Act, 46 U.S. Code Sections 183-185.
| Should the damage be caused by public vessel, the U.S. may
| avail itself of the provisions of the Act. To secure maximum
| protection, Commandant (G-LCL) should be contacted anytime
| claims may be received arising out of an incident which may
| exceed the value of the public vessel causing the damages
| claimed.

CHAPTER 10

MILITARY CLAIMS ACT

A. Authority.

1. The authority for this Chapter is Title 10 U.S. Code Section 2733. The Secretary's authority has been delegated to the Commandant and Chief Counsel in Title 49 Code of Federal Regulations 1.46(j).
2. Regulations implementing the Military Claims Act may be found at Title 33 Code of Federal Regulations 25.401-25.409.
3. Redelegations are at paragraph 5-B-4.

B. Scope.

1. This Chapter prescribes procedures for administrative settlement of claims under the Military Claims Act for death, personal injury, or damage to or loss of property;
 - a. Caused by military personnel or civilian employees of the Coast Guard acting within the scope of their employment;
or
 - b. Otherwise incident to the noncombat activities of the Coast Guard.
2. Unlike the Federal Tort Claims Act, the Military Claims Act does not authorize anyone to sue the U.S. It merely authorizes the settlement and payment of certain administrative claims.
3. Non-combat activities are essentially military in character, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for the payment of these claims (e.g. Maneuvers and special exercises, practice firing, ice-breaking operations, law enforcement endeavors, and the movement of vehicles designed especially for Coast Guard use).

C. Claimants. Anyone may be a claimant.

D. Claims Not Payable. A claim is not payable under this Chapter if it:

1. Results from action by an enemy, or directly or indirectly from an act of the Armed Forces of the U.S. in combat;
2. Is purely contractual in nature;
3. Results wholly or partly from the negligence or wrongful act of the claimant or the claimant's agent, unless comparative negligence is applicable under local law;
4. Is for death or personal injury of a U.S. employee for whom benefits are provided under the Federal Employees' Compensation Act, 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 U.S. on behalf of the injured employee;
5. Is cognizable under Chapters 11 or 12;
6. Is for reimbursement for medical, hospital, or burial services furnished at the expense of the U.S.;
7. Is excludable under Title 28 U.S. Code subsections 2680(a), (c) (except for some damages arising from "innocent" vessel law enforcement boardings and detentions), (e), (f), (h), or (j);
8. Results from a specific risk which the claimant assumed in writing before the accident giving rise to the claim;
9. Is for damage to or loss of a letter or postal matter while in the possession of the Postal Service;
10. Is for rent or other payments involving the acquisition, use, possession, or disposition of real property or interest therein by and for the Coast Guard except damage to or loss of real property, including damage or loss incident to the use and occupancy of real property by the Coast Guard;
11. Is for the taking of private property by trespass except for actual physical damage; or
12. Is for death or personal injury of member or civilian employee of the Coast Guard whose death or injury was incident to service.

CHAPTER 11

FEDERAL TORT CLAIMS ACT

A. Authority.

1. The Federal Tort Claims Act, Title 28 U.S. Code Sections 2671-2680, together with 28 CFR Appendix to Part 14, authorizes the Secretary to settle certain administrative claims if the amount of the adjustment, compromise, or award does not exceed \$100,000.
2. The Secretary delegated this authority to the Commandant in 49 CFR ^1.45(a)(2), and (3). The Commandant re delegated this authority to the Chief Counsel in 33 CFR ^25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities (33 CFR ^25.133).
3. Redelegations are at paragraphs 5-B-5.
4. Department of Justice guidelines for processing claims under the Federal Tort Claims Act (FTCA) are in 28 CFR ^^14.1-14.11 (hereinafter Department of Justice Regulations).
5. If the Secretary, or the Secretary's delegate, settles an administrative claim under the FTCA for an amount in excess of ^50,000, the Appendix to 28 CFR Part 14 requires that a memorandum fully explaining the basis for the action be executed, and a copy of the memorandum be sent to DOJ after the fact.

B. Scope. See the Department of Justice Regulations.

C. Claimants. See the Department of Justice Regulations.

D. Claims Payable. Unless otherwise prohibited, a claim for death, personal injury, damage to or loss of property is payable when the claim arises from the negligent or wrongful act or omission of a military member or civilian employee of the Coast Guard acting within the scope of employment under circumstances in which the U.S., if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

E. Claims Not Payable.

1. 28 U.S.C. ^2680 lists specific exclusions, the interpretation of which is a federal question decided under federal law.

11.E.2. Punitive damages are prohibited by statute.

3. Interest prior to judgment is prohibited by statute.

4. Although not excluded by the Federal Tort Claims Act, the following claims may not be paid:

- a. A claim for death or personal injury of a member of the armed forces, or damage to or loss of a servicemember's personal property, incurred incident to service. Feres v. U.S., 340 U.S. 135 (1950);
- b. A claim for death or personal injury of a government employee for whom benefits are provided by the Federal Employees' Compensation Act (5 U.S.C. ^^7901-7903 & 8101-8193) (this compensation scheme also applies to Auxiliaries by virtue of 14 U.S.C. ^^832 & 707);
- c. A claim for death or personal injury of a civilian employee of a nonappropriated fund activity for whom benefits are provided under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. ^^901-950 and 5 U.S.C. ^8171);
- d. A claim for taking of private property by trespass implied under local law or of a type contemplated by the Fifth Amendment to the U.S. Constitution;
- e. A claim for damage from or by flood waters contemplated by Title 33 U.S. Code Section 702c;
- f. A claim based solely upon a theory of absolute liability or liability without fault;
- g. A claim for patent or copyright infringement; or
- h. A claim excluded by the Civil Defense Act (Title 50 App. U.S. Code Section 2294).

5. A claim is not payable if not properly presented within 2 years from the date of accrual. [28 U.S.C. ^2401(b)].

F. Procedure.

- 1. Except as specifically noted below, a claim shall be processed in accordance with Chapter 3 or 4, as applicable.
- 2. Failure of a settlement authority to take final action on a claim within six months of receipt may be treated by the claimant as a final denial for the purposes of filing suit in federal district court.

- 11.F.3. Each amendment of the claim pursuant to ^14.2 of the Department of Justice Regulations shall be acknowledged in writing by the settlement authority. The acknowledgment shall inform the claimant that the amendment constitutes a new claim giving the Coast Guard an additional six months from the date of amendment within which to make final administrative disposition.
4. Consultation with the Department of Justice is required in every case in which it is the opinion of the settlement authority that:
- a. A new precedent or a new point of law is involved;
 - b. A question of policy is or may be involved;
 - c. The U.S. is or may be entitled to indemnity or contribution that exceeds \$600 from a third party, and the Coast Guard is unable to settle the third party claim;
 - d. For any reason, the compromise of a particular claim, as a practical matter, shall control the disposition of related claims in which the amount to be paid may exceed \$100,000; or
 - e. Where the U.S., an employee, agent, or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.
5. If a consultation with the Department of Justice is required, the settlement authority shall forward the claim to the Commandant (G-LCL). The forwarding letter shall include the items specified in subsections 14.7(a), (b), and (c) of the Department of Justice Regulations.
6. Each notification of disapproval shall be by certified or registered mail, and shall inform the claimant that if dissatisfied:
- a. Suit may be filed in federal district court within six months; and
 - b. Any request for reconsideration must be in writing, prior to filing suit, and filed with the settlement authority within six months of the date of the disapproval letter (section 3-I).
7. Payment of Claims.

11.F.7. a. Claims approved for payment of \$2,500 or less are paid from Department of Transportation claims appropriations.

b. Claims approved for payment over \$2,500 shall be forwarded to the General Accounting Office, General Government Division (Claims Section), 441 G Street, NW, Washington, DC 20548. The referral to the General Accounting Office, shall consist of:

(1) A letter of transmittal including a statement showing that the officer signing the Standard Form 1145 as the approving authority has the authority to act under Title 28. U.S. Code Section 2672;

(2) For claims approved for payment over \$100,000, an approval by the Attorney General;

(3) The claim;

(4) The action of the settlement authority;

(5) The settlement agreement if applicable; and

(6) The original power of attorney if applicable. Where payee is a minor or incapable the full legal name of the individual and relationship to the payee should be listed on the voucher (e.g. John A. Doe as guardian of his son John A. Doe, Jr.). See paragraph 3-G-3 concerning minors.

c. Post judgment interests can only be paid in accordance with Title 31 U.S. Code Section 1304.

8. Claims alleging medical malpractice or unprofessional conduct by USPHS personnel attached to the Coast Guard will ultimately be adjudicated by the Office of General Counsel, Department of Health and Human Services. However, a timely and quality internal investigation by the Coast Guard will often be critical to a proper resolution of such a claim.

a. A medical malpractice type claim involving USPHS personnel, or information regarding such a potential claim, will be forwarded immediately to the Chief, Claims and Litigation Division (G-LCL).

b. G-LCL, in consultation with the Office of Health Services (G-K), will make a decision whether the investigation should be conducted locally with support from a local legal office, or coordinated by G-K with legal support from G-LCL.

9. Claims alleging medical malpractice or unprofessional conduct by Coast Guard personnel will be adjudicated by the Chief, Claims and Litigation Division. Therefore, such a claim,

- | 11.F.9. (cont'd) or information regarding such a potential claim,
| will be forwarded immediately to G-LCL. G-LCL, in
| consultation with the Office of Health Services (G-K), will
| make a decision whether the investigation should be conducted
| locally with support from a local legal office, or
| coordinated by G-K with legal support from G-LCL.
- | 10. Claim settlement authorities shall consult with the Chief,
Claims and Litigation Division prior to taking any action
(approval, disapproval, or request for further information,
etc.) on all claims alleging personal injury or death due to
exposure to radiation, asbestos, or other potentially toxic
substances.

CHAPTER 12

FOREIGN CLAIMS

A. Authority.

1. The authority for the majority of this Chapter is Title 10 U.S. Code Section 2734, commonly referred to as the Foreign Claims Act. It authorizes the Secretary to settle certain administrative claims.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations ^1.46(b). The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations ^25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities (33 Code of Federal Regulations ^25.133).
3. Redelegations are at paragraph 5-B-6.
4. Regulations implementing the Foreign Claims Act are at Title 33 Code of Federal Regulations ^^25.501-25.515.
5. Authority for the handling of claims arising in foreign countries is also contained in Title 10 U.S. Code Sections 2734a and 2736 which provide for referral of claims to a single armed service. These claims are handled under International Agreements (see section 12-G). A listing of armed services and countries may be found in the army's "Legal Services Claims," Air Force's "Claims Manual," or Navy's "JAG Manual."

B. Scope.

1. To promote and maintain friendly relations through the prompt settlement of meritorious claims, this Chapter prescribes procedures for the administrative settlement of claims against the U.S. by a foreign country or a political subdivision or an inhabitant thereof, for death, personal injury, or damage to or loss of property occurring outside the U.S., its territories, commonwealths, or possessions caused by a military member or civilian employee of the Coast Guard, or otherwise incident to noncombat activities of the Coast Guard.
2. Relationship to other claims.
 - a. A claim which is also cognizable under Chapter 6, Personnel Claims, shall be considered first under Chapter 6.

- 12.B.2. b. A claim which is also cognizable under Chapter 9, Admiralty Claims Act, shall be considered first under this Chapter only when specifically authorized by Commandant.
- c. A claim which is also cognizable under Chapter 10, Military Claims Act, shall be considered first under this Chapter.

C. Claimants.

1. An inhabitant of a foreign country is a proper claimant.
2. An inhabitant of a foreign country is a person whose usual place of abode is in a foreign country. A corporation or other business association organized in the U.S. may be an inhabitant of a foreign country if it has been admitted to do business in the foreign country and maintains a permanent office in the foreign country. It is not necessary that a claimant be a citizen of or legal domiciliary of the foreign country. U.S. citizens may be claimants if they establish that they were inhabitants of the foreign country, and they were not employees of the U.S. at the time of the incident. Citizens of the U.S., or its territories, commonwealths, or possessions who are visiting, touring, or temporarily employed in a foreign country are usually not inhabitants of a foreign country.
3. The following are prohibited from being claimants:
 - a. Civilian employees of the U.S. and U.S. military personnel and their dependants, who are in a foreign country primarily because of their own or their sponsor's duty status;
 - b. Other citizens of the U.S., its territories, commonwealths, or possessions, unless they can establish their status as inhabitants of the foreign country; and
 - c. Subrogees.

D. Claims Payable.

1. Unless otherwise prohibited, a claim is payable if it was incident to a non-combat activity of the Coast Guard or was caused by:
 - a. A military member of the Coast Guard;
 - b. A civilian employee of the Coast Guard who is not a national of the country in which the incident

12.D.1. b. (cont'd) occurred; or

c. A civilian employee of the Coast Guard who is a national of the country in which the incident occurred if:

(1) The employee was within the scope of employment; or

(2) An employer or owner of the property involved would be liable under local law.

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

3. Local law or custom pertaining to contributory or comparative negligence, and to joint tort-feasors, is applied to the extent practicable.

E. Claims Not Payable. A claim is not payable if it:

1. Results from action by an enemy or directly or indirectly from an act of the Armed Forces of the U.S. in combat;

2. Is purely contractual in nature;

3. Is for the death or personal injury of a U.S. employee for whom benefits are provided under the Federal Employees' Compensation Act, 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 U.S. on behalf of the injured employee;

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

5. Arises from private or domestic obligations as distinguished from governmental transactions;

6. Is a bastardy claim; or

7. Involves a patent or copyright infringement.

F. Procedure.

1. If an International Agreement exists between the claimant's country and the U.S., see section 12-G.

2. Time Limitation. A claim may be settled under this Chapter only if presented within 2 years after it accrues.

12.F.3. Claim form.

- a. An oral complaint is sufficient to stay the 2 year limitation.
- b. The oral complaint shall comply with section 3-A before further action is taken on the complaint. The first Coast Guard command receiving the oral complaint or written complaint in an insufficient format shall assist the claimant, if necessary, in preparation of the claim form (section 1-D).

4. Foreign Claims Commissions.

- a. A command shall appoint necessary foreign claims commissions within the command's area of geographic jurisdiction in accordance with paragraph 5-B-6. A command shall appoint commissions consisting of one member or three members.
 - (1) Each member shall be senior to the alleged tort-feasor or the person who allegedly occasioned the damage, injury, or death.
 - (2) Each member shall also have experience as is considered adequate by the command to qualify him to analyze evidence, determine facts, and apply pertinent legal principles.
 - (3) At least one member of each foreign claims commission shall be a civilian employee of the Coast Guard in an assigned legal billet, a law specialist, or a judge advocate officer of another armed service.
 - (4) If the commission consists of three members, the senior member shall sign all documents produced by the commission.
- b. A foreign claims commission shall investigate any claim within its jurisdiction in accordance with Chapter 2.
- c. A copy of each order appointing a foreign claims commission shall be forwarded to Commandant (G-LCL).
- d. The action of the foreign claims commission shall be in the form prescribed by Chapter 3 or 4 as appropriate.

12.F.4. e. The foreign claims commission shall determine a single settlement or recommended settlement. In the case of a foreign claims commission consisting of three members, the single settlement or recommended settlement shall be determined by a majority vote of the members.

f. Settlement.

(1) A foreign claim commission may settle any claim for which the award is \$10,000 or less.

(2) If a foreign claims commission with the requisite jurisdiction would approve in whole or part a claim for which the award would be over \$10,000 but not more than \$25,000, the action is forwarded in draft form to the command that appointed the commission.

(a) The command appointing the commission is permitted to:

1. Approve the recommended action; or

2. Disapprove the recommended action and return it to the commission with reasons justifying a higher or lower award.

(b) Upon receipt of this determination, the foreign claims commission may:

1. Take action consistent with the determination of the command appointing the commission; or

2. Attempt to settle the claim for \$10,000 or less.

(3) If a foreign claims commission with the requisite jurisdiction would approve in whole or part a claim for which the award would be over \$25,000, the commission forwards the claim to the Chief, Claims and Litigation Division, Office of Chief Counsel via the command who appointed the foreign claims commission.

(a) The claim shall be forwarded in accordance with paragraph 3-E-6.

12.F.4. f. (4) If a foreign claims commission with the requisite jurisdiction would deny a claim for which the award would be over \$10,000 but not more than \$25,000, the action is forwarded in draft form to the command that appointed the commission.

(a) The command appointing the commission is permitted to:

1. Approve the recommended action; or
2. Disapprove the recommended action and return it to the commission with reasons justifying an award.

(b) Upon receipt of this determination, the foreign claims commission must take action consistent with the determination of the command appointing the commission.

5. Reconsideration.

- a. While there is no appeal from the action of a foreign claims commission, any request from a claimant, or someone acting in his behalf, which appears to request relief shall be treated as a request for reconsideration. Refer to paragraph 3-I.
- b. If a foreign claims commission determines that its original action was correct and that no modification is in order, the foreign claims commission shall refer the entire file with a memorandum of opinion to the Chief Counsel via the command who appointed the commission. The foreign claims commission shall notify claimant using Coast Guard Form CG-4217 that the request has been forwarded.

G. International Agreements.

1. The U.S., by treaties, has established procedures for handling claims arising from the activities of members of the U.S. armed forces while on official duty in the applicable foreign countries. The treaties are commonly referred to as Status of Forces Agreements (SOFA). Essentially, the judge advocate general of one of the DOD services has the responsibility and authority to resolve and pay claims arising under a SOFA in the SOFA country. As of January 1985, SOFA agreements exist between the NATO countries, 4 U.S.T. 1792, and Australia, Iceland, Japan, Korea,

- 12.G.2. SOFA claims are resolved by a combination of law and diplomacy. Each command planning to visit a foreign country should be prepared to handle an incident giving rise to a SOFA claim (e.g. A vessel calling at a Spanish port should have an English and Spanish (for a potential claimant) language copy of Articles XXIV - XXXII of 27 U.S.T. 3095).
 - a. If an incident giving rise to a claim occurs in a SOFA country, the command should contact the staff judge advocate of the nearest Defense Attache Office in that country.
 - b. If the incident also results in imprisonment of Coast Guard personnel, refer to 33 C.F.R. Part 47 (10 U.S. Code Section 1037).
3. In each case, the SOFA must be reviewed to determine if it applies and what actions are required of the alleged tortfeasor's command. Many SOFAs require the alleged tortfeasor's command to make specific findings and to forward a "certificate of official duty" to the responsible JAG office. Because many SOFAs allow the claimant a judicial option, it is imperative that the alleged tortfeasor's command quickly complete the initial requirements of the SOFA.
4. When a SOFA applies, there will be no settlement activity by the Coast Guard. However, the settlement authority which would have settled the claim in the absence of the SOFA is responsible for obtaining all relevant information and getting it to the responsible JAG office (section 2024 Navy Jag Manual).
5. A claim arising from Coast Guard activities paid pursuant to a SOFA will be presented by the authorizing agency to the Coast Guard for reimbursement.

CHAPTER 13

CLAIMS NOT COGNIZABLE UNDER OTHER LAW

A. Authority.

1. The authority for this Chapter is contained in Title 10 U.S. Code Section 2737. It authorizes the Secretary to settle certain administrative claims.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations authority to the Chief Counsel in Title 33 Code of Federal Regulations ^25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities (Title 33 Code of Federal Regulations ^25.133).
3. Redelegations are at paragraph 5-B-7.
4. Regulations implementing this Act are at Title 33 Code of Federal Regulations ^^25.601-25.609.

B. Scope.

1. This Chapter prescribes procedures for administrative settlement of claims under Title 10 U.S. Code 2737 for death, personal injury, or damage to or loss of property. Unlike the Federal Tort Claims Act, this act does not authorize anyone to sue the U.S., but merely authorizes the settlement and payment of administrative claims.
2. This Chapter does not permit consideration of any claim cognizable under any other statute or regulation of the U.S.

C. Claimants. Anyone may be a claimant.

D. Claims Payable. Unless otherwise prohibited, a claim for death, personal injury, or damage to or loss of real or personal property is payable when:

1. Caused by a military member or civilian employee of the Coast Guard through the use of a vehicle (government owned or a private vehicle used when eligible for mileage reimbursement) at any place; or
2. the claim arises from the use of any other government owned property on a government installation.

- E. Claims Not Payable. A claim is not payable under this Chapter if it:
1. Is legally recoverable by the claimant under a compensation statute or an insurance policy;
 2. Results wholly or partly from the negligent or wrongful act of the claimant, or the claimant's agent or employee;
 3. Is a subrogated claim;
 4. Is cognizable under any other provision of law or regulation administered by the U.S.; or
 5. 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 U.S.

F. Procedure.

1. A claim shall be processed in accordance with Chapter 3 or 4 as applicable.
2. Time Limitation. A claim may be settled under this Chapter only if presented within 2 years after it accrues.
3. Payment Limitation. Although a claimant may demand any amount, approval and payment is limited to \$1,000.
4. If a claim is determined to be meritorious in any amount, claimant shall sign a written acceptance and release or a claim settlement agreement before payment.

CHAPTER 14

OIL POLLUTION DAMAGE AND REMOVAL CLAIMS

A. Authority.

1. The authority for this Chapter is contained in both the Federal Water Pollution Control Act (FWPCA), 1972, as amended, Title 33 U.S.C. Section 1321, and the Oil Pollution Act of 1990 (OPA 90), 33 U.S.C. Section 2701, et seq. The FWPCA authorizes the President to settle administrative claims against the United States for damage to or loss of property resulting from containment or removal activities. That Presidential authority was previously delegated to the Secretary by Executive Order 11735, Sections 5(a) and 5(b)(3). OPA 90 authorizes the President to reimburse proper claimants for removal costs and various and distinct types of property damage or economic loss caused by an oil pollution incident. Executive Order 12777, dated 18 October 1991, revoked E.O. 11735 and delegated Presidential authority as follows: Sections 2(a) and 3 pertaining to FWPCA; and Section 7 pertaining to OPA 90.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations Section 1.46(m).
3. The Commandant redelegated this authority: in Title 33 Code of Federal Regulations Part 153, with respect to FWPCA; and by delegation letter 5402 dated 19 March 1992, with respect to OPA 90.
4. Regulations implementing the FWPCA are contained in Title 33 Code of Federal Regulations Sections 25.801-25.805. Regulations implementing OPA 90, when promulgated, will be contained in Title 33 Code of Federal Regulations Part 136.

B. FWPCA.

1. Scope. Claims for damage to or loss of property caused by the United States, its employees, agents, or contractors carrying out oil pollution containment or removal activities.
2. Claims Payable. A claim is payable if the damage was unavoidable and the damage resulted from actions necessary to contain or remove pollutants. Claims are usually considered and paid by the FOSC as part of the pollution response activity. However, if it is determined that the damage was avoidable, the claim should be considered by the cognizant settlement authority under Chapters 6-13. Claims are processed in accordance with Chapter 3 or 4, as applicable.

| C. OPA 90.

- | 1. Scope. Claims involving the Oil Spill Liability Trust Fund (OSLTF): claims for removal costs and for certain types of damages, including property damage, and economic losses covered by OPA 90, and presented by an allowable claimant, caused by an oil pollution incident; also, affirmative cost recovery claims on behalf of the U.S. and OSLTF.
- | 2. Claims Payable. Claims payable, and requirements and procedures, are contained in Title 33 Code of Federal Regulations Part 136. Director, National Pollution Fund Center (NPFC) gathers all information relevant to every claim submitted, and adjudicates each claim. Claims which exceed \$100,000.00, and those, regardless of amount, which present significant legal or policy questions, shall be coordinated with the Chief Counsel.
- | 3. Affirmative Cost Recovery Claims. Affirmative claims on behalf of the OSLTF will be processed under Chapter 16 (Federal Claims Collection) and deposited to the Oil Spill Liability Trust Fund.

| D. Litigation.

- | 1. All claims for removal costs or damages, including damages deemed necessary and unavoidable, on behalf of the OSLTF, and which cannot be settled or terminated by the appropriate settlement authority, shall be forwarded to the Department of Justice via Commandant (G-LCL). Should a claim for removal costs or damages against the fund result in litigation, the defense of that litigation by the Department of Justice will be via Commandant (G-LCL).
- | 2. Any recommendations for judicial civil penalties to be assessed, in lieu of any administrative civil penalties otherwise assessable, shall be forwarded to the Department of Justice via Commandant (G-LCL).

CHAPTER 15

ADMIRALTY CLAIMS ON BEHALF OF THE COAST GUARD

A. Authority.

1. Title 14 U.S. Code Section 647 authorizes the Secretary to administratively settle claims of the Coast Guard for damage cognizable in admiralty. Title 14 U.S. Code Section 642 authorizes collection of claims for damage to Coast Guard property. This authority was vested in the Secretary of the Treasury by Section 1 of Reorganization Plan No. 26 of 1950 under the authority of the Reorganization Act of 1949 (63 Stat. 203). Authority to carry out this provision was transferred to the Secretary of Transportation by Sec. 6(b)(1) of the Department of Transportation Act, P.L. 89-670, now codified as 49 U.S. Code 108.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations 1.46(b).
3. The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131 and also authorized the Chief Counsel to redelegate this authority to settlement authorities (Title 33 Code of Federal Regulations 25.133).
4. Redelegations of the Chief Counsel's authority are at paragraph 5-B-8. Limitations on that authority to redelegate are at paragraph 5-C.

B. Scope.

1. This Chapter prescribes procedures for documentation and administrative settlement of claims on behalf of the Coast Guard for damage to property, if the claim is:
 - a. Cognizable in admiralty; or
 - b. For damage caused by a vessel or floating object.
2. The procedures of Chapter 16 apply to claims cognizable under this chapter in the absence of specific reference to additional or contrary provisions.

C. Investigation.

1. A command learning of an incident which may give rise

- 15.C.1. (cont'd) to an affirmative claim that may exceed \$5,000 shall immediately notify the local settlement authority by rapid means. (A situation report (SITREP) to the District will satisfy this requirement.)
2. An incident giving rise to an affirmative claim on behalf of the Coast Guard is investigated in accordance with Chapter 2, unless a party accepts liability in writing.
 - a. Admiralty courts have historically attached great significance to records of original entry. Accordingly, investigators should preserve the original navigation and other operational records, and the actual charts and publications used which may be pertinent to any claim. These documents are preserved as is, with no erasures or alterations. Corrections required for operational needs should be made in such a way that the original entry is still legible.
 - b. Oftentimes problems arise because of differences between clocks at different locations aboard a vessel. Whenever an incident occurs which may result in a claim, the clocks should be compared and this comparison recorded as soon as possible.
3. If liability is accepted in writing, the investigation need only address damages.
4. An aid to navigation claim file should include the following:
 - a. Messages initially reporting the damage to the aid;
 - b. Report of Vessel Casualty or Accident, CG-2692, if available, establishing liability;
 - c. Aids to Navigation Information System (ATONIS) records and historic SANDS reports, if available, establishing the age and condition of the aid and appurtenances;
 - d. Copies of Coast Guard logs showing vessel time necessary to locate, recover, remove and replace the aid and any temporary aid;
 - e. Copies of work orders establishing cost of repair;
 - f. Billing for Sale of Material or Services, CG-3621; and
 - g. Any investigation which the settlement authority determines to be necessary. See 2-B-1-d, 2-C-3, and 2-D-1.

15.C.5. A survey is required in all significant admiralty cases. A survey eliminates later controversy concerning the extent of damage. A survey is a formal, technical, joint inspection held by a representative of each interested party. It is not the one party appraisal often used in the settlement of other claims. The U.S. as a claimant has the same obligations as any private claimant to give the (potential) debtor a chance to survey the damage. Failure to afford an opportunity for survey places a heavy burden on the U.S. to establish damages at a later date. In addition to local marine surveyors, settlement authorities may consider obtaining the services of the United States Salvage Association, Inc., the contract surveyor for the Navy. Because a survey may be required on short notice, settlement authorities should determine in advance what surveyors are available in the various localities within their geographic area.

6. Survey procedure is as follows.

- a. Give notice of survey in person, by telephone or telegram as soon as possible to the local representative of the (potential) debtor. This is generally the local agent or master of the other vessel. If notice is given in person or by telephone follow-up with written confirmation addressed to the (potential) debtor with a copy to the local agent or master of the vessel.
- b. If there is no satisfactory response after three days, make personal contact, telephone or telegram again and confirm this action by letter sent the same day by certified or registered mail, return receipt requested. The settlement authority should send this confirmation letter even though other attempts to notify have been unsuccessful.
- c. The notice of survey shall reference the incident and indicate:
 - (1) The location of the damaged Coast Guard vessel;
 - (2) The desire to conduct a joint survey as soon as possible;
 - (3) The surveyor who will represent U.S. interests; and

15.C.6. c. (4) The person to contact within the Coast Guard.

d. Each successive notice of survey shall recite previous efforts to arrive at a mutually suitable time to conduct a joint survey.

7. The survey report lists the items of damage and the recommended repairs. It may also include an estimate of the reasonable costs of repairs. The surveyors should also check as the repair work is accomplished to ensure that the time and money being expended are for the damage identified by the survey as opposed to pre-existing or later received damage.

8. In addition to the concept of interdepartmental waiver discussed in paragraph 2-B-1 treaties provide for the waiver of damages arising out of maritime torts involving certain public vessels.

D. Liability.

1. Title 33 U.S. Code Sections 408 and 412 make a vessel strictly liable in rem for damage it causes to an aid to navigation.

a. The Coast Guard is not authorized to administratively assess the civil penalty contained in Title 33 U.S. Code Section 412.

b. Settlement authorities may not use the criminal sanction in Title 33 U.S. Code Section 411 to influence or induce payment of an aid to navigation claim.

2. For claims beyond the scope of Title 33 U.S. Code Sections 408 and 412, liability is determined on the basis of admiralty law.

E. Damages.

1. The following items of damage should be considered in any affirmative claim for damage to a Coast Guard vessel:

a. Temporary and permanent repairs;

b. Drydocking;

c. Lost or damaged equipment, stores, provisions, fuel, and ammunition;

- 15.E.1. d. Off loading and on-loading of fuel and ammunition necessitated by the incident;
 - e. Towage and pilotage necessitated by the incident;
 - f. Personnel claims;
 - g. Survey fees; and
 - h. Detention.
2. A claim for damage to or destruction of an aid to navigation shall include, but is not limited to:
- a. Cost of placing into operation and removing the aid to navigation;
 - b. Cost of locating, recovering, and removing the damaged, destroyed, or lost aid to navigation or any of its appurtenances, without regard to the success of such efforts;
 - c. Cost of repairing or replacing the damaged, destroyed, or lost aid to navigation, or any of its appurtenances. (The claim for the present cost of equipment repair or replacement should reflect reductions for any enhanced value of the aid after repair or replacement due to additional or upgraded equipment, and reasonable depreciation of the equipment and structure prior to the incident.);
 - d. Cost of returning a floating aid to navigation to its proper position without regard to the physical damages to the aid; or
 - e. Cost of repairing damage sustained by a vessel, or of injury to personnel involved in the evolutions outlined above.

F. Procedures. Collections and settlement of claims are in accordance with the Federal Claims Collection Standards, 4 CFR Parts 101-105, and Chapter 16. Settlement authorities must ensure, prior to compromising or settling a claim pursuant to 14 U.S.C. 642 & 647, that an account receivable for that claim is already established in the special account at the Finance Center set up for that purpose. Otherwise, any funds recovered go back into the general treasury fund, whereas deposit to such a special account allows the Coast Guard to retain the funds for return to the unit which effected the repairs or replacement.

CHAPTER 16

FEDERAL CLAIMS COLLECTION

A. Authority.

1. Title 31 U.S. Code, Chapter 37, Subchapter II, authorizes the Secretary to collect, compromise and terminate collection of certain claims. The Secretary is further authorized to promulgate regulations to carry out this authority. The Secretary delegated Federal Claims Collection authority to the Commandant in Title 49 Code of Federal Regulations, Part 89 and section 1.45(a)(15). The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131, and to the Chief, Office of Personnel and Training by letter 7220 dated 19 July 1985. Both the Chief Counsel and the Chief, Office of Personnel and Training are authorized to redelegate this authority.
2. Title 14 U.S. Code 642 authorizes collection of claims for damage to Coast Guard property. This authority was vested in the Secretary of the Treasury by Section 1 of Reorganization Plan No. 26 of 1950 under the authority of the Reorganization Act of 1949 (63 Stat. 203). Authority to carry out this provision was transferred to the Secretary of Transportation by 6(b)(1) of the Department of Transportation Act, P.L. 89-670, now codified as Title 49 United States Code, 108. The Secretary is authorized to promulgate implementing regulations and orders under Title 14 U.S. Code 633. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations, 1.46(b). The Commandant redelegated the authority to the Chief Counsel in Title 33 Code of Federal Regulations, 25.131.
3. Redelegations of the Chief Counsel's authority are at paragraph 5-B-9 of this manual. Limitations on redelegation are at paragraph 5-C.

B. Scope. This chapter prescribes amplifying guidance for the administrative supervision, collection, compromise, suspension, termination, offset, or review of action to collect claims, except those identified in paragraphs 16-C-2 and 16-C-3, on behalf of the Coast Guard.

C. Limitations.

1. This chapter does not apply to claims:
 - a. involving adjustment for unused passenger transportation and services, and travel advances;

- 16.C.1. b. erroneous payment or overpayment of pay and/or allowances to military personnel or civilian employees;
 - c. involving an agency or instrumentality of the U.S. (normally interagency immunity precludes compensation);
 - d. involving a foreign government or international organization;
 - e. claims arising under contracts procuring goods and services; or
 - f. arising due to fraud, false statements, misrepresentation, or conduct in violation of antitrust laws.
2. The claims described in paragraph 16-C-1 of this Chapter are to be investigated fully and forwarded to the appropriate authority. In the case of (a) to the Finance Center, (b) to the Commanding Officer, Pay and Personnel Center, (c) and (d) to Commandant (G-LCL), (e) to the Finance Center in accordance with the procurement regulations; and (f) to the U.S. Attorney or Commandant (G-LCL) for referral to the Department of Justice.
 3. The collection of debts owed to the United States by military personnel or civilian employees, other than for debts identified in Chapters 11 and 14 of Coast Guard Pay Manual, COMDTINST M7220.29, will be processed in accordance with this chapter. The debts currently collected by the Chief, Office of Personnel and Training through Chapters 11 and 14 are:
 - a. erroneous payments to military members, and former members;
 - b. shortages in official accounts maintained by accountable officers;
 - c. the embezzlement, theft, forgery, or other unauthorized conversion of money or property for which a member has been tried at courts-martial; and
 - d. deductions from pay for claims cognizable under 10 U.S. Code 939.
 4. Referrals by other federal agencies for collection of a debt by either offset against an amount owed to the debtor by the Coast Guard (31 U.S. Code 3716), or by offset against salary of a member or employee will be

16.C.4. (cont'd) processed in accordance with Volume I of the Comptroller Manual, the Pay Manual, or the Certifying and Disbursing Manual, COMDTINST M7210.1. The claim settlement function for such cases will be within the authority of the Comptroller or the Chief, Office of Personnel and Training, or their designee, or the comptroller of a district or Headquarters unit if authority was redelegated in accordance with paragraph 5-C of this manual.

D. Definitions.

1. For the purpose of the Federal Claims Collection Standards, Title 4 Code of Federal Regulations, Parts 101 through 105, the terms "debt" and "claim" are considered interchangeable. The application of standards contained in this chapter will not be based on the account receivable being characterized as a "debt" or "claim."
2. As used in this chapter the term "Comptroller" will mean the Resource Director/Comptroller or designees having authority through 33 CFR 25.131, or comptroller offices having authority through paragraph 5-C.
3. As used in this chapter the term "Claim Settlement Authority" refers to the Chief Counsel, the Chief, Claims and Litigation Division, the Chief, Legal Division of a Maintenance & Logistics Command, district legal officers, Academy legal officer, and those law specialists or attorneys assigned to permanent legal officer billets delegated authority pursuant to paragraph 5-C. Under certain circumstances it will also include the entities and individuals identified in paragraphs 16-C-2 and 16-C-3.
4. A debt is delinquent on the date provided by advance notice (i.e. hearing officer's civil penalty assessment letter), or if no date is provided, 30 days following the mailing of the notice of the debt's existence in conformance with 4 CFR 102.2.
5. Dollar amounts indicated represent the principal amount of the claim, exclusive of interest, late payment penalties, or administrative costs.
6. A debtor's liability arising out of a particular incident is a single debt.
7. All other terms used in this chapter will have the meaning defined in Title 31 U.S. Code Section 3701, 4 CFR 101.2, or Chapter 1 of this manual.

E. Investigation.

1. The local settlement authority should ensure that each potential claim in favor of the United States is identified promptly and investigated fully.

16.E.2. An incident or expenditure of funds giving rise to an affirmative claim on behalf of the Coast Guard shall be documented. If the claim is not based on a contract or a referral from another federal agency, it shall be investigated in accordance with Chapter 2.

3. All investigations should document the identity and capacity of the debtor, facts upon which the party's liability is based, the amount claimed, and the intent of the debtor, if known. The extent of the investigation will vary according to the complexities of the issues involved. If liability is accepted by the debtor, the investigation should document the acceptance, corroborate the acceptance as appropriate, and primarily document damages.

F. Time Limitations.

1. Tort claims asserted by the United States are barred if suit is not filed within 3 years from the date the cause of action accrued. For contract claims (i.e. suits to collect on the basis of a contract, express or implied, or on the basis of the third party beneficiary theory), the applicable time period is 6 years. See Title 28 U.S. Code, Sections 2415 and 2416. For claims arising from the enforcement of a civil fine, penalty, or forfeiture, the applicable time period is 5 years, Title 28 U.S. Code 2462. See also Title 18 U.S. Code 3282 for non capital criminal offenses (5 years). Efforts at administrative settlement of the claim do not waive or toll the running of this statutory limitation. Notwithstanding these limitations, for collection by offset pursuant to 5 U.S. Code 5514, 31 U.S. Code 3716, or other statutory or common law authority, see paragraph 16-H-2.
2. In accordance with DOJ/GAO regulations (4 CFR 105.1) all efforts to collect a claim should be conducted so that the claim can be referred to the Department of Justice/U.S. Attorney within 1 year of identifying the existence and amount of the debt.

G. Procedure.

1. Procedures for administrative settlement, termination, and compromise of claims shall be in conformity with statutory authority (Title 31 U.S. Code Chapter 37, Subchapter II), standards promulgated jointly by the Attorney General and the General Accounting Office (Title 4 Code of Federal Regulations, Parts 101-105), and this chapter. In addition, the General Accounting Office has established principles for agency collection programs in Section 69, Chapter 4 of the Policy and Procedures Manual for Guidance of Federal

- 16.G.1. (cont'd) Agencies, and the Treasury provides guidance on interest to be assessed in its Treasury Fiscal Requirements Manual.
2. When a file, investigation, or other material substantiating a claim is received, the settlement authority shall ensure that every claim in favor of the U.S. is pursued vigorously commensurate with the circumstances of the claim and the cost entailed. The standard for liability is the law of the place where the incident occurred. See paragraph 15-E-2 for claims for damage to aids to navigation.
 3. Procedures for administrative collection are prescribed by Title 4 Code of Federal Regulations, Part 102. The following expands that guidance.
 - a. The collection process begins by a written notification of the existence of the debt. This notification can be through a billing, a penalty assessment letter, notification of discovery of overpayment, contract provision, or other written notification informing the debtor that a sum certain amount is owed or will be due and owing on a specific date. To be an effective collection tool, such notification should inform the debtor that while the accrual of interest and administrative costs begins on the date notification is sent, those charges will be waived if payment is received within 30 days. If 30 days from the date of the letter passes, the debt is delinquent and written demands for payment will be initiated. The initial notification letter can also constitute one of the required demand letters if the requirements of paragraph 16-G-3-c are met. Regardless of the official sending this notification (i.e. comptroller, Commandant (G-PS-1), Pay and Personnel Center, hearing officer, contract administrator), the accounting office should be advised of the existence of the debt for recording as an account receivable.
 - b. DOJ/GAO standards require three written demands be made by the agency at thirty day intervals prior to referral unless response to the first or second demand indicates further demands would be futile. In order to meet this requirement the following practice is recommended.
 - (1) The authority having cognizance of the account receivable initiates or insures that all required demand letters are sent. (See Figures 7-3, 7-4, 7-5, of the Comptroller Manual, Vol. I for examples of demand letters and attachments). A billing or

- 16.G.3. b. (1) (cont'd) hearing officer's penalty assessment letter may constitute a demand letter if the requirements of paragraph 16-G-3-c are met. (See Paragraph 6-P for asserting subrogated claims against third parties arising under the MPCECA.)
- (2) If subsequent to mailing the notification of debt or any demand letter, the debtor responds in any of the following manners, the file is to be forwarded to the appropriate claims settlement authority.
- (a) an offer to settle the debt for an amount less than the full principal and any accrued interest, administrative costs, and penalties;
 - (b) liability for the debt or amount of damages is being disputed;
 - (c) If no response indicates further demands would be futile (i.e. the debtor has died, filed bankruptcy, dissolved the corporation, etc.); or
 - (d) The debtor requests a hearing or review of the debt.
- (3) If no response is received subsequent to a second demand letter or the response is in a manner identified in paragraph 16-G-3-b-(2), the comptroller forwards the file to the appropriate claim settlement authority.
- (4) The claim settlement authority will be responsible for responding to any offer to settle, compromise, or terminate the claim, requests for review or reconsideration, and collection through a method other than direct collection, including reporting the claim to a credit reporting agency.
- (5) If no response was received subsequent to the first or second demand sent by the comptroller, the claim settlement authority will send the third required demand. This demand should advise the debtor of the increased amount of the debt due to the accrual of interest and administrative costs, and if possible, advise of the claim settlement authority's intent to collect the debt by a specific collection method. (See Enclosure (7).)

- 16.G.3. b. (6) Once the debt file is forwarded to the claim settlement authority for further action, responsibility for the claim will be with that officer. At the completion of all collection actions, either administrative or through DOJ/ U.S. Attorneys, the claim settlement authority will notify the comptroller of the results of those actions and the terms of any settlement for less than the full amount, interest, administrative costs, and late payment charges so the necessary accounting entries may be made.
- c. The initial demand letter should include:
- (1) the basis for the indebtedness;
 - (2) the standards for assessing interest;
 - (3) the standard for assessing administrative costs;
 - (4) notification that the debt is due;
 - (5) notification that late payment charges assessed at a annual rate of 6% will be added if payment is not made within 90 days of the debt becoming delinquent; and
 - (6) notification of the debtor's rights for review and examination of documents.
The initial demand letter may also include notification of the Coast Guard's collection options and the debtor's rights in regard to those options.
- d. All parties potentially liable for the debt, including financial guarantors for oil pollution claims, should be sent demand letters.
- e. Second and third demand letters should be stronger in tone than the first. These demand letters should notify the debtor of the increased amount of the debt. They may also serve as vehicles for notifying the debtor of the Coast Guard's collection options. See paragraph 16-H for notification standards.
- f. Additional demand letters should not be sent unless it is determined that the additional demand will have a positive result or are sent in conjunction of giving notice of intent to use a collection method of which the debtor has not been previously notified.
- g. Demand letters may be sent by regular mail. However, if the debtor is nonresponsive, subsequent demands shall be sent by certified or registered mail, return receipt requested. The date of the

16.G.3. g. (cont'd) demand letter is to be used for measuring time intervals. It is therefore important to ensure the demand letters are mailed on the date stamped.

4. Claim settlement authorities and comptrollers are permitted to accept payment in full for any claim.
5. A settlement authority may compromise, suspend, or terminate claims within their delegated authority in accordance with Title 4 Code of Federal Regulations, Parts 103 and 104.
6. A settlement authority may exercise discretion in choosing a means to collect a claim. In exercising such discretion the claim settlement authority should consider whether the obligation to pay has been fixed, any unrecoverable cost of the collection action, the relevant time delays before collection will be completed, and the effect on future collections.
7. Claims in excess of delegated authority which cannot be collected in full shall be forwarded to Commandant (G-LCL) using the format prescribed in 3-E-6-c. The settlement authority shall ensure compliance with the applicable portions of Title 4 Code of Federal Regulations Parts 101, 102, and 105.

H. Collection.

1. Direct Collection

- a. All collection actions should commence with attempts to directly collect the debt, unless it is known such attempts would be futile, i.e. bankruptcy. Written demands should be made in accordance with paragraph 16-G. Should response to these demands not result in collection, compromise, suspension, or termination of the claim, the claim settlement authority must determine whether to pursue additional administrative collection options, forward the claim to the Claims and Litigation Division, or refer the claim to the Department of Justice or U.S. Attorney as appropriate.
- b. Claim settlement authorities may agree to repayment of the debt by installments. The agreement should state the amount of the debt, and the amount of interest, administrative costs, and late payment charges, if any, that will accrue. Although the waiver of interest is discouraged, all or part of these charges may be waived in accordance with paragraph 16-K-6. The conditions that will cause the agreement to be in default should be specified in the agreement. Provisions enforceable in the state of the debtors residence for confess-judgment notes are also recommended.

- 16.H.1. b. (cont'd) Although claim settlement authorities have discretion in establishing terms of repayment, agreements calling for the payment of at least \$100 per month and the debt to be paid within one year are encouraged.

2. Administrative Offset

- a. When a debt can not be collected directly in full or by a repayment agreement, collection by administrative offset is a preferred alternative collection method when the obligation and amount to pay is fixed (i.e. a liquidated claim), it is feasible and not prohibited, and it appears to be the least costly means of collection. Statutory offset was established as a collection method by Section 10 of the Debt Collection Act of 1982 (now codified as Title 31 U.S. Code 3716). Offset recognized as a collection remedy in common and statutory law has not been preempted by this statute. However, the procedural requirements of 31 U.S. Code 3716 and the Federal Claims Collection Standards are applicable to administrative offsets in the absence of separate regulatory guidelines. The procedures established by this paragraph will be applicable to all administrative offset actions under this chapter.
- b. Discretion may be utilized in determining whether offset should be utilized. Factors that may be considered are the effect on the debtor's financial condition, the effect of the action on other Coast Guard and government programs, whether future enforcement would be enhanced by this method or another, and whether collection by this method is cost effective in the immediate instance.
- c. Prior to offsetting, the debtor must be provided written notice of intent to pursue this collection method. The notice must include:
- (1) basis and current amount of the debt, and that the debt is overdue;
 - (2) notification of the location of records pertaining to the debt;
 - (3) notification that the debtor has the right to inspect and copy pertinent records;
 - (4) notification of intent to collect the claim by offset and the account payable which will be offset, if known;

- 16.H.2. c. (5) notification that the debtor has a right to request agency review of the indebtedness;
- (6) notification that the debtor may voluntarily pay the debt before offset (including notification that offset is an option in an initial demand letter will meet this requirement);
- (7) notification that the debtor has the opportunity to enter a written agreement to repay the debt; and
- (8) if the debtor is an individual, the notice should advise that to effect offset the individual's name, address, social security number or other taxpayer identification number, any other information to establish the identity of the individual and the amount of the claim is subject to release to an appropriate federal official or federal agency. Such information is released under the authority of 5 USC 552a(b)(3) as a routine use. Notice under Title 5 U.S. Code 552a(e)(4) of such routine uses must be given before information is released from a Privacy Act protected system of records. For the Coast Guard, such notice is given by the Office of Secretary Department of Transportation's Periodic Publication of All Privacy Act Systems of Records published in the Federal Register.
- d. Discretion may be used in determining whether to accept a repayment agreement. Such an agreement should not normally be accepted if the debt has not been disputed, and there is a readily available account payable or other obligation to effect the offset, unless the debtor establishes that offset would result in undue financial hardship or would be against equity and good conscience.
- e. Offset may be made prior to completion of the notification requirements and the debtor's exercise of procedural rights if:
- (1) failure to offset would substantially prejudice the ability to collect the claim; and
- (2) the time before the payment is to be made does not reasonably permit completion of the procedures.

Following offset, notification and review procedures must be completed, and any excess amounts collected promptly returned.

- 16.H.2. f. Offset pursuant to Title 31 U.S. Code ^3716 is not permitted when:
- (1) the right to collect the debt accrued more than 10 years previously unless authorized by 4 CFR 102.3(b)(3) (The concept of "accrual" is governed by 28 U.S. Code 2415.);
 - (2) the debt is owed by a state or local government (Offset against these entitles remains viable under common law or if authorized by other statutes);
 - (3) other statutes prohibit offset as a collection method or prescribe an offset method inconsistent with the Federal Claims Collection Standards; or
 - (4) debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.
- g. Administrative offset may be made on any claim that accrued less than 10 years previously. Claims that accrued more than 10 years previously may be collected by offset if the standards of 4 CFR 102.3(b)(3) are met. If the claim accrued more than 6 years previously, the claim settlement authority must account by memo to the file the reasons the claim has been unresolved and the reason offset is feasible at that time, and whether the cost of collecting the claim will exceed the recovery. Such reasons may include but are not limited to collection of a judgment entered near or after the expiration of 6 years, discovery of accounts payable, or other changed circumstances of law or fact.
- h. Written requests for offset may be accepted from other agencies. The Coast Guard will only act in the capacity of collecting the debt. The requesting agency will be responsible for providing the debtor with procedural rights of notice and review. Any request for collection by offset should, to the extent known and releasable, state the name of the debtor, social security or other tax payer identification number, address, any other identifying information, the amount of the debt, that the debt is overdue, and that the procedural requirements of 31 U.S. Code 3716, 4 C.F.R., Parts 101- 105, and agency regulations have been complied with before requesting offset. If the request for offset is being made prior to completion of the administrative procedures, the request should state the reasons the request is being made in advance of completion of notice and review procedures, and that

- 16.H.2. h. (cont'd) the Coast Guard will be notified at the completion of the procedures whether excessive amounts were collected. The comptroller should only review a request for offset for providing adequate information as to the identity of the debtor; and that the requesting agency has certified that the debtor owes the debt, the sum certain to be collected, and that the creditor agency has complied with the necessary procedural requirements. A request for offset from another federal agency will be declined only if the debtor or an amount can not be identified, the creditor agency has not complied with the Federal Claims Collection Standards, or offset would be contrary to law.
- i. The Coast Guard may request other agencies to offset a debt on our behalf. (For collecting debts by salary offset by referral to another federal agency see paragraph 16-H-4.)
- (1) Before requesting another agency to offset, the claim settlement authority will ensure that notification and review procedures have been followed. In requesting an offset from another agency the settlement authority must certify in writing that the debtor owes a debt, that all procedures have been complied with, and the amount to be offset.
 - (2) The claim settlement authority should consider use of the Army Finance and Accounting Center (FINCY) Contractors Indemnity List (sometimes referred to as the Army Hold-Up List). This List is distributed to contracting agencies to alert them to withhold amounts otherwise due to contractors indebted to the U.S. This List is only helpful if the debtor is presently a government contractor or has the potential to contract with the government in the future. Accordingly, the majority of the entries are businesses. The following rules apply to this list:
 - (a) The debt must exceed \$200;
 - (b) If the debt does not exceed \$1,000, it will be automatically deleted at the end of one year;
 - (c) All other debts will be automatically deleted at the end of three years; and
 - (d) If any change occurs in the debtor's status (i.e. payment or initiation of litigation concerning the case), the settlement authority shall inform FINCY.

- 16.H.2. i. (3) In addition to certifying the amount of the debt, that the debtor is responsible, and that all procedures have been complied with, letters requesting inclusion of a debtor on this List shall include:
- (a) the name of the debtor;
 - (b) all addresses used by the debtor;
 - (c) the total amount of the debt (sum certain);
 - (d) the commercial or autovon telephone number of the settlement authority; and
 - (e) state that, "The government code is U."
- (4) Mail letters requesting inclusion of debtors to:
U.S. Army Finance and Accounting Center FINCY-H
Attention: Field Services Office
Indianapolis, IN 46249
- (5) As in all instances of requesting an offset by another federal agency, the file is not to be sent to the Army Finance and Accounting Center.
- j. Collection of debts may be offset against money judgments obtained by debtors against the United States in accordance with 37 U.S. Code 3728.
- k. Requests for review of the claim will be handled in accordance with paragraph 16-J.

3. Contracting for Collection Services

- a. Contracting for the collection of claims is authorized by Title 31 U.S. Code 3718.
- b. When the obligation of the debtor to pay is enforceable, a claim settlement authority may utilize discretion in determining whether to refer a claim to a claim collection service. Factors that may be considered are the likelihood of recovery, the effect of the action on other Coast Guard or federal programs, whether future enforcement would be enhanced by this method, and whether the use of a collection service is cost effective.
- c. Referrals for collection will be in accordance with contracts, if in effect, in which the Department of Transportation or Coast Guard is a participating agency. Contracting for collection of claims will be at the district/Headquarters unit level only in

- 16.H.3. c. (cont'd) the event a government wide, department, or service wide contract is not available. Any contract for collection of a claim must:
- (1) be on a contingent fee basis;
 - (2) contain provisions that will meet the requirements of 4 CFR 102.6(a); and
 - (3) be awarded only after solicitation for competitive bids.
- d. Before a claim is forwarded to a contractor for collection the claim settlement authority must:
- (1) review the file and determine if a claim exists in a sum certain (other than accruing interest, administrative costs and late payment charges) and that it is overdue;
 - (2) notify the debtor in writing, either hand delivered or by registered mail return receipt requested:
 - (a) of the amount of the claim, the basis of the claim, and that it is overdue;
 - (b) of the intent to forward the claim to a contractor for collection; and
 - (c) that the debtor has a right to dispute information in the claim file concerning the claim, and a right to request administrative review or reconsideration of the claim.
- e. If the debtor is an individual, the notification should also include a statement that:
- (1) the claim will not be forwarded to the contractor within 60 days from the date of the letter; and
 - (2) that the forwarding of the claim may result in the disclosure of the debtor's name, address, Social Security number or taxpayer identification number, and any other information necessary to establish the identity of the individual, the amount, status and history of the claim, and the agency or program under which the claim arose.

Note: Disclosure of information concerning individuals to a collection agency is subject to Privacy Act limitations. Such information is released under the authority of 5 USC 552a(b) (3) as a routine use. Notice under Title 5 U.S. Code 552a(e) (4) of such routine uses must be given before

Note (cont'd) information is released from a Privacy Act protected system of records. For the Coast Guard, such notice is given by the Office of Secretary, Department of Transportation's Periodic Publication of All Privacy Act Systems of Records published in the Federal Register.

- f. After forwarding a claim to a collection agency, the claim settlement authority should periodically review efforts made by the contractor to collect the claim, determine if collection will likely be successful, and determine if any other means of collection would provide a greater likelihood of success or cost effectiveness.
 - g. Claims should not be forwarded to a contractor:
 - (1) if the claim settling authority does not have evidence that the debtor received written notice of the intent to forward the claim to a contractor for collection; nor
 - (2) until final resolution of the debtor's written request for administrative review or repeal of the claim; nor
 - (3) when forwarding the claim to a contractor is not in the best interest of the Coast Guard, or is otherwise not cost effective; nor
 - (4) when the contract does not contain provisions for satisfying the conditions of 4 CFR 102.6(a). Contracts issued on a government wide, department wide, or service wide basis should be presumed to be in compliance.
 - h. Requests for review or repeal of claims will be handled in accordance with paragraph 16-J.
4. Collections from members and employees of the Coast Guard, members of other armed services, and employees of other federal agencies.
- a. Debts owed the United States by military members or federal employees, including retirees, may be collected by deduction (salary offset) from federal disposable pay pursuant to 5 U.S. Code 5514. Additionally, debts owed the United States by members of the armed forces, including retirees may be deducted from pay pursuant to 37 U.S. Code 1007.
 - b. Responsibility for action on claims
 - (1) The collection of claims identified in paragraph 16-C-3, including the overpayment of pay and allowances to military members, are

- 16.H.4. b. (1) (cont'd) outside the scope of this chapter. The role of the legal officer will be to provide advice. The Chief, Office of Personnel and Training will be responsible for providing the necessary demands, notice of intent to collect by deduction from pay, and any review.
- (2) If a member or employee is identified as responsible for the payment of a debt arising from other than a claim identified in paragraph 16-C-3, the collection will be conducted in accordance with this chapter. If the debt can not be collected directly, the claim settlement authority will provide notice of intent to collect by a specific method and retain responsibility for collection, compromise, termination, etc. If pay/salary offset is chosen as a collection method, the claim settlement authority will request the comptroller to collect the amount owed.
- (3) Referrals from other armed services and federal agencies for collection are to be processed directly by the Chief, Office of Personnel and Training.

c. Procedural requirements

- (1) The procedural requirements for collecting by offset under either 37 U.S. Code 1007 or 5 U.S. Code 5514 against pay/salary are different. The distinction for the procedural and review requirements is based on Comptroller General Opinion B-215128 of December 14, 1984.
- (2) Debts owed by Coast Guard members and members of other armed services regardless of the source of the debt and present service should be collected pursuant to 37 U.S. Code 1007. As that authority allows for promulgation of procedural guidelines by the collecting agency, utilize the guidelines for collecting under this provision contained in the Pay Manual. In the absence of guidelines in that manual, utilize paragraph 16-H-2 for collection under 31 U.S. Code 3716 (administrative offset).
- (3) Debts owed by Coast Guard civilian employees or employees of other federal agencies regardless of the source will be collected pursuant to 5 U.S. Code 5514. Debts owed by members of other military services may be collected pursuant to 5 U.S. Code 5514. Prior to

- 16.H.4. c. (3) (cont'd) collection of the debt owed the Coast Guard, the debtor will be notified, in writing, of the intent to collect the debt by this method. The notice of such intent may be by separate correspondence demanding payment. In addition to notifying the employee of the intent to collect by salary offset, the notice will include:
- (a) the basis, current balance of the debt, and that it is overdue;
 - (b) location of records pertaining to the debt, and the debtor's right to review and copy records;
 - (c) the intended repayment schedule;
 - (d) notification of the option of repaying the debt pursuant to a repayment agreement at terms agreeable to the Coast Guard;
 - (e) notification that the debtor has the right to request review of the indebtedness and the terms of the repayment schedule, and to whom a petition for review should be delivered;
 - (f) notify the debtor of the date that the petition for review must be mailed or hand delivered in order to be timely;
 - (g) notify the debtor that the debt will not be collected by deduction from salary for thirty days from the date of mailing or hand delivery of the notice; and
 - (h) that the debtor's name, social security number, and any other information to establish the identity of the debtor and amount of the claim is subject to release to an appropriate official or federal agency.
- (4) Refer to paragraph 16-J and Enclosure (9) for Review and Reconsideration procedures.

d. Collection of the debt.

- (1) Subsequent to compliance with notification and review procedure, the claim settlement authority will request collection. In the case of Coast Guard members, the request will be forwarded to the Pay and

- | 16.H.4. d. (1) (cont'd) Personnel Center. Collection will be made
| in accordance with the Pay Manual. In the case of
| civilian employees, the request will be forwarded to
| Commandant (G-FPS).
- (2) If the debtor is an employee of another federal
agency, referral to the employing agency is
appropriate after all notice and review procedures
have been met. The referral should identify the
debtor, certify the amount of the debt, state the
precollection procedures have been complied with, and
that the procedures have been approved by OPM.
- (3) If the debtor is a member of another armed force, the
referral should be forwarded to the Pay and Personnel
Center. The referral should contain copies of
documents supporting the debt and that procedural
requirements have been met.
- e. Collection of Judgments in favor of the United States
against members and employees.
- (1) Judgments in favor of the United States entered by a
federal court may be collected by salary offset under
the authority of P.L. 97-276, 124.
- (2) All requests for salary offset under this authority
shall be forwarded to Commandant (G-PC).

I. Credit Reporting Agencies

1. Consumer Reporting Agencies.

- a. Reporting outstanding debts owed by individuals to
consumer reporting agencies is authorized by Title 31
U.S. Code 3711(f). Disclosure of information concerning
individual debtors is authorized by 5 USC 552a(b)(12).
A limitation on the authority is that information
released to a consumer reporting agency, if from a record
system subject to the Privacy Act, may only be from a
record system for which notice under Title 5 U.S. Code
552a(e)(4) has been given. For the Coast Guard, such
notice is contained in the Office of Secretary Department
of Transportation's periodic Publication of all Privacy
Act Systems of Records published in the Federal Register.
- b. The decision to release information to a consumer
reporting agency rests solely with the claims

16.I.1. b. (cont'd) settlement authority. Before information is forwarded to a consumer reporting agency, the claim settlement authority must:

- (1) Review the file and determine that a claim exists in a sum certain (other than accruing interest, administrative costs, and late payment charges), and is owed by an identified debtor and is overdue; and
- (2) Notify the individual debtor in writing (first class mail is sufficient):
 - (a) of the amount of the claim, the basis for the claim, and that it is overdue;
 - (b) of the intent to disclose to a consumer reporting agency that the individual debtor is responsible for the claim;
 - (c) that the disclosure will not take place within 60 days from the date of the letter;
 - (d) the specific information to be disclosed; and
 - (e) that the individual has the right to an explanation of the claim, a right to dispute information in the claim file concerning the claim, and a right to request administrative review or repeal of the claim.

c. The information that may be disclosed is the debtor's name, address, social security number or other taxpayer identification number, and any other information necessary to establish the identity of the individual, the amount, status and history of the claim, and the agency or program under which the claim arose.

d. Disclosure to a consumer reporting agency will not be made:

- (1) within 60 days of written notification of intent to disclose the debt to a reporting agency; or
- (2) until final resolution to the individual debtor's written request for administrative review or reconsideration of the claim; or
- (3) when the amount of the claim (not including interest, administrative costs, and late payment penalties) is less than \$100; or

- 16.I.1. d. (4) when disclosure to a consumer credit reporting agency is not in the best interest of the Coast Guard, or is otherwise not cost effective.
 - e. After disclosure of information relating to a claim to a consumer credit reporting agency, the claim settlement authority is responsible for:
 - (1) promptly disclosing to the consumer credit reporting agency substantial changes in the status of the claim and/or the balance of the administrative costs, and late payment penalties. In most cases changes in the balance of 10% of the original debt or \$50, whichever is higher, should be considered a substantial change;
 - (2) promptly respond to requests from a consumer credit reporting agency for verification or correction of information related to the claim; and
 - (3) promptly notifying the consumer credit reporting agency that the debt has been liquidated.
 - f. Requests for review or repeal of the claim will be handled in accordance with paragraph 16-J.
 - g. Claim settlement authorities will initiate the documents necessary to transfer information to a consumer reporting agency. Procedures for generating the necessary documents for transfer of the initial disclosure and subsequent information to a consumer reporting agency will be in accordance with the methods established by Chapter 7, Comptroller Manual, Volume I.
2. Commercial Reporting Agencies.
- a. Debts generated by commercial concerns may be reported to commercial credit reporting agencies by authority of OMB Bulletin number 83-21.
 - b. Procedures detailed in paragraphs 16-H-3-b through paragraph 16-H-3-f will be followed.

16.I.3. Credit Investigations

Claim Settlement authorities are authorized to conduct credit investigations for the purpose of making appropriate decisions as to the collection and compromise of claims; the collection of late payment interest, administrative costs, and late payment charges; the use of administrative collection options; and the preparation of claim collection litigation reports, when required. The primary source of this information will be credit reporting agencies. Claim settlement authorities should determine if a contract exists through which the Coast Guard must or can obtain information. Any costs to the Coast Guard for credit investigations will be borne by the program generating the debt.

J. Review and Reconsideration Procedures

All administrative collection methods require written notification that the debtor may request review of the basis and amount of the debt. Refer to Enclosure (9) for review and reconsideration procedures.

K. Interest, Administrative Costs, Late Payment Penalties

1. The assessment of interest, administrative costs, and late payment penalties on delinquent debts is authorized and required by Title 31 U.S. Code 3717. Such charges should not be collected when exempted by that statute or by 4 CFR 102.13.
2. Late payment interest normally accrues from the date of mailing or hand delivery of notice of the debt. If notice is given in advance of the date the debt is due, such as hearing officers' assessments of civil penalties or demands for subrogated claims arising under the MPCECA (see Paragraph 6-P), late payment interest will accrue from the due date, if the advance notice informed the debtor of the accrual of these charges. Administrative costs and late payment charges accrue from the date the debt is delinquent.
3. Interest
 - a. Interest accrues from the date of mailing notice of a debt, or when advance notice is given of the date the debt is due, if the notice of the debt also informs the debtor that interest will accrue at a specified rate.
 - b. The applicable rate of interest is that published by the Department of the Treasury in accordance

- 16.K.3. b. (cont'd) with Title 31 U.S. Code Section 3717 in the Federal Register and/or Treasury Fiscal Manual Bulletins. The use of a higher rate of interest to protect the government's interest is authorized, but should only be used when the government's interest and the benefits to be derived can be articulated. The rate of interest will be the effective rate on the date from which interest accrues, and will remain fixed for the duration of the indebtedness, except when the debtor enters into a new repayment agreement after defaulting on a previous agreement. Under normal circumstances, the rate of interest will be fixed prior to forwarding the claim to the claim settlement authority for collection.
- c. Interest is not assessed on accrued interest, administrative costs, or late payment charges except as allowed by paragraph 16-K-3-d.
- d. If the debtor enters into a new repayment agreement after defaulting on a previous agreement, the rate of interest for the new agreement will be either the rate of interest for the agreement in default or the rate of interest set by Treasury at the time of the new agreement, whichever is higher. Under the new agreement interest will be assessed on the total of the balance of the unpaid debt including previously unpaid interest, administrative costs, and late payments penalties.
4. Administrative Costs
- a. Administrative costs reflecting the cost of collecting a debt shall be assessed on all delinquent debts.
- b. The costs to be assessed to any particular debt shall be provided by the Comptroller. (See DOT Order 2700.13B for guidance.)
5. Late payment charges
- a. A penalty charge shall be assessed for all debts that have been delinquent for over 90 days.
- b. The penalty charge shall be assessed at an annual rate of 6 percent. The late payment penalty charge will be assessed on the total of the principal amount of the debt and all accrued late payment interest, administrative costs, and late payment penalty charges.
- c. Although a late payment charge is not assessed until the debt has been delinquent for over 90 days, the penalty charge accrues from the day the debt is delinquent.

16.K.6. Waivers

- a. Late payment interest and administrative costs will be waived on all or that portion of the debt paid within 30 days of the initial due date of the debt obligation.
- b. Interest, administrative costs, and late payment charges may be waived on part or all of the debt in the following circumstances:
 - (1) pursuant to compromise of the debt in accordance with 4 CFR, Part 103; or
 - (2) for the period of time administrative review or reconsideration is being conducted pursuant to a request by the debtor. The exercise of this discretion should be based on whether the issues raised by the debtor are frivolous or exhausted by the review, the length of time the reconsideration is expected to take, whether undue delay is caused by the Coast Guard's handling of the case, and whether the accrual of these charges during reconsideration will result in the late payment charges being unduly disproportionate to the principal amount of the debt.
- c. Interest, administrative costs and late payment charges will not be assessed during administrative review if the claim arises under a statute requiring mandatory review or waiver of interest. Accrual of late payment penalty charges will be suspended while the debt is being repaid by installment.

L. Compromise

- 1. The DOJ/GAO standards for compromise of claims at 4 CFR, Part 103 will be utilized.
- 2. The Federal Claims Collection Standards discourage the repayment of a debt by installment as part of a compromise agreement. However, when collection by installment is appropriate, refer to paragraph 16-H-1-b.
- 3. A financial statement should be obtained when the debtor's inability to pay is cited as the reason for compromising the claim. Department of Justice forms LLA-60 and OBD 500 may be used for requesting personal financial information from persons and corporations, respectively.
- 4. If a claim is settled at a compromise amount, the comptroller should be informed of the settlement and the

16.L.4. (cont'd) share of the total settlement attributable to principal, administrative costs, interest, and late payment penalties. These amounts should be apportioned in accordance with Chapter 7 of the Comptroller Manual, Volume I.

M. Suspension or Termination of Collection Action

1. The DOJ/GAO standards for suspension or termination of claims at Title 4 Code of Federal Regulations Part 104 will be utilized.
2. Claim settlement authorities may terminate collection action on a potential claim that plainly is factually erroneous or legally without merit regardless of the amount involved. If the claim's merits are in doubt or the claim is valid but exceeds the claim settlement authority's authority to suspend or terminate, the claim file should be forwarded to the Chief, Claims and Litigation Division with an appropriate recommendation.

N. Referrals

1. Various statutes and regulations authorize federal agencies to refer cases to the Department of Justice for litigation (e.g. 4 CFR 105.1). Delegations of authority within the Department of Justice establish who the appropriate receiving entity will be. Currently, U.S. Attorneys are authorized to handle claims of \$100,000 or less.
2. Claims that exceed in value the applicable cut off point established by subparagraph 16-N-3, for which efforts to collect have failed, and for which termination, suspension, or compromise are inappropriate shall be referred to the Department of Justice/U.S. Attorney.
3. The following cutoff points establish Coast Guard policy concerning the referral of claims.
 - a. A claim of \$50.00 or less is terminated and not referred. This policy is mandatory without regard to the source of the claim.
 - b. A claim in excess of \$50.00 but not more than \$100.00 may be terminated and not referred without regard to the source of the claim. The dollar amount by itself indicates that cost will exceed recovery.
 - c. A claim in excess of \$100.00 but not more than \$600.00 may be terminated and not referred if referral is not important to a significant Coast

16.N.3. c. (cont'd) Guard enforcement policy. The burden is upon the manager of the program from which the debt arose to demonstrate significance. The dollar amount by itself indicates that the cost will exceed recovery.

4. The following cases are referred to the Department or U.S. Attorney by the Chief, Claims and Litigation Division:

a. Claims involving amounts exceeding claim settlement authority as delegated by Chapter 5;

b. all admiralty jurisdiction affirmative claims regardless of amount; and

| c. Cases involving pollution cost recovery or damage claims,
| whether affirmative or defensive in nature, and related
| civil penalties, arising from pollution incidents over
| which the Coast Guard has cognizance.

5. Penalty cases.

| a. With the exception of those civil penalty cases described
| in paragraph 16-N-4-c, all cases for collection of
| assessed civil penalties to be enforced in personam may
| be referred by MLCPAC to the U.S. Attorneys via the DOJ's
| Nationwide Central Intake Facility (NCIF) in accordance
| with Enclosure (10).

| b. Cases for collection of assessed civil penalties to be
| enforced in rem will be forwarded to Commandant (G-LCL)
| for referral to DOJ. If arrest or attachment of a vessel
| is deemed time critical, settlement authorities may seek
| authorization to deal directly with DOJ, Civil Division,
| Torts Branch (Admiralty), after coordination with
| (G-LCL).

6. All other cases may be referred directly to the local U.S. Attorney as specified below. A copy of each referral (without enclosures) will be sent to Chief, Claims and Litigation Division.

7. Before referring any claim, the claim settlement authority shall insure compliance with Title 4 Code of Federal Regulations, Parts 101-105. Note these regulations place a minimum dollar amount on referrals of claims. For claims less than \$600 the claim settling authority also must confirm that the debtor has the ability to pay and the Government can enforce payment.

16.N.8. Procedure.

- a. Referrals should be by Claim Collection Litigation Reports unless waived by the Department of Justice. See 4 CFR 105.2. The cost of obtaining credit data will be borne by the program generating the claim.
- b. Cases described in paragraph 16-N-6 to be filed in a federal judicial district encompassing all or a portion of the settlement authority's geographic jurisdiction will be referred directly to the U.S. Attorney within whose district the suit will be filed.
- c. Cases to be filed in federal judicial district not encompassing all or a portion of the settlement authority's geographic district may be forwarded to a U.S. Attorney within whose district the case will be filed. Before referral the claim settlement authority should contact the local district legal officer to advise of the referral, and determine whether there are matters of local rules or interest that should be considered. A copy of the referral document should be forwarded to the local district legal officer.
- d. Cases described in paragraph 16-N-4 are forwarded to the Chief, Claims and Litigation Division. Use the format described in paragraph 3-E-6-c, and summarize any claim collection actions and/or debt review conducted. Do not indicate enclosures by stamping or otherwise marking the actual documents.
- e. The procedures outlined above are intended for routine cases. In unusual cases, telephone the Chief, Claims and Litigation Division for specific guidance on the handling of the specific case; for instance, handling the case in the normal course of business will create a statute of limitation problem, or the case contains unique Coast Guard (or admiralty) issues which might be handled better by the Civil Division of the Department of Justice.

9. Bankruptcy.

- a. If the claim settlement authority learns that the debtor has filed for bankruptcy, further collection action is usually inappropriate and/or futile. A proof of claim form should be prepared and forwarded to the U.S. Attorney with a request that the form be filed on our behalf. Since certain claims are not

16.N.9. c. (cont'd) dischargeable in bankruptcy but may be uncollectible through the bankruptcy proceeding, claims settling authorities are encouraged to contact the cognizable U.S. Attorneys to discuss options for protecting Coast Guard interests.

O. Payment.

1. When a debtor responsible for damage to Coast Guard property, or the debtor's 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 if the procedure is in the Coast Guard's best interest. The actual repair or replacement of property by the person liable for the damage is permitted only if the plans and schedule are acceptable to the settlement authority.
2. The Coast Guard may not pay for enhanced value unless previously agreed to in writing.
3. For claims arising from damage to Coast Guard property including aids to navigation, Title 14, U.S. Code 642 authorizes money collected under that authority to be deposited to the Coast Guard appropriation account from which the repairs have been made or will be funded. Settlement authorities should ensure that accounting or collection personnel or both are aware of this fact when forwarding any payments received for deposit. A reimbursable account must be set up at the time of the first demand and not merely when the money is collected.
4. Pollution cost recovery collections, as well as collections of civil penalties resulting from pollution incidents, should be made payable to the "United States Coast Guard" and deposited to the Oil Spill Liability Trust Fund.

P. Release.

1. The settlement authority may execute a release either upon receipt of agreed payment of the claim or upon completion of the repairs and the receipt of the evidence of payment in full to the repairer. A standard form furnished by the debtor may be executed, provided no indemnity agreement is included. A receipt for payment in full, installment payment, or compromised payment may also be executed.

Q. Semiannual Report.

1. Semiannual reports of activities under this chapter are required by 49 CFR, Part 89.

CHAPTER 17

MEDICAL CARE RECOVERY CLAIMS

A. Authority.

1. Title 42 U.S. Code 2651-2653 and Title 10 U.S. Code 1095 authorize the Secretary to administratively settle claims for recovery of the reasonable value of the medical care and treatment furnished or to be furnished at Coast Guard expense to an injured person.
2. The Secretary delegated this authority to the Commandant in Title 49 Code of Federal Regulations 1.45(a)(2).
3. The Commandant redelegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131, and also authorized the Chief Counsel to redelegate this authority. (25.133).
4. The Chief Counsel has redelegated this settlement authority, in its entirety, to the Chief, Claims and Litigation Division.

B. Scope.

1. The Department of Justice has established guidelines for administrative processing of claims under the Federal Medical Care Recovery Act (hereinafter FMCRA) at Title 28 Code of Federal Regulations Part 43 (hereinafter DOJ Regulations).
2. A claim arises under 2651-2553 when:
 - a. A Coast Guard member, retiree, or dependent incurs an injury or disease as a consequence of circumstances creating tort liability upon a third party; and
 - b. Medical care was provided by a Coast Guard facility, Coast Guard paid medical provider(s), a DOD facility, or CHAMPUS.
3. A claim arises under 1095 when the medical care was provided through a Uniformed Services facility to a person who would otherwise be eligible to receive reimbursement or indemnification from a third party payor.
4. Information concerning a potential claim should be forwarded to Commandant (G-KRM-1) when:
 - a. A third party, third party insurer, or other representative offers payment and requests a release from the U.S. as a condition precedent to the payment of other damages to the injured person; or

- 17.B.4. b. An investigation indicates liability by a party from which collection is not precluded; or
- c. An investigation reveals the existence of any insurance policy from which recovery can be pursued.
5. A claim which does not meet the criteria of paragraph 17-B-4 should nevertheless be forwarded if the local settlement authority determines that assertion of the claim is merited, or if a property damage tort claim is also asserted as provided in Chapters 15 or 16.
6. A claim which does not arise from tort liability is outside the scope of the FMCRA but a claim may still be assertable under circumstances wherein the U.S. is an eligible third party beneficiary of a medical payment, uninsured motorist, no-fault, personal injury payment, or workmen's compensation insurance policy.
7. A claim is prohibited if it is for medical care furnished to a veteran by the Veteran's Administration under Title 38 U.S. Code 601 - 643 for a service-connected disability. However, a claim for the care of an injured Coast Guard member, later discharged and transferred to a Veteran's Administration facility, may be forwarded for collection for the reasonable value of medical care up to the date of discharge.

C. Debtors.

1. This Chapter does not apply to claims against:
- a. An employer of a seaman treated under Title 42 U.S.C. 249;
- b. A government contractor if the U.S. is obligated to defend the contractor for claims arising in connection with the performance of the contract. Before forwarding such claims to Commandant (G-KRM-1) for collection action, care should be taken to determine if such a contractual obligation exists; and
- c. Any department, agency, or instrumentality of the U.S.
2. A claim within the scope of this Chapter against a foreign debtor shall be investigated, processed, and forwarded for assertion without regard to the nationality of the debtor. A claim against a foreign government or international organization shall be investigated by the cognizant command and the investigative report and recommendations of the local settlement authority forwarded to Commandant (G-LCL).

17.C.3. A claim within the scope of this Chapter which would be asserted against a member of the armed services of the U.S., an employee of the U.S., or a dependent of a member or employee, is prohibited unless the claim is recoverable out of the proceeds of liability insurance or unless the (potential) debtor was guilty of willful misconduct or gross negligence.

D. Investigation.

1. If the information from the injured person and the medical report indicates potential third party liability, the command providing the treatment, if Coast Guard, investigates the facts and circumstances. If the injured party is not treated at a Coast Guard facility, the command of the injured party shall conduct the investigation. The guidelines in Chapter 2 shall be followed. Use reports of investigation under other directives if already available or soon to be available. If U.S. property has been damaged in the incident causing the injuries, the investigation should also comply with Chapters 15 or 16. The investigative report should contain:

a. In all cases:

- (1) The surname, first name, and middles initial, address (also residence address if the mailing address is other than a residence), and occupation of each apparent third party;
- (2) If a third party is a member of a uniformed service or an employee of the U.S., a finding of fact showing whether that third party was on duty and, if so, was performing official duty or within the scope of employment at the time of the incident, and whether or not grossly negligent or guilty of willful misconduct; and
- (3) A report of the financial status of the third party or the nature and extent of any insurance coverage, the policy number, and the name and address of the insurer. Problems encountered in obtaining information because of the Fair Credit Reporting Act, 15 U.S.C. 1681, should be referred to Commandant (G-LCL). If the third party is uninsured or underinsured and the cause of the injury was a motor vehicle accident, indicate the status of the applicable law for financial responsibility.

b. In vehicle accident cases, a finding of fact showing whether any injured person, owner, driver, or passenger had uninsured motorist insurance coverage (sometimes called family protection coverage), personal injury protection, medical payments coverage, or any type of major medical or hospitalization insurance, and, if so, the extent of such coverage;

- 17.D.1. c. The initial, and final diagnosis and prognosis, and a finding of fact about the degree of any permanent or temporary disability suffered including a copy of Standard Form 502.
- d. The originals or copies of paid vouchers showing the amount expended by the U.S. for the injured person's treatment;
- e. Medical records relevant to the treatment of the injuries which form the basis of the claim; and
- f. Any release executed by the injured person.

E. Procedure.

- 1. Upon notice of a possible claim, the settlement authority determines whether the Coast Guard is the responsible federal agency.
 - a. If the Coast Guard or other federal agency furnishes medical care to an injured person who is a member of another agency, investigation and processing of the claim will be by the other agency. The settlement authority should forward all available information to that agency.
 - b. If the medical facility of an agency other than the Coast Guard furnishes medical care and treatment to an injured person who is a member of the Coast Guard, or whose sponsor is a member of the Coast Guard, the investigation, processing and collecting will be by the Coast Guard.
 - c. If the responsible agency has no facility conveniently located to investigate or take other actions relating to the FMCRA claim, it may request assistance from a conveniently located federal agency. Such assistance will be in accordance with that agency's procedures. The cost of such assistance may not be reimbursed.

F. Responsibility.

- 1. Commandant (G-KRM-1) is the central manager for documenting, assembling, and forwarding FMCRA claims to Commandant (G-LCL) for collection action. See COMDTINST 6010.16A (series). Proper coordination between G-LCL and G-KRM-1 will prevent duplication of effort.
- 2. The authority to compromise, waive, terminate collection action, or refer to Department of Justice for litigation rests with G-LCL.

CHAPTER 18

LITIGATION

A. Function and Organization.

1. This chapter provides general information and instruction on litigation-related problems which frequently arise within the Coast Guard.
2. Organization.
 - a. The Department of Justice (DOJ) has the primary authority to represent the interests of the United States in all civil and criminal litigation.
 - b. The Chief Counsel of the Coast Guard initiates, supervises, and coordinates all actions necessary to protect the interests of the Coast Guard in all legal and administrative proceedings which arise out of or otherwise affect Coast Guard activities.
 - c. Except for procurement and environmental compliance matters, the Chief, Claims and Litigation Division (G-LCL) is responsible for maintaining a close liaison with DOJ & U.S. Attorneys in civil litigation, assisting in procuring and evaluating evidence, preparing pleadings and litigation reports, assisting in trial and appellate presentations, and negotiating and compromising litigation involving the Coast Guard. However, MLCPCAC coordinates directly with DOJ & U.S. Attorneys on litigation to collect most civil penalties; however, in cases involving penalties assessed under the FWPCA and potentially involving the Oil Spill Liability Trust Fund, MLCPCAC first coordinates with the NPFC and G-LCL, as appropriate, prior to coordination with DOJ & U.S. Attorneys.
 - d. Legal officers of MLC's, districts, and headquarters units are responsible for identifying matters within their command's cognizance which may result in claims or litigation, securing the appointment of claims investigating officers, and providing counsel as necessary. Legal officers may also assume, in particular cases, following coordination with G-LCL, full responsibility for litigation support to DOJ or the U.S. Attorney, as described in the preceding paragraph.
 - e. All Coast Guard attorneys, military and civilian, are responsible for identifying potential claims and causes of action which may be asserted by the United States, and ensuring that such matters are reported to the appropriate authority for further investigation.

18.A.3. No person on active duty with the Coast Guard or employed by the Coast Guard will appear as an attorney or counsel for the Coast Guard before any civil court, tribunal, administrative body, or government agency of the United States, unless authorized by the Commandant, the Chief Counsel, the MLC legal division chief, or the district legal officer.

4. As used in this chapter, the term "legal officer" means the Chief Counsel, G-L division chiefs, and legal officers of MLC's, districts, and headquarters units. The "appropriate" or "cognizant" legal officer is the legal officer having primary responsibility for litigation support in a particular case, or, in general matters, the legal officer for the command affected or the command to which the affected individual is assigned.

B. Service of Legal Process.

1. This section outlines the appropriate response when service of process (summons, subpoenas, etc.) is attempted on Coast Guard personnel or employees. It does not address the subject of criminal arrest by civil authorities. For civil arrest procedures, see Article 8-C, Personnel Manual, COMDTINST M1000.6 (series), and Chapter 8, Military Justice Manual, COMDTINST M5810.1B (series). Service of subpoenas seeking Coast Guard witnesses in criminal cases, however, is within the scope of this section.

2. The rules governing service of process vary considerably among the various courts from which such process may issue. Nevertheless, the immediate response of the command will generally be the same, depending only on the method by which service is attempted. The following guidelines apply:

a. Whenever process is served, by any method, in a matter which involves a Government employee in his or her official capacity, the servicing legal officer should be immediately notified. Unless the employee has been named as a defendant, the provisions of 49 CFR Part 9 will most likely govern and section 18-G, "CG Personnel & Employees as Witnesses," of this Manual should be consulted.

b. Personal service is hand-delivered to the individual, usually by a professional process server or law enforcement officer. When such service is attempted at a Government installation, the commanding officer or officer in charge should normally grant permission to the process server to enter the installation for that purpose. This policy of cooperation with civil authorities applies whether the process is intended to affect the individual as a Government employee or as a private person. Admittance to the installation may be denied for good reason, e.g., if it may significantly interfere with the functioning of the command, or if the

- | 18.B.1. b. (cont'd) area may be hazardous to the process server.
| When permission to serve process is denied, the command
| shall immediately notify the appropriate legal officer
| and provide the reason for the refusal.
- | c. Service by mail may also be attempted. When a member or
| employee receives, by mail, process which purports to
| relate in any way to his or her official duties, the
| commanding officer or officer in charge shall immediately
| notify the servicing legal officer. When a summons,
| naming an employee as a defendant in his or her
| individual capacity, requests return of an acknowledgment
| of service, it may be in the named individual's best
| interest to comply. [See, Fed. R. Civ. P. 4(c)(2)(C)&(D)
| regarding imposition of the costs of effecting personal
| service when service by mail is not timely acknowledged].
| Mail service of summonses naming the United States, or
| employees in their official capacity, shall be
| acknowledged only when the DOJ attorney assigned to the
| case has so instructed. In such cases, Enclosure (16) or
| an equivalent should be used. [See section 18-C,
| "Representation of CG Personnel," regarding the
| determination of whether an employee has been sued in an
| *individual or official capacity*.]
- | d. Delivery to commanding officer or officer in charge.
| When process is delivered to a commanding officer or
| officer in charge with the request that it be forwarded
| to a member or employee within his or her command, it may
| be delivered to the person named provided that the
| individual voluntarily agrees to accept it. If the
| person named in the process does not voluntarily accept
| it, the commanding officer or officer in charge is not
| required to act as a process server and will return the
| process to the sender with a notation that service has
| been refused.
- | 3. Garnishment. Process for the garnishment of wages for all
| active duty and retired Coast Guard personnel and Coast Guard
| reservists receiving drill pay will be immediately forwarded
| to the Coast Guard Pay and Personnel Center for appropriate
| action.
- | 4. Jury duty. Active duty members of the Armed Forces are
| exempt from jury service in federal courts. 28 U.S.C.
| ?1863(b)(6). Civil process for state or local jury duty
| served on an active duty member will be honored unless the
| Coast Guard determines that such jury service would
| unreasonably interfere with the performance of the member's
| military duties, or would adversely affect the readiness of
| the unit, command, or activity to which the member is
| assigned. 10 U.S.C. ?982. Certain positions, such as flag
| officers, commanding officers, and officers-in-charge, have
| been categorically determined to be exempt (see paragraph
| 16-M of the Personnel Manual).

C. Representation of Coast Guard Personnel

1. Criminal Proceedings. Representation is not available by the Department of Justice for federal criminal proceedings. Except in unusual cases, DOJ representation is also generally not available for state criminal proceedings.
2. Civil Proceedings. Past or present Coast Guard personnel or employees against whom civil proceedings are brought in their *individual* capacities, but which arise out of the performance of their official duties, are generally afforded representation by the Department of Justice.
3. Individual v. Official Capacity Suits. Personal representation of government employees is necessary only when they are sued in an *individual* capacity. When sued in an *official* capacity, the real defendant is the United States; should relief be awarded, it would be against the resources of the U.S. (see ¶4-5.212, Department of Justice Manual).
 - a. It is not always easy to determine whether a named individual is being sued in his *individual* or *official* capacity. But among the indicia to be reviewed are the body of the complaint and the *ad damnum* clause (or prayer for relief). The clearest hallmark of an individual capacity suit is that the prayer for relief seeks moneydamages personally from the named government employee (see Paragraph I(B) of DOJ Monograph, "Representation Practice & Procedure," ¶4-15A.300, Department of Justice Manual).
 - b. Conversely, *official* capacity suits are most often characterized by suits against higher ranking officials for declaratory, injunctive, or other forms of equitable relief (e.g., mandamus). Once notified of an official capacity suit, DOJ will automatically represent the named federal official; no formal request for representation is necessary in such cases (see ¶4-5.212 and 4-13.000, Department of Justice Manual).
4. Upon receiving notice that a Coast Guard member or employee has been served with a summons in a matter which may involve his or her official duties, the appropriate legal officer shall investigate as necessary to discover facts sufficient to support a determination as to whether or not the employee was indeed acting within the scope of his or her employment at the time of the incident. Such an investigation shall be undertaken immediately. Investigation shall not be delayed because the individual has not yet indicated a desire to seek DOJ representation. The reasons are twofold:
 - a. The United States may ultimately be brought into the litigation regardless of the employee's desires. In such

| 18.C.4. a. (cont'd) cases, preliminary scope of employment
| investigation will not be time wasted, as it can serve as
| the starting point for the necessary claims
| investigation. Furthermore, depending on the court and
| the nature of the proceedings, rapid action by DOJ may be
| necessary. A motion to remove a case from state to
| federal court, for example, must ordinarily be made
| within 30 days of the receipt of process (see 28 U.S.C.
| 1446(b)). There will be more time available for an
| adequate DOJ response if the preliminary matter of the
| representation determination can be processed
| expeditiously pursuant to timely investigation.

| 5. If the individual wishes to request DOJ representation, the
| cognizant legal officer shall prepare for the signature of
| the employee a written request, in accordance with the
| requirements of 28 C.F.R. Section 50.15 (see Enclosure (13)).
| The employee's representation request, together with the
| investigative results regarding scope of employment, must be
| sent as soon as possible to G-LCL. A complete DOJ Form 399
| should be included in this mailing, if possible.

| 6. G-LCL will forward the request to the Department of Justice.
| In appropriate cases, the forwarding letter will include
| certification that the employee was acting within the scope
| of employment (see Enclosure (13)). Final determinations as
| to scope of employment are made by DOJ.

| 7. Pending notification of the DOJ representation determination,
| or further guidance from G-LCL, the cognizant legal officer
| will cause a claims investigation to be undertaken, in
| accordance with Chapter 2 and the citations therein.

D. Litigation - United States as Defendant.

| 1. The Department of Justice (DOJ), usually through the local
| United States Attorney, is responsible for civil litigation
| involving the United States, as either plaintiff or
| defendant. The Chief, Claims and Litigation Division (G-LCL)
| assists DOJ in the litigation of Coast Guard cases, except
| those involving procurement and environmental compliance law.
| Since most suits name the United States as a party, service
| will usually be made upon the Attorney General and the local
| United States Attorney, and a request made to G-LCL for a
| litigation report. Cases of local import or which do not
| involve significant Coast Guard activities may be delegated
| by G-LCL to district, MLC, and any other legal officer for
| litigation support.

| 2. When the local U.S. Attorney requests a litigation report
| directly from the district or MLC legal officer, he or she
| shall immediately forward a copy of the request to G-LCL and
| cause a claims investigation to be commenced. Preparation of
| a litigation report may begin if the legal officer intends to
| request delegation of litigation support responsibility for

- | 18.D.2. (cont'd) the case or has reason to believe that such
| responsibility may be delegated, but no formal response to
| the U.S. Attorney shall be made until authorized by G-LCL.
- | 3. The Chief, Claims and Litigation Division, or the legal
| officer to whom he or she has delegated support
| responsibility for a particular case, is responsible for
| supplying a litigation report to the DOJ attorney assigned to
| the case.
- | 4. The litigation report provides the factual background to the
| legal action and emphasizes any problems anticipated in the
| litigation of the case. It should raise and discuss issues,
| propose defenses, and recommend to the trial attorney the
| course of action which will best serve the interests of the
| Coast Guard. It should fit the needs of the particular case
| and, as required:
- a. Contain a full description of the facts;
 - b. Describe any action taken on any claims submitted on the
matter before litigation was initiated;
 - c. Discuss the legal issues, including all possible defenses
and motions, and, when appropriate, references to
applicable state and local laws;
 - d. Include a proposed answer to the complaint, or, in
affirmative actions, a proposed complaint;
 - e. Identify any associated claims and lawsuits, and the
Coast Guard attorney assigned to the claim or suit;
 - f. Give the name and current duty stations and work
telephone numbers of all potential witnesses and experts,
and a synopsis of expected testimony;
 - g. Address all potential problems anticipated in the defense
or prosecution of the case;
 - h. Identify appropriate affirmative claims, such as those
contained in Chapters 14, 15, 16, 17; and
 - i. Provide all pertinent documents and written statements.
- | 5. In the course of the litigation, the Coast Guard will provide
| full assistance to the trial attorney in locating witnesses,
| responding to pleadings and discovery, and providing other
| such support as may be requested.

E. Litigation - United States as Plaintiff.

1. The Department of Justice is charged with the representation
of the United States in affirmative civil litigation.

- 18.E.1. (cont'd) Depending on the amount or legal issues involved, the case may be handled by the Department of Justice or the local United States Attorney. In affirmative cases, the Coast Guard has the responsibility to take all reasonable steps to collect or compromise the claim or debt owed the United States prior to the referral of the case for prosecution. Refer to 31 U.S.C. 3711, et seq., 4 C.F.R., Parts 101-105, and Chapter 16 for the claims collection standards. Only upon the failure of the parties to come to agreement as to liability, the amount of the debt, or when termination, compromise, or suspension are inappropriate or beyond the authority of the Coast Guard, should the case be referred.
2. Referrals to the Department of Justice for collection of affirmative claims will be in accordance with paragraph 16-N.
3. The District Commander may refer criminal cases directly to the appropriate United States Attorney for criminal prosecution (see 33 C.F.R. 1.07-90).

F. Release of Information During Litigation.

1. The release of information by the Coast Guard is primarily governed by the provisions of the Privacy and Freedom of Information Acts Manual, COMDTINST M5260.2, and 49 C.F.R., Parts 7 and 10. When questions arise about the propriety of the release of information during litigation, or when the possibility of litigation exists, the custodian should consult those publications and the appropriate legal officer.
2. Contact between parties involved in the litigation should be made only between the attorneys for the parties. All requests for information concerning matters known to be in litigation shall be directed through the appropriate legal officer. In the event that the custodian receives a request for information which the custodian believes may be in litigation the custodian shall immediately contact the appropriate legal officer before releasing the information.
3. In order to preserve the integrity of Coast Guard records, originals of books, records, papers, or documents should not be furnished to any person or agency for use as evidence in legal proceedings. Properly authenticated copies of Government documents may be admitted in lieu of the originals. [See Enclosure 14 for the preparation of a Certificate of True Copy.]

G. Coast Guard Personnel and Employees as Witnesses.

1. The appearance of present and former Coast Guard employees (both military and civilian) as witnesses in legal proceedings is governed by Title 49, Code of Federal Regulations, Part 9. The provisions of 49 CFR Part 9 are

- | 18.G.1. (cont'd) quite specific, and familiarity with them by Coast
| Guard attorneys will answer most questions which typically
| arise. All Coast Guard attorneys, whether military or
| civilian, are authorized to act as "agency counsel" for
| purposes of 49 CFR Part 9.
- | 2. U.S. as a Party. In legal proceedings involving the United
| States, the appropriate legal officer will arrange for the
| production of Coast Guard witnesses requested by the United
| States.
- | 3. Private Litigants. When any present or former Coast Guard
| employee has been served with a subpoena to testify or
| produce records (or is contacted by a party, their
| representative or attorney, regarding the possibility of
| having to testify or produce records) concerning information
| acquired in the course of performing official Coast Guard
| duties or because of the employee's official status, the
| appropriate servicing legal officer should be consulted prior
| to responding.
- | 4. Funding. Travel expenses necessary for Coast Guard employees
| to appear at legal proceedings, other than Military Justice
| or internal administrative proceedings and proceedings not
| involving the United States at which the member or employee
| voluntarily appears, shall be funded as follows:
- | a. In civil or criminal proceedings involving Coast Guard
| activity (i.e., cases brought against the Coast Guard, or
| brought by the U.S. at the Coast Guard's request) intra-
| district travel will be funded by the district; inter-
| district travel will be funded by Commandant (G-LPD) (see
| Enclosure (15)).
- | b. In any proceeding -- (1) to which the U.S. is a party,
| and (2) the subject matter of which does not involve
| Coast Guard activity, and (3) at which the employee is
| appearing at the request of the attorney representing the
| United States -- funding will be by the Department of
| Justice, coordinated by Commandant (G-LPD) and (G-LCL).
- | c. In all proceedings not otherwise described above, funding
| will be provided by the party soliciting the employee's
| appearance. In appropriate instances, funding may be
| provided by the Coast Guard, subject to later
| reimbursement by the party soliciting the employee's
| appearance (see COMDTINST M16000.6 (series), Personnel
| Manual, Article 7-A-23).
- | 5. Duty status of witnesses. For military members, see
| COMDTINST M1000.6 (series), Personnel Manual, Article
| 7-A-23; for civilian employees, see COMDTINST 12630.9
| (series), Court Leave.

- | 18.G.5. a. In any proceeding at which an employee appears, pursuant
| to compulsory process or TAD orders, for the purpose of
| testifying as to knowledge resulting solely from the
| individual's Coast Guard employment, (s)he does so in an
| official duty status. In the absence of compulsory
| process, TAD orders will be issued only in the
| circumstances described in paragraphs 18-G-4-a & b,
| above, or when the appropriate legal officer has
| determined that the matter involves: (1) a substantial
| public interest, or (2) a substantial Coast Guard or U.S.
| interest.
- | b. Civilian employees appearing at proceedings to which the
| United States, the District of Columbia, or a State or
| local government is a party, for the purpose of
| testifying as to knowledge not resulting from the
| individual's Coast Guard employment, shall be granted
| court leave for that purpose.
- | c. In any case not described in the preceding two
| paragraphs, the member or employee shall proceed on
| regular or annual leave.
- | 6. Any check for witness fees accompanying a subpoena, pursuant
| to which the employee is issued orders or granted court
| leave, shall be signed over to the Coast Guard and deposited
| as a miscellaneous receipt.

| H. Payment of Counsel Fees and Other Expenses for Coast Guard
| Personnel and Dependents in Foreign Tribunals.

- | 1. Title 10, United States Code, Section 1037, provides
| authority for employment of counsel by the government, and
| payment by the government of counsel fees, court costs, bail,
| and other expenses associated with the representation, before
| foreign judicial tribunals and administrative agencies, of
| persons subject to the UCMJ, and of persons not subject to
| the UCMJ but employed by or accompanying the Armed Forces in
| an area outside the United States and the territories and
| possessions of the United States, the Northern Mariana
| Islands, and the Commonwealth of Puerto Rico.
- | 2. Individuals eligible for assistance pursuant to this statute
| include:
- | a. Coast Guard members and members of the Coast Guard
| Reserve serving under orders, when brought before a
| tribunal or administrative agency of any foreign nation;
- | b. Civilian personnel described in paragraph 18-H-1 above,
| when brought before a tribunal or administrative agency
| of a foreign nation in which they are present solely by
| reason of their Coast Guard employment; and

- | 18.H.2. c. Dependents of military or civilian personnel described in
| paragraphs 2-a. and 2-b. above, if, at the time of the
| act or omission, such dependents: (1) meet the criteria
| for establishing dependent status set forth in Article
| 18-C-2 of the Personnel Manual, COMDTINST M1000.6A, or
| equivalent criteria for civilian sponsors, and (2) are
| present in the foreign nation solely by reason of
| accompanying the sponsor to his or her place of duty or
| employment.
- | 3. Funds will not be expended under 10 U.S.C. ?1037 for the
| benefit of contractors or their employees who might be
| serving the Coast Guard overseas. Expenditure of funds for
| the benefit of Coast Guard employees who are nationals of a
| foreign nation is limited to actions arising out of their
| performance of official duties on behalf of the United States
| government. Dependents of foreign nationals are not eligible
| individuals.
- | 4. A request for provision of counsel, bail, or payment of
| expenses will be made by the eligible individual, through the
| chain of command, to the approval authority, that is, the
| Commander of the cognizant Maintenance and Logistics Command
| or, Headquarters and Headquarters units, the Chief,
| Claims and Litigation Division. Such requests may be in
| message form when time is critical to effective
| representation of the individual. Forwarding endorsements
| shall include recommendations. The approval authority will
| determine whether the request meets the criteria prescribed
| in this section and take final action to approve or
| disapprove the request.
- | 5. Foreign Criminal cases. Requests for the provision of
| counsel and payment of expenses in criminal cases may be
| granted in both trial and appellate proceedings in any of the
| following circumstances:
- | a. The act complained of occurred in the performance of
| official duty.
- | b. The sentence that is normally imposed includes
| confinement, whether or not such sentence is suspended.
- | c. Capital punishment may be imposed.
- | d. An appeal is available, from any proceeding in which the
| substantial rights of the defendant appear to have been
| denied.
- | e. Conviction of the offense alleged could form the basis
| for an administrative discharge.
- | f. The case, although it involves none of the preceding
| circumstances, is considered to have a significant

| 18.H.5. f. (cont'd) potential impact on the relations of U.S. forces
| with the nation involved, or to otherwise involve a
| particular U.S. interest.

| Funds for the posting of bail or bond to secure the release
| of eligible individuals from confinement by foreign
| authorities may be furnished in all criminal cases.
| Safeguards should be imposed to ensure that at the conclusion
| of the proceedings, or on the appearance of the defendant in
| court, the funds will be refunded to the Coast Guard. Funds
| for the posting of bail or bond will be provided only to
| guarantee the presence of the defendant and will not be
| provided to guarantee the payment of fines or damages. Funds
| will be provided for bail or bond only after reasonable
| efforts have been made to secure the release or pretrial
| custody to U.S. authorities by other normal methods.

| 6. Foreign Civil cases (including appearances before
| administrative agencies). Requests for provision of counsel
| and payment of expenses in civil cases may be granted in both
| trial and appellate proceedings in either of the following
| circumstances:

| a. The act or omission complained of occurred in the
| performance of official duty.

| b. The case is considered to have a significant potential
| impact on the relations of U.S. forces with the nation
| involved or to otherwise involve a particular U.S.
| interest. No funds shall be provided under this
| statutory authority where the United States is, in legal
| effect, the defendant, nor where the eligible individual
| is the plaintiff.

| 7. Procedures for Hiring Counsel and Obligating Funds.

| a. The selection of individual counsel will be made by the
| defendant. Such counsel will represent the individual
| defendant and not the U.S. Government. Upon approving a
| request for representation, the approval authority will
| contact the appropriate U.S. Diplomatic or Consular
| Mission to procure a copy of the list of attorneys who
| are qualified, competent, and experienced in trial
| practice, if such a list is maintained. The defendant's
| selection will be made from this list. If there is no
| such list, the qualifications of the attorney proposed by
| the defendant will be verified by the approval authority.
| Counsel must be admitted for full practice before the
| courts of the foreign country involved.

| b. The approval authorities designated under paragraph
| 18-H-4 will, whenever possible, cause a written contract
| to be entered into between the selected counsel and the

- | 18.H.7. b. (cont'd) United States. The contract will cover counsel
| fees and other costs (when appropriate) incurred in
| defense of the initial action only. It will not include
| fees for representation on appeal. If the case is
| appealed, supplemental agreements will be executed for
| each appeal. The contract shall be written so as not to
| establish an employer-employee relationship between the
| selected counsel and the United States. A sample
| contract is presented in Enclosure (17).
- | c. Counsel fees and expenses should not exceed amounts paid
| under similar circumstances by nationals of the country
| where the proceeding takes place. Fees will only be for
| services for representation in the particular case for
| which the contract is made. In no event may any contract
| include fees for representation in habeas corpus or
| related proceedings before courts of the United States.
| When appropriate and reasonable in the case, the payment
| of expenses, in addition to counsel fees, may include
| court costs, bail or bond costs, charges for obtaining
| copies of records, printing and filing, interpreter fees,
| witness fees, and other necessary and reasonable
| expenses. Expenses will not include the payment of fines
| or civil damages, directly or indirectly.
- | d. If unusual circumstances or local customs make it
| impracticable to enter into a written contract, action
| will be taken to record the agreement reached between the
| approval authority and the selected counsel in a letter
| of understanding. This letter should incorporate the
| party's understanding regarding fees and expenses, as
| discussed above.
- | e. Provision of counsel and payment of expenses under this
| section are not subject to the provisions of the
| Comptroller Manual. However, the provisions of the
| Federal Acquisition Regulations (FAR), in particular
| Sub-part 37.104 (Personal Service Contracts), may be used
| as guides in contracting.
- | f. Nothing in this regulation will be construed as
| prohibiting the service member or employee from selecting
| qualified local counsel employed by the U.S. Government.
- | 8. Payment of bills submitted by the selected counsel and other
| costs will be made in accordance with Part IV, Chapter 4,
| Section L of the Comptroller Manual (COMDTINST M3700.4) and
| pertinent disbursing regulations relating to payment of
| contractual obligations. Acceptance of services procured
| under these procedures will be certified by the approval
| authority or his designee. Payments of bail may be made when
| authorized by such officers. Such authorization will be in
| the form of a directing letter or message citing 10 U.S.C.
| 1037.

| 18.H.9. Ordinarily, reimbursement will not be required from
| individuals with respect to payments made on their behalf.
| However, prior to the posting of bail or bond on behalf of a
| service member or civilian employee defendant, he or she
| shall sign an agreement to remit the amount of such bail or
| bond or permit the application of so much of his or her pay
| as may be necessary to reimburse the Government, in the event
| that he or she willfully causes forfeiture of such bail or
| bond. In the event of such forfeiture, the amount of bail or
| bond provided will be recovered from the party to the
| agreement in accordance with that agreement and U.S. law.
| The agreement should include a statement that it does not
| prejudice the defendant's rights under the provisions of the
| Federal Debt Collection Act (5 U.S.C. ?5514) to notice,
| hearing, etc., if the amount is considered erroneous.
| Likewise, it should contain a provision that it does not
| prejudice the defendant's right to appeal to the Comptroller
| General of the United States and the courts after such
| payment or deduction has been made if the amount is
| considered erroneous. Reimbursement will also be sought, by
| any method available, from dependents on whose behalf bail or
| bond is posted, if they willfully cause the forfeiture
| thereof.

CHAPTER 19

ENVIRONMENTAL COMPLIANCE LITIGATION AND RELATED ISSUES

A. Authority.

1. Title 14, U.S. Code Section 691, requires an Environmental Compliance and Restoration (EC&R) Program for the Coast Guard. The Secretary's authority in this regard has been delegated to the Commandant. 49 CFR ^1.46(tt). The Commandant redelegated the claims assertion and settlement portion of that authority to the Chief Counsel. The Chief Counsel has redelegated that authority to the Chief, Environmental Law Division (G-LEL), for claims not exceeding \$100,000 under the Environmental Compliance and Restoration Program (See, paragraph 5-B-14, and Enclosures (18) & (19)).

B. General.

1. Like any other federal agency or private sector entity, the Coast Guard must comply with a myriad of environmental laws and regulations issued by both federal and state regulatory authorities. This chapter outlines policy and procedure to be followed when the Coast Guard is faced with defensive environmental compliance litigation or negotiation stemming from our operations. This chapter is not designed as a substantive manual on environmental compliance law, but rather describes issues which commonly arise and outlines the resources that are available within the Coast Guard legal program for dealing with the legal aspects of environmental compliance problems.

C. Organization and Responsibilities.

1. The Chief, Environmental Law Division (G-LEL) manages the delivery of environmental compliance law services using a team approach involving the MLC, district, and base legal staffs. G-LEL is responsible for coordinating environmental compliance legal services within the Coast Guard. This includes advising program managers on policy issues, disseminating information to legal offices, reviewing all legal documents relating to environmental compliance submitted for Headquarters approval, providing litigation support to the Department of Justice (DOJ), and negotiating all Coast Guard CERCLA cases.
2. The Department of Justice, Environment & Natural Resources Division, Environmental Defense Section (EDS), provides representation for the Coast Guard in defensive litigation based on alleged violation of environmental laws or claims for environmental remediation costs. G-LEL provides all necessary litigation support to DOJ(EDS).

| 19.C.3. The Chief, Legal Division, of each MLC has designated
| environmental attorneys to provide environmental law services
| directly to our units. Those attorneys are tasked with a
| variety of environmental law duties, among which are:
| responding to notices of violation (NOVs) and compliance
| orders, negotiating federal facility agreements (FAAs), and
| rendering advice on fee/tax issues. Ongoing negotiations
| with EPA or state officials should be closely coordinated
| with, and copies of any draft FFAs forwarded to, G-LEL, to
| both insure consistency of policy and maximize the likelihood
| that the documents in question ultimately receive
| Headquarter's approval.

| 4. District legal officers and independent duty legal officers
| will often be the first ones that units turn to for advice on
| a real or perceived environmental compliance problem. As
| such, it is incumbent upon these legal officers to seek out
| training opportunities for themselves and their staffs, and
| to be conversant in environmental law matters. The intent
| here is not to produce environmental law experts at the local
| level, but rather to have individuals who can accurately
| grasp and frame the issues and then know who to contact at
| the respective MLC, or G-LEL, for additional assistance. As
| local counsel gain more expertise in the subject area, they
| may be called upon to interface and negotiate with local
| regulators when necessary.

| D. Regulatory Enforcement Actions Against Coast Guard Units.

| 1. Congress, through its waivers of sovereign immunity in
| several environmental laws, has greatly expanded the
| potential for enforcement against federal facilities. For
| instance, facilities with permits for air or water discharge,
| or hazardous waste storage, are subject to inspection and
| possible violation notices in case of noncompliance. The
| purpose of this section is to give a brief description of the
| types of enforcement actions or mechanisms which might be
| employed and the initial procedure to follow.

| 2. Notice of Violation (NOV), Notice of Noncompliance (NON), and
| Notice of Deficiency (NOD). In the event a unit is cited for
| permit or regulatory violations, it is important to react
| promptly to the notice and get the issue resolved quickly.
| The NOV/NON/NOD (the exact term in use varies with the
| jurisdiction) is often the first "warning shot" regulators
| will fire to put the facility on notice that greater
| attention must be paid to compliance issues. Inattention to
| NOVs is a bad practice which will lead to poor relations with
| local regulators or, worse yet, possible criminal action
| against certain Coast Guard members or employees. When a
| Coast Guard facility receives a NOV, the receiving unit will
| normally notify the district or independent legal office.
| Local counsel should, in turn, notify the respective MLC.

| 19.D.2. (cont'd) Under the Resource Conservation and Recovery Act
| (RCRA) a NOV may be issued simultaneously with a Corrective
| Action Order. If such an order has been issued, the MLC
| should immediately contact the state or regional EPA
| authority with responsibility for the action. Time is
| important in these matters as the order may become effective
| within 30 days of issuance if not contested by the agency.

| 3. Federal Facility Compliance Agreement (FFCA). Federal
| Facility Compliance Agreements (FFCAs) are formal agreements
| between a federal agency and the Environmental Protection
| Agency. They cover media-specific (air, water, etc.)
| violations and establish a plan for remedying the violations
| and achieving compliance. State regulators will often seek
| our signature on formal documents called Administrative
| Consent Orders (sometimes referred to as Administrative
| Orders on Consent or Administrative Consent Decrees) in an
| effort to memorialize our agreement to comply with state
| regulations. Commonly, regulators will offer a "model" FFCA
| (in the case of EPA) or Consent Order (in the case of a
| state) to the unit commander for signing shortly after a NOV
| has been issued. They will leave the command with the
| impression that the terms of the document are hard and fast,
| nonnegotiable. However, Coast Guard commitments made in an
| FFCA/Consent Order are enforceable and must be carefully
| considered for technical and financial feasibility prior to
| signing. MLC environmental attorneys are primarily
| responsible for, and are the resident experts in, negotiating
| the terms of an FFCA or Consent Order. MLC coordination with
| G-LEL is essential in order to lay the foundation for
| Headquarters commitment to signing these documents.

| a. Once the FFCA or Consent Order has been negotiated by the
| MLC environmental law attorney in coordination with
| G-LEL, the document should be signed by the respective
| shore unit commander in the rank of O-5 or above, or by
| the unit's next higher operational commander in the rank
| of O-5 or above, and then forwarded to G-LEL for
| signature by the appropriate authority. Staffing the
| document through the necessary offices at MLC and
| Headquarters can be time-consuming and the regulators
| should be advised that immediate turnaround is difficult
| to achieve.

| b. It is current policy for most FFCAs/Consent Orders to be
| signed personally by the Chief of Staff (G-CCS). In some
| limited situations, and depending on the exact nature of
| the agreement, proper signature authority may rest below
| the level of G-CCS.

| c. Monitoring progress in addressing previously identified
| problems is critical in achieving and maintaining
| environmental compliance. The Office of Engineering,

| 19.D.3. c. (cont'd) Logistics, and Development (G-E), the
| Environmental Compliance program manager for the Coast
| Guard, has established initial and follow-up reporting
| requirements for environmental compliance violations.
| Local Coast Guard counsel should stress the importance of
| complying with these requirements; otherwise, the same
| problems tend to recur over and over again.

| E. Other Agreements Regarding Remediation Problems at Coast Guard
| Installations. Serious remediation problems may result in a
| Coast Guard installation being placed on the National Priorities
| List (NPL). In such a case, the Coast Guard will be called upon
| to negotiate and enter into an Interagency Agreement (IAG) or
| Federal Facility Agreement (FFA) with EPA pursuant to ^120 of
| CERCLA. Even at sites which are not placed on the NPL, it may be
| appropriate and to our advantage for the Coast Guard to enter
| into analogous agreements with the respective states. IAG/FFA
| agreements will be negotiated by either the MLCs or G-LEL,
| depending on the circumstances.

| F. CERCLA (Third Party Site) Litigation and Negotiations. Like most
| large organizations, the Coast Guard frequently finds itself
| named as a potentially responsible party (PRP) at hazardous waste
| sites under either the Comprehensive Environmental Response,
| Compensation and Liability Act (CERCLA or Superfund) or an
| equivalent state law (typically referred to as a Mini-CERCLA).
| These cases arise when non-federal waste disposal facilities,
| which received Coast Guard hazardous wastes, release or threaten
| to release wastes into the environment. If the problem is a
| serious threat to human health or the environment, the site may
| be placed on the National Priorities List (NPL) and qualify for
| Superfund expenditures. At other sites state regulatory
| authorities will take action to remedy the problem. In either
| case, the Coast Guard can potentially incur tremendous liability
| for clean-up of the site because CERCLA imposes strict, joint,
| and several liability.

| 1. Case Initiation. The Coast Guard usually learns of its
| potential involvement in a CERCLA site when a letter from EPA
| or a state arrives at the Coast Guard unit which is suspected
| of generating waste that was delivered to the site.
| Typically, the letter requests information under Section
| 104(e) of CERCLA, 42 U.S.C. ^9604(e), and informs us that the
| Coast Guard may be a PRP. A unit in receipt of such a letter
| should send it immediately to G-LEL, via the respective MLC
| Legal Division, with a copu to the respective district legal
| office in the case of a district unit. G-LEL is primarily
| responsible for handling third-party site cases, but will
| often request assistance from the MLC, district, or base
| legal office in gathering records. Units receiving Section
| 104(e) requests should be advised to locate and copy any
| records relating to the generation of wastes by the facility
| (hazardous waste manifests, waste disposal contracts; etc.).
| Those records, as well as the names and present
| location/phone numbers for pertinent Coast Guard witnesses

| 19.F.1. (cont'd) (e.g., hazardous waste coordinator, unit records
| custodian, contracting personnel) should be forwarded as soon
| as possible to G-LEL.

| 2. Case Negotiation. PRPs will often form a PRP group or
| steering committee for purposes of negotiating both with the
| EPA/state and among themselves. A PRP group will sometimes
| initiate a study/clean-up of the site under EPA/state
| oversight. The Coast Guard is frequently invited to
| participate in such a PRP group and its activities.
| Opportunities for such participation will be considered on a
| case by case basis. In some cases it may be to our
| advantage, while in others it may not. Advance approval for
| formal membership and participation in a PRP group should be
| obtained from DOJ's Environmental Defense Section (EDS).
| G-LEL will be solely responsible for handling these cases and
| coordinating PRP group participation with DOJ. However,
| G-LEL may request MLC, district, or base legal offices to
| represent the Coast Guard at PRP meetings in the local area.

| G. Criminal Enforcement Against Coast Guard Employees. The wide
| variety of Coast Guard missions, facilities, and supplies expose
| many uniformed and civilian employees to environmental compliance
| responsibilities. Coast Guard employees who fail to meet these
| requirements and violate federal or state environmental laws are
| subject to potential criminal prosecution. As a general rule,
| DOJ representation is unavailable to federal employees accused of
| environmental crimes. The exception to this rule is when
| representation would be in the interest of the United States
| (e.g., an overly restrictive state criminal law is being used
| against federal employees as part of what amounts to a political
| debate between the state and federal government). These cases
| are rare and only apply when DOJ has not sought an indictment
| against the individual concerned. In the event that a Coast
| Guard employee is accused of environmental crimes, and requests
| individual representation by the government or at government
| expense, the request should be forwarded immediately to G-LEL for
| coordination with the DOJ.

| H. Payment of Environmental Fees. The Coast Guard will pay
| reasonable regulatory fees to state environmental regulators for
| services provided in managing state programs which apply to the
| federal government. Enclosure (20) is a copy of the latest
| internal fee/tax guidance in this area.

| I. Environmental Planning. Coast Guard environmental planners and
| civil engineers frequently seek legal advice concerning the
| proper interpretation of various laws which dictate when, and the
| extent to which, environmental planning must be documented.
| Among these laws are: the National Environmental Policy Act
| (NEPA), as well as the implementing regulations of the Council on
| Environmental Quality (CEQ) found at 40 CFR Parts 1500-1508;
| ^4(f) of the DOT Act of 1966; and ^106 of the National Historic
| Preservation Act, along with its implementing regulations found

- | I. (cont'd) at 36 CFR Part 800. Coast Guard compliance is generally
| governed by COMDTINST 16475.1B (series). Local legal officers
| should coordinate with the appropriate MLC environmental
| attorney, when necessary, to resolve these types of questions.
| Situations which are recognized as posing significant policy
| issues, or which are likely to result in litigation, should be
| referred to G-LEL as early as possible.
- | J. Other Environmental Compliance Legal Issues. MLC, district,
| base, and G-LEL environmental attorneys must work together to
| provide legal advice to Coast Guard clients concerning a wide
| variety of environmental law issues. Sensitizing Coast Guard
| personnel -- from employees who work in hazardous waste
| generating operations, their supervisors, and installation
| commanders -- to environmental compliance requirements is a very
| important task for Coast Guard attorneys. Providing early client
| advice on these issues will preserve Coast Guard relationships
| with regulators and encourage our clients to make environmental
| compliance an integral part of mission accomplishment.

Allowance List--Depreciation Guide (1990 Revision)

Use this Allowance List-Depreciation Guide for claims investigated and adjudicated on or after 01 October 1990. Deviation from the Maximum Payment amount may be authorized only by the Chief, Claims & Litigation Division, pursuant to subparagraph 1-8-2-e.

The listed depreciation rates are guides and will be used in accordance with the principles set forth in subparagraph 6-H-9-b(7). Apply these rates unless evidence establishes that an item has been subjected to less than average usage or more than average usage; in such cases, these rates should be reduced or increased in the sound discretion of the approving or settlement authority (see paragraph 6-H-9-b(7)(e)).

Compute yearly depreciation in 12 month increments, disregarding the month of purchase and the month of pickup. Consider 6-17 months as equal to one year, 18-29 months as equal to two years, and so on. When the claimant lists a range of purchase dates, for example "1966-1970," use the median date; in the example, this would be 1968. Do not depreciate items less than 6 months old except for rapidly depreciating items like clothing. Do not depreciate parts and accessories which are not normally replaced during the useful life of an item. Because items in storage are not subjected to the usual wear and tear, normally no depreciation should be taken on items during periods of government-authorized storage; however, in appropriate instances consider deducting for obsolescence.

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX- NUM		
1	Air Conditioners	**	**	**		See Item No. 64, electrical and gas appliances.
2	Antiques (other than furniture)				\$1000 per item \$5000 per claim	For an item to be considered as an antique, clear and convincing evidence must be presented. A prima facie case is made out if the item is shown to be at least 100 years old. For newer items, the claimant must prove that the item possesses a demonstrably inherent value regardless of its purchase price, place of purchase, prestige of label, or sentimental or personal attraction. Absent this reimbursement should be limited to out-of-pocket loss or the cost of a substantially similar substitute. The mere fact that an isolated appraiser can be found to assign a higher value does not meet this burden of proof. Also see Item No. 71 for antique furniture.
3	Aquariums	10% first year 5% thereafter		75		
4	Artificial flowers and fruits		25			
5	Automobiles and motor vehicles including recreational vehicles, trailers, motor-cycles, etc.	varies			\$2000 per claim except \$20,000 per vehicle in shipment	The maximum payment includes property stored in the vehicle. A maximum payment of \$20,000 is applicable to motor vehicles, etc., damaged, destroyed, or missing during government authorized shipment. Also see Item No. 99 for mobile homes.

ALDG CONTINUED - Page 2

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAXIMUM		
6	Automobile batteries	20		75	Include in maximum of No. 5 or No. 12	Compute depreciation based on length of use/guarantee period ratio. Otherwise use 20% per year.
7	Automobile convertible tops, seat and floor coverings	20		75	Include in maximum of No. 5 or No. 12	
8	Automobile paint jobs	10		75	\$1500 per vehicle Include in maximum of Item No. 5	On complete paint jobs, depreciate both labor and material. On minor paint jobs, do not depreciate labor or material. The allowance for pinstriping, special types of paint such as metal flake paint, and special technique painting such as scenic views will be limited to the cost of factory-styled pinstriping, decals and paint jobs.
9	Automobile radios, tape players, telephones and accessories	10		75	\$500 per claim Include in maximum of Item No. 5	Such radios include CB radios, Ham radios, and all types of special frequency receivers and transceivers. Accessory equipment (such as antennas, slide mounts, speakers, head sets, cables, microphones, etc.) is included in the maximum payment. Tapes left in a vehicle are not included in this category- see Item No. 128. Also see Item No. 64 for radios not mounted on a vehicle.
10	Automobile tires	30		75	Include in maximum of No. 5 or No. 12	Compute depreciation based on miles used/30,000 miles or miles used/mileage guarantee ratio if known. Otherwise use 30% per year.
11	Automobile internal and external working parts such as mufflers, exhaust systems, shocks, etc.	20		75	Include in maximum of No. 5 and No. 12	Only depreciate parts which are normally replaced during the useful life of the vehicle. Do not depreciate parts such as glass, fenders, bumpers, mirrors, etc.
12	Automobile spare parts	10		75	\$1000 per claim	This category includes parts not mounted on a vehicle which are shipped as household goods or stored at quarters. New spare parts which have not been used should not be depreciated.
13	Baby bassinets and carriages	10		75		Also see Item No. 71 for infant furniture.
14	Bags, fabric or plastic (clothes, shoes)	20		75		Also see Item No. 91 for luggage.
15	Barbecue grills (including Hibachi pots)	10		75		
16	Barber equipment (electric razors, shears clippers, scissors)	10		75		

ALDG CONTINUED - Page 3

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
17	Baskets- Metal	10		75		
	Wicker or plastic	20		75		
18	Bathroom scales	10		75		
19	Bedding- Mattresses, boxsprings					Mattress and box spring sets do not lose their intended use merely because the coverings do not match. It is not appropriate to recover both pieces because damage necessitates recovering one. Also see Item No. 88 for linens.
	- Feather pillows	5		75		
	- Other pillows	10		75		
	- Mattress cover pads	20		75		
20	Bedspreads	**	**	**		See Item No. 88, linens.
21	Bicycles	10		75	\$750 per item	The maximum payment includes all accessories. Also see Item No. 132 for tricycles.
22	Binoculars	5		50	\$350 per item \$1500 per claim	Also see Item No. 97 for microscopes and telescopes.
23	Blankets- electric	**	**	**		See Item No. 88, linens.
24	Boats and motors including outboard motors	varies			\$2000 per claim except \$15,000 per claim in shipment	Use local used boat retail values. There is no maximum allowance on houseboats in shipment; however, only boats used as living quarters prior to shipment would be considered houseboats.
	Houseboats	varies				
25	Boating equipment and supplies (exclusive of motors)	20		75	\$500 per claim	
26	Bookends		10			
27	Books- Bibles and bound Classics	5		25	\$3000 per claim for all books	This category does not include lecture notes and theses, see Item No. 130. Medical, dental, legal, and other professional books are included. Consider a lesser rate of depreciation on encyclopedias or texts if these are kept up to date with current supplements. Large sets of bound classics may be considered collections; see Item No. 48.
	- Encyclopedias, cookbooks, how-to books, textbooks and similar works	20		75		
	- Other hard-cover nonfiction	10		50		
	- Fiction, paperbacks, and magazines		50			
28	not used.					
29	Boxes (jewelry, cigarette, music, etc.)	5		75		

ALDG CONTINUED - Page 4

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
30	Bric-a-brac (all types)		10			This category includes inexpensive figurines, sculptures, and ornamental or sentimental items as distinguished from expensive objects of art; also see Item Nos. 48 and 101.
31	Briefcases	5		75		
32	Brushes (hair, clothes, etc.)	20		75		
33	Calculators (including adding machines)	10		75		Also see Item No. 102 for office furnishings.
34	Camel saddles (footstools)	5		75		
35	Cameras and photographic equipment	**	**	**		See Item No. 106, photographic equipment.
36	Camping equipment and supplies (including tents, sleeping bags, back packs, shovels and other tools, lanterns, etc.)	10		75	\$2500 per claim	Camping cutlery is included in this category. Camping clothing is not included in this category, see Item No. 47.
37	Candles (decorative)		25		\$50 per item \$300 per claim	
38	Cards (greeting- including Xmas and other religious cards)		50			If boxes are unopened or unused, take no depreciation.
39	Cards (playing)		25			If boxes are unopened or unused, take no depreciation.
40	Card tables	10		50		
41	Ceramic animals		20		\$250 per item \$750 per claim	This category is intended for floor-type items, such as elephants known as buffies.
42	Chandeliers				\$750 per item	
43	Chess sets.	**	**	**		See Item No. 73, game equipment.
44	Chests (ice, picnic, etc.)- Styrofoam - Metal or plastic	10	50	75		
45	China (fine)				\$3000 per claim	To be fine china, a five piece place setting must cost at least \$70. Also see Item No. 53 for crockery.
46	Clocks- Inexpensive- \$75 or less - Expensive- more than \$75 - Grandfather and Grandmother	10 5 5		75 75 50	\$3000 per claim \$750 per item \$1500 per item	The \$3000 maximum per claim includes Grandfather and Grandmother clocks. Also see Remark b for internal damage. Also see Item No. 48 for collections.

ALDG CONTINUED - Page 5

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAXIMUM		
47	Clothing (mens, womens and childrens)	30% 1st year, 10% each succeeding year		75	Per person per claim Ages 0 thru 14 \$1500 per person Ages 15 and older \$3500 per person	Sports clothing, camping clothing, etc., are included. Do not depreciate military uniforms and do not include these in the maximum allowances. Payment for the cost of pressing wrinkled clothing is not allowed unless the wrinkling is so severe as to amount to actual damage. In shipment, some wrinkling is expected. Necessary cleaning costs for soiling, staining, or contamination will be considered. Also see Item No. 149 for wedding gowns.
48	Collections and hobbies (coins, stamps, electric trains, bottles, etc.)	Use rate if indicated for individual items elsewhere on this chart, otherwise use 10% flat rate.			\$4000 per claim for all collections; use per item maximums if indicated elsewhere on this chart	Do not place reasonable recreational items in the collection or hobby category unless the quantity clearly indicates a collection or hobby. For example, a set of golf clubs, two tennis rackets, etc., are not quantities which comprise a hobby or collection.
49	Comforters	**	**	**		See Item No. 88, linens.
50	Compasses	5		50		
51	Computers Computer peripherals, software and accessory equipment	20 10		75 75	\$4000 per claim	Software and accessory equipment for the computer, such as the printer, etc., are included in the maximum per claim.
52	Cosmetics (including perfume, toilet articles, medicines, soap, etc.)		50			If boxes are unopened or unused, take no depreciation.
53	Crockery (dishes, pottery, glassware, plasticware)		20			Do not include fine china, crystal, or expensive cut glass in this category. Also see Item Nos. 45, 54 and 84.
54	Crystal				\$3000 per claim	Crystal items such as lamps and chandeliers will be considered under their respective specific categories and will not be counted in the maximum per claim for crystal. Expensive cut glass will be considered under this category. Also see Item Nos. 42, 53, 60 and 75.
55	Curtains	20		75		Also see Item No. 62 for depreciation on curtain rods.
56	Decorations (Xmas, birthday, etc.)		25			
57	Dental equipment and instruments		10		\$1500 per claim	Dental books are not included, see Item No. 27.
58	Dentures					Take no depreciation.
59	Desk and writing equipment (pen & pencil desk sets, fountain pens, etc.)	10		75	\$100 per claim	If made of precious metal, take no depreciation.

ALDG CONTINUED - Page 6

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
60	Dishes	**	**	**		See Item No. 53, crockery.
61	Drafting, mapping and sketching equipment	5		50	\$500 per claim	
62	Drapes	10		75		The curtain rods category includes related hardware.
	Draperies & curtain rods, venetian blinds	5		75		
63	Dryers	**	**	**		See Item No. 64, electrical and gas appliances.
64	Electrical and gas appliances				\$1500 per item except \$2500 per claim for satellite dishes, projection televisions, or for spas/hot tubs	Also see Item No. 126 for Hi-Fi and stereo systems and for tape recorders. Also see Item No. 141 for video recorders. See Remark b for internal damage. Depreciate television picture tubes 10% per year for the first three years and 5% per year thereafter up to a maximum of 75%.
	- Minor- \$200 or less	10		75		
	- Major- over \$200, except listed below	5		75		
	- Televisions, washers, dryers, hot tubs, satellite dishes, pinball machines, dishwashers, spas	10		75		
65	Elephants, ceramic	**	**	**		See Item No. 141, ceramic animals.
66	Eyeglasses (including contact lenses)	5		75		
66a	Fencing	**	**	**		See Item 102a, outdoor structures.
67	Figurines	**	**	**		See Item Nos. 30 and 101.
68	Firearms	5		50	\$2000 per claim	Take no depreciation if the firearm is of a type which would normally increase in value.
69	Flashlights	20		75		
70	Foodstuffs	varies			\$200 per claim	In shipment, for nonperishable foodstuffs only.
					\$500 per claim reasonable	At quarters, for a loss resulting from a power outage. At quarters or in shipment to a remote area.
71	Furniture (including brass furniture, cement furniture, water beds, and shelving)	5		50	\$2000 per item except \$4000 per claim for sectional sofas, or for dining room table and chair sets, or for schrank, or for sets of furniture replaced due to loss or damage of a single component part.	This category includes antique furniture. Take no depreciation on antique furniture or expensive, solid wood furniture such as cherry, walnut, teak, rosewood, oak, etc., except for replacement of fabric. Do not confuse solid wood with finishes, stains, veneers, etc. The \$2000 per item limit includes water bed frames and parts. Kitchen table and chair sets will be considered as one item with a maximum of \$2000. Consider each wall unit under this category as one item. For furniture containing marble, see Item No. 92. See Remarks c and d.
	Work benches and infant, lawn, plastic, wicker, rattan, and patio furniture	10		75		Infant furniture includes such items as cribs, youth beds, etc.

ALDG CONTINUED - Page 7

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
72	Furs	5		40	\$1500 per item \$3000 per claim	
73	Game equipment (poker chips, chess and checker sets, backgammon sets, etc.)		25		\$500 per claim	This category includes backgammon and similar sets, as distinguished from children's toys and games.
74	Garden equipment (all implements to keep-up lawns and yards including lawn mowers)	10		75		Also see Item No. 71 for lawn furniture.
75	Glassware (including pyrex)	**	**	**		See Item Nos. 45, 53 and 54.
76	Hairpieces	**	**	**		See Item No. 150, wigs.
77	Hampers (wicker or plastic)	10		75		
78	Handbags and purses (leather or fabric)	20		75		
79	Hearing aids	5		75		
80	Hi-Fi Stereo systems	**	**	**		See Item No. 126, stereo items.
81	Hobbies or collections	**	**	**		See Item No. 48, collections and hobbies.
81a	Housekeeping items (mops, brooms, ironing boards, pails, closet racks, etc.)	10		75		This category includes common household items which do not fit into other, more specific categories.
82	Irons (electric or steam)	**	**	**		See Item No. 64, electrical and gas appliances.
83	Jewelry- Costume - Expensive	10		75	\$750 per item \$2500 per claim	Expensive jewelry is jewelry made substantially of gold, silver, precious stones, diamonds, pearls, or other precious metals or gems and should not be depreciated.
84	Kitchen utensils (pots, pans, knives, etc) - Heavy aluminum, copper, corningware, cast iron, stainless steel, etc. - Other items	5 20		50 75		All long lasting kitchen tools should be considered in the 5% /50% category. Items such as potato peelers, cake cooling racks, ice picks, bowl scrapers, or other items described in advertisements as "kitchen gadgets" should be considered in the 20% /75% category
85	Lamps (including sunlamps)- Lamps Lampshades	5 10		75 75	\$250 per item	The higher rate applies when lampshades are claimed separately. However, if shades are made of glass of any type, apply 5% depreciation. For lamps with marble bases, see Item No. 92.
86	not used					

ALDG CONTINUED - Page 8

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
87	Lawn mowers	**	**	**		See Item No. 74, garden equipment.
88	Linens- Fine, expensive	5		50	\$400 per item \$2000 per claim	Consider handwoven, crocheted, or heirloom items as expensive linens. Apply these maximums when value is established for hand sewn items. Otherwise award reasonable replacement as for other fine linens.
	- Quilts, comforters, blankets	5		75		
	- Electric blankets	10		75		
	- Ordinary household items (such as sheets, towels, tablecloths, bath mats, pillowcases, bedspreads)	20		75		
89	Lighters (cigar, cigarette, etc.)	20		75		
90	Lighting supplies (globe domes, electric candlesticks or candelabra, etc.)	5		75		These items are payable only when they belong to the claimant and have not lost their character as personal property by being affixed to real property.
91	Luggage (all types including footlockers)	5		75		See Remark c for replacement of sets.
92	Marble (lamps, tabletops, etc.)				For per item and per claim maximums, see specific categories	The amount of depreciation on marble contained in furniture may be varied from other types of furniture, based on its quality, etc. Under appropriate circumstances, it may be determined that no depreciation be taken on the marble. Examination will indicate whether the item is imitation marble, alabaster, soapstone, or other material.
93	Material (including yard goods and yarn)		10			
94	Mattresses (including boxsprings)	**	**	**		See Item No. 19, bedding.
95	Medical equipment and instruments		10		\$1500 per claim	Medical books are not included, see Item No. 27.
96	Memorabilia (including snapshots, snapshot albums, baby albums, scrapbooks, souvenir albums, emblems, award plaques, trophies, movie film, photographic slides, etc.)				\$1000 per claim	Exclude scenic slides and wedding albums from this category. Use \$.50 per slide or print as a rule of thumb cost. Also see Item No. 48 if quantity indicates a hobby or collection. Also see Item No. 148 for wedding albums.
97	Microscopes, telescopes				\$500 per item \$1500 per claim	Also see Item No. 22 for binoculars.
	- Inexpensive- \$100 or less	10		75		
	- Expensive- more than \$100	5		75		
98	Mirrors (including frames)	5		75		Mirrors which are integral parts of furniture items are depreciated at the same rate as those items.
99	Mobile homes	varies				Value the item based on comparable values in the area.

ALDG CONTINUED - Page 9

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
100	Musical instruments					This category includes amplifiers and accessories.
	- Pianos, organs, player pianos, harps	5		75	\$5000 per claim	
	- Other musical instruments- under \$100	20		75	\$1500 per claim	
	- Other musical instruments- \$100- \$250	10		75		
- Other musical instruments- over \$250	5		75			
101	Objects of art (sculptures, figurines, etc.)				\$750 per item \$2000 per claim	This category does not include paintings; see Item No. 103. Figurines with a replacement cost of less than \$100 should be considered bric-a-brac, Item No. 30.
102	Office furnishings	10		75	\$75 per item \$200 per claim	This category includes calculators, radios, paintings, plants, etc., lost from the workplace.
102a	Outdoor structures	10		75	\$500 per claim	This category includes fences and storage sheds.
103	Paintings and pictures (including frames, photographic portraits, etchings, hand reproduced pictures, lithographic prints, etc.)		10		\$750 per item \$2000 per claim	Take no depreciation on paintings having a value in excess of \$750 each.
104	Pen and pencil sets	**	**	**		See Item No. 59, desk and writing equipment.
104a	Pets (including tropical fish)				\$150 per pet \$500 per claim	This category is primarily intended for quarters losses. Do not pay claims for pets lost or injured in shipment.
105	Phonograph records - Records	10		50	\$1500 per claim	Also see Item No. 128 for tapes.
	- Compact discs		10		\$1500 per claim	
106	Photographic equipment (cameras, screens, lenses, projectors, etc.)				\$2000 per claim for all photographic equipment and accessories	Also see Item No. 141 for video cameras and accessories.
	- Inexpensive- \$100 or less	10		75		
	- Expensive- more than \$100	5		75		
107	Pillows	**	**	**		See Item No. 19, bedding.
108	Pipes, smoking (including pouches)	20		75		
109	Pool tables	5		50	\$1500 per item	Take no depreciation on expensive solid wood pool tables.
110	Pots and pans	**	**	**		See Item No. 84, kitchen utensils.
111	Professional equipment	5		75	\$1500 per claim	Also see Item Nos. 57 and 95 for dental and medical equipment and instruments.

ALDG CONTINUED - Page 10

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAX-MUM		
112	Quilts	**	**	**		See Item No. 88, linens.
113	Radios	**	**	**		See Item No. 64, electrical and gas appliances.
114	Razors (other than electric)	5		75		Also see Item No. 64 for electric razors.
115	Refrigerators	**	**	**		See Item No. 64, electrical and gas appliances.
116	Rugs- Under \$500	10		75	\$2000 per item	
	- \$500- \$999	5		50	\$4000 per claim	
	- \$1000 or more	2		25		
117	not used					
118	Screens, fireplace and accessories (room dividers, folding screens, etc.)	5		75	\$500 per item \$1000 per claim	Also see Item Nos. 101 and 103 for items considered to be more artistic than functional.
119	Scissors, shears (other than electric)	5		75		Also see Item No. 64 for electric clippers, etc.
120	Sewing machines (other than electric)	5		75		Also see Item No. 64 for electric sewing machines, etc.
121	Silver and metal flatware and holloware	5		75	\$2000 per claim	Take no depreciation on sterling silver. For sterling silver flatware, apply a \$75 per item maximum. For sterling silver serving pieces, apply a \$200 per item maximum. Consider fine pewter as sterling silver.
	- Silverplate, goldplate, pewter, stainless steel, copperware, bronzeware				\$5000 per claim	
	- Sterling silver and fine pewter					
122	Slip covers	10		75		
123	Sporting equipment and supplies (including uniforms and riding togs; basketball, baseball, football, croquet, volleyball, bowling, badminton, skiing, scuba, golf, tennis equipment, etc.)	10		75	\$2500 per claim	Take no depreciation on unopened or unused boxes of golf balls or canisters of tennis balls. Also see Item No. 36 for camping equipment.
124	Stationery		50			If boxes are unopened or unused, take no depreciation.
125	Stenotype machines	5		75		
126	Stereo items and accessories	10		75	\$1000 per item \$3500 per claim	The maximum per claims includes styli, dust covers, tape recorders, speakers, amplifiers, turntables, etc. See Remark b for internal damage and Remark c for replacement of sets. Also see Item No. 128 for tapes and Item No. 141 for video recorders.

ALDG CONTINUED - Page 11

NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAXIMUM		
126a	Storage sheds	**	**	**		See Item No. 102a, outdoor structures.
127	Stuffed animals	10		50		
127a	Swing Sets	**	**	**		See Item No. 102a, outdoor structures.
128	Tapes, blank and commercially recorded					Apply a per claim maximum of \$60 to the loss of tapes from a vehicle, which is included in the maximum per claim of Item No. 5, automobiles.
	- Audio	10		75	\$1500 per claim	
	- Video	10		50	\$1500 per claim	
128a	Taxidermy items		25		\$500 per claim	This category includes mounted deer heads, fish, etc.
129	Television sets	**	**	**		See Item No. 64, electrical and gas appliances.
129a	Telephones and telephone answering machines	10		75	\$150 per item \$500 per claim	
130	Theses and lecture notes					Compensation is limited to the cost of materials only.
131	Tools, tool chests and toolboxes					Emergency tools are those types of tools generally locked in vehicle trunks which are reasonable or useful for emergency road repair. Related emergency equipment such as flares, tow ropes, fire extinguishers, first aid kits, trouble lights, battery jumper cables, etc., is considered as emergency tools. A toolbox appropriate for shipment or storage in a vehicle is a small, portable toolbox as distinguished from a tool chest. The maximum per claim for emergency tools and toolboxes in vehicles is included in the maximum for Item No. 5. Exceptions may be made as to the amounts and types of tools considered as emergency tools in overseas areas where POV tools are not readily available or if a claimant is not authorized a household goods shipment. See Remark e for lifetime guarantees.
	- Manual tools, other than in a vehicle	5		50	\$1250 per claim	
	- Power tools, other than in a vehicle	5		75	\$1250 per claim	
	- Tool chests and toolboxes, other than in a vehicle	5		75	\$500 per claim	
	- Emergency tools and toolboxes shipped in a vehicle	see above		see above	\$200 per claim	
- Emergency tools and toolboxes otherwise in a vehicle	see above		see above	\$400 per claim		
132	Toys - radio-controlled cars, planes, boats, etc.; tricycles; wagons; electronic games	20		75	\$1000 per claim	Also see Item No. 21 for bicycles, Item No. 73 for checker sets and game equipment, and No. 134 for electric trains. See Item No. 48 if quantity indicates a collection.
	- other children's games and toys		50			
133	Trailers (house, boat)	**	**	**		See Item Nos. 5 and 99.
134	Trains (electric)	**	**	**		See Item No. 64, electrical and gas appliances.

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NO	ITEM	% DEPRECIATION			MAXIMUM PAYMENT	DISCUSSION
		PER YEAR	FLAT RATE	MAXIMUM		
135	Tricycles	**	**	**		See Item No. 132, toys.
136	TV trays	10		75		
137	Typewriters	5		75	\$750 per item	
138	Umbrellas	20		75		
139	Vacuum cleaners	**	**	**		See Item No. 64, electrical and gas appliances. See Remark e for lifetime guarantees.
140	not used					
141	Video recorders, video cameras and accessory equipment	10		75	\$1000 per item \$2500 per claim	Also see Item No. 128 for video tapes. Accessory equipment for video recorders and cameras is included in the maximum per claim.
142	Wagons (children's)	**	**	**		See Item No. 132, toys.
143	Wall units	**	**	**		See Item No. 71, furniture.
144	Washers	**	**	**		See Item No 64, electrical and gas appliances.
145	Wastebaskets- Metal	10		75		
	- Plastic	20		75		
146	Matches- Inexpensive- \$50 or less	10		75	\$500 per item	
	- Expensive- more than \$50	5		75		
147	Waterbeds	**	**	**		See Item No. 71, furniture.
148	Wedding albums				\$500 per claim	Take no depreciation.
149	Wedding gowns		10		\$1000 per claim	
150	Wigs (including hairpieces)- Under \$100	20		75	\$500 per claim	
	- \$100- \$250	10		75		
	- \$250 or more	5		75		

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Legend. To maintain uniformity, use the following in the "Remarks" section of the DD Form 1844 to explain the examiner's intent.

AC The amount claimed was awarded.
 AGC An agreed cost of repair was awarded in lieu of an estimate. Enter the amount, "\$40 AGC."
 BX (Also PX or PACK-EES) The replacement cost for a substantially similar item was obtained from the local exchange. Enter a dollar value and, if applicable, depreciation taken, for example, "PX \$100, 25% D."
 CR The claimant was paid by the carrier for the item. Enter the amount, for example, "ER less \$75 CR."
 D Yearly depreciation of a replacement cost or parts was applied. Enter the percentage, for example, "20% D."
 DV The cost of repair exceeded the depreciated value of the item. Use other terms to explain, for example, "DV, PX \$100, 75% D."
 ER An estimate of repair was used. Also enter the exhibit number, for example, "ER, EX 5."
 EX Estimates, etc., were numbered as exhibits, for example, "EX 7."
 FR Flat rate depreciation was applied. Enter the percentage, "25% FR."
 F&R A fair and reasonable amount was awarded. Enter a dollar value, for example, "\$40 F&R."
 LOV A loss of value was awarded in lieu of or in addition to the cost of repairs. Enter a dollar value, for example, "\$25 LOV."
 M/A The amount otherwise payable exceeded a maximum allowance.
 N/P No amount was payable. Enter the basis for denial.
 N/R The item is not repairable.
 OBS A deduction was made for obsolescence. Enter a percentage, for example, "15% D + 25% OBS."
 PCR Lost potential carrier recovery was deducted because the claimant failed to provide timely notification to the carrier. Enter a dollar value, for example, "75% D less \$36 PCR."
 PED A deduction was made for pre-existing damage reflected in the amount claimed. Enter a percentage such as, "ER less 25% PED."
 PP The purchase price was used.
 RC A replacement cost for a substantially similar item was used. Enter a dollar value and, if applicable, depreciation taken.
 SV/N The item was damaged beyond economic repair and has no salvage value. Turn-in is not required.
 SV/R The item was damaged beyond economic repair and has salvage value; the claimant elected to retain the item. Enter the amount of salvage value deducted, such as "75% D, \$35 SV/R."
 SV/T The item was damaged beyond economic repair and has salvage value. Turn-in is required.

Remarks.

a. Expensive and valuable items. If expensive, everyday items which serve a utilitarian purpose are claimed, such as household furnishings or wearing apparel, the cost of reasonable substitute items should be awarded instead. The amount awarded should be just and not arrived at by considering only low-priced substitutes.

b. Internal damage to appliances when no external damage to the cabinet or transportation container is evident. Consideration should be given to paying for such damage if there is evidence of rough handling of other items in the shipment, the item is relatively new in comparison to its useful life, the claimant is apparently honest based upon an examination of the entire claim, and/or a qualified repairman is able to state that the damage was the result of rough handling in transit. In such cases, evidence suggesting transit damage should be viewed in the light most favorable to the claimant. If cleaning, tuning, or color alignment for a television set is claimed, consider this only when the item has suffered other damage which is incident to transit.

c. Replacement of sets. When component parts of any set of articles (lamps, glasses, china, dining room sets, end tables, stereo speakers, or other items which comprise a set) are damaged beyond repair or missing, the claimant should only be reimbursed for the destroyed or missing items as a rule. An exception may be made if the claimant provides proof that the component pieces of the set cannot be replaced and the integrity of the set has been destroyed. In such cases, either an additional award for diminution in value (LOV) or replacement of the set should be considered. When an entire set is replaced, except in cases, require turn-in of the undamaged pieces to the U.S. or to the carrier.

d. Reupholstery. Where damage to part of a matching set of upholstered furniture requires reupholstery and matching material cannot be obtained, the cost to reupholster the entire set, less depreciation on the fabric, may be paid if there is a measureable decrease in value of the set. This includes replacing chair seats. Consider a loss in value instead of reupholstering any of the pieces if the damage is merely minor. For example, a loss in value would be appropriate for a three-inch tear in the back of a sofa which can be repaired by reweaving, even if the damage would be visible to a casual observer. In depreciating fabric, use 5% per year.

e. Lifetime guaranteed tools and other personal property with such guarantees. Do not depreciate tools and other property which are covered by such guarantees. Catalogs reflect items covered by such guarantees.

Military-Industry Memorandum of Understanding
on Loss and Damage Rules

To establish the fact that loss or new transit damage to household goods owned by members of the military was present when the household goods were delivered at destination by the carrier.

I. Notice of Loss and Damage.

- (A) Upon delivery of the household goods, it is the responsibility of the carrier to provide the member with three copies of the DD Form 1840/1840R and to obtain a receipt therefor in the space provided on the DD Form 1840. It is the joint responsibility of the carrier and the member to record all loss and transit damage on the DD Form 1840 at delivery. Later discovered loss or transit damage, including that involving packed items for which unpacking has been waived in writing on the DD Form 1840, shall be listed on the DD Form 1840R. The carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt. (1)
- (B) Loss of or damage to household goods discovered and reported by the member to the claims office more than 75 calendar days after delivery will be presumed not to have occurred while the goods were in the possession of the carrier unless good cause for the delay is shown, such as officially recognized absence or hospitalization of the service member during all or a portion of the period of 75 calendar days from the date of delivery. In case of recognized official absences, the appropriate claims office will provide the carrier with proof of the officially recognized absence with the demand on carrier.
- (C) The carrier's failure to provide the DD Form 1840/1840R to the military member and to have proof thereof will eliminate any requirement for notification to the carrier. Written notice, using DD Forms 1840/1840R, is not required by the carrier in the case of major incidents described by Paragraph 32 of the Tender of Service which requires the carrier to notify Headquarters, Military Traffic Management Command and appropriate PPSO's of the details of fires, pilferage, vandalism, and similar incidents which produce significant loss, damage or delay.

II. Inspection by the Carrier

- (A) The carrier shall have 45 calendar days from delivery of shipment or dispatch of each DD Form 1840R, whichever is later, to inspect the shipment for loss and/or transit damage.

Military-Industry Memorandum of Understanding
on Loss and Damage Rules

- (B) If the member refuses to permit the carrier to inspect, the carrier must contact the appropriate claims office which shall facilitate an inspection of the goods. It is agreed that if the member causes a delay by refusing inspection, the carrier shall be provided with an equal number of days to perform the inspection/estimate (45 days plus delay days caused by member).

III. Repair Estimate Submitted by the Carrier

- (A) Subject to the procedures in this Memorandum of Understanding, the military services shall evaluate itemized repair estimates submitted by a carrier from a qualified and responsible firm in the same manner as any estimate submitted by a claimant from a repair firm not associated with or retained by the carrier.
- (B) Carrier estimates:
 - (1) If the appropriate claims office receives an itemized repair estimate from the carrier within 45 calendar days of delivery, the claims office will use that estimate if it is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based upon the repair firm's reputation for timely and satisfactory performance. If the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability.
 - (2) The claims office will also use an itemized carrier estimate received more than 45 calendar days after delivery if the claim has not already been adjudicated and that estimate is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based on the firm's reputation for timely and satisfactory performance. If the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability.
 - (3) If the carrier provides the appropriate claims office with a low repair estimate after the Demand on Carrier has been dispatched to the carrier's home office, it will be considered in the carrier's recovery rebuttal or appeal process if lower than the estimate used by the claims office and if it establishes that the estimate submitted by the member was unreasonable in comparison with the market price in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged.

**Military-Industry Memorandum of Understanding
on Loss and Damage Rules**

- (4) If a carrier has made an inspection/estimate based upon a DD Form 1840, and a DD Form 1840R is received, the carrier is authorized to make an additional inspection/estimate. The carrier will contact the claims office to determine if they will authorize a deduction of \$50.00 from the carrier's liability for performing the second inspection/estimate.
- (5) When a carrier makes an estimate, copies will be provided in a reasonable time to the military claims office and to the member, if requested. The carrier agrees to do the repairs in a reasonable time if requested by the member or the military claims office. Carrier and member estimates provided by firms that do not perform repairs will not be accepted.
- (C) No claim shall be denied solely because of the carrier's lack of opportunity to inspect prior to repair, an essential item that is not in operating condition such as a refrigerator, washer, dryer, or television requiring immediate repair. In such cases, the carrier will be provided with copies of the repair estimate/receipt attached to the demand.

IV. Carrier Settlement of claims by the Government

- (A) The carrier shall pay, deny, or make a firm settlement offer in writing within 120 calendar days of receipt of a formal claim from the Government. If a carrier makes an offer within 90 calendar days of receipt of a formal claim which is not accepted by the Government, a written response to the offer will be made prior to offset action.
- (B) It is agreed that the claim will be limited to items indicated on the DD Form 1840 and 1840R, except as indicated in paragraphs I (B) and I (C) above. The claim for loss and/or damage shall not be limited to the general description of loss or damage to those item(s) noted on the DD Form 1840 and 1840R.

V. Effective Date This memorandum of understanding will be effective on January 1, 1992 and will apply to shipments picked up/loaded on or after that date. It supersedes the Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules of April 20, 1984, except that the Memorandum of April 20, 1984, will apply to shipments picked up and loaded prior to January 1, 1992.

VI. Filing The original of this Memorandum of Understanding shall be retained by the American Movers Conference, which shall provide conformed copies to all signatories and other interested parties.

Enclosure (2) to COMDTINST M5890.9

**Military-Industry Memorandum of understanding
on Loss and Damage Rules**

NOTE:

1/Although the carrier shall accept written documentation on the DD Form 1840R as overcoming the presumption of correctness of the delivery receipt, the inventory prepared at origin is valid evidence which the military claims services shall consider in determining whether or not a claimant has sustained loss and/or damage in shipment. If for example, a claimant wrote on the DD Form 1840R that a kitchen table not listed on the inventory was missing in shipment, that claimant would have to prove by convincing evidence that he or she owned and tendered to the carrier for shipment a kitchen table. An item like a kitchen table would normally be listed on the inventory. Note, however, that if a kitchen table not listed on the inventory was delivered in a damaged condition and noted on the DD Form 1840/1840R, the fact that the carrier delivered the kitchen table would establish the claimant owned and tendered to the carrier a kitchen table.

For: Household Goods Forwarders
Association of America, Inc.
Donald H. Mensch
President

Department of the Army
Joseph C. Fowler, Jr.
Colonel, USA
Commander, U.S. Army Claims
Service

American Movers Conference
Joseph M. Harrison
President

Department of the Navy
Milton D. Finch
Captain, USN
Deputy Assistant JAG (Claims)

Household Goods Carriers' Bureau
Joseph M. Harrison
President

Department of the Air Force
Robert G. Douglass
Colonel, U.S. Air Force
Chief, Claims and Tort
Litigation Division
Air Force Legal Services Agency

Independent Movers Conference
John T. McBrayer
Executive Director

U.S. Coast Guard
William B. Thomas
Captain, U.S. Coast Guard
Chief, Claims and Litigation Div.
Office of Chief Counsel

Independent Government Movers
James P. Coleman
President

National Moving and Storage
Association
Gary Frank Petty
President

SAMPLE LETTERS TO CLAIMANTS AND CARRIERS

1. Sample letter indicating the action of the settlement authority.
 - a. A claimant who has submitted a claim under the Military Personnel and Civilian Employees' Claims Act as amended shall be provided with an explanation of the settlement authority's action whenever:
 - (1) The claim is approved and more than 30 days have elapsed since the claimant was last contacted by either the Claims Investigating Officer, transportation officer, or settlement authority;
 - (2) The claim is only approved in part and the partial approval was based upon reasons other than the mere application of depreciation to the amounts claimed; or
 - (3) The claim is disapproved.
 - b. The following worksheet may be used by settlement authorities to notify claimants whose claims have not been approved in full:

4050
(ID number,
if any)
DATE

From: Settlement authority
To: Rank or rate, name of claimant
Via: Claimant's command preceded by any intermediate commands
Subj: Personal Property Claim

1. Your claim in the amount of \$____ (received on____ has been forwarded for settlement.) or (was received on____.)
2. Review of the claim indicates (an) item(s) of personal property (was) (were) (lost), (damaged), (lost and damaged) (briefly describe the circumstances surrounding the loss which make it incident to service; e.g. "during shipment of household goods"). (The claim establishes that (this) (these) loss(es) (was) (were) substantiated and that possession of the property was reasonable, useful, or proper under the circumstances.)

3. (Your claim is denied for the following reason(s) (.) (:)) or (In some cases the amount claimed was reduced in accordance with the depreciation table contained in Enclosure (1) to the Claims and Litigation Manual, COMDTINST M5890.9.) (In addition, the following amount(s) was (were) disallowed (:)) (Whenever possible use the reference number from column 23a CG-4111 when discussing an item. When numerous items are discussed, a tabular format is preferred.)
4. Accordingly, payment of \$___ has been approved. A check in that amount will be forwarded to you (in the near future) or (within weeks from the date of this letter) without further action on your part. (You are also entitled to retain the (\$___ recovery from the carrier.)
5. (If the settlement authority authorizes replacement in kind, indicate the steps the claimant should take to have the item(s) replaced.)
6. You may request reconsideration of your claim in accordance with section 3-I of the Coast Guard Claims and Litigation Manual. Note the six month time limit which applies to most requests. Enclose the original claim and all supporting documents with your request. If you have any further questions, please contact ___ of my staff.)

Settlement Authority

Standard reasons for denial or reduction of the amount claimed for use in paragraph 3.

- a. The allowance for damaged property was based on the lowest estimate of repairs submitted.
- b. Since the cost of repairs exceeded the value of the item at the time of the damage, the allowance was based on the value of the item.
- c. The allowance was limited to the cost of repairing the damage which occurred (in transit) (during storage) as opposed to pre-existing damage.
- d. The allowance for repair was reduced by the amount necessary to depreciate the cost of material.
- e. No allowance was made for the cost of obtaining estimates of repair since the evidence of record

Encl. (3) to COMDTINST M5890.9

- e. (cont'd) indicates that this cost is to be applied against the total bill upon completion of repairs.
- f. Since the inventory merely indicates that the item was damaged rather than destroyed there is no evidence tending to prove that the item cannot be repaired for less than its actual value.
- g. The indication "Packed By Owner" on the Inventory means that the claimant assumed responsibility for any resulting damage. There is no evidence tending to prove that the damage or destruction was the fault of the carrier.
- h. Failure to make a prior or a concurrent demand on a carrier (insurer) or failure to make all reasonable efforts to collect the amount recoverable from the carrier (insurer) results in a reduction of the allowance by the amount that would have been recovered from the carrier (insurer).
- i. When an item is not on the Inventory, there is no evidence proving that the item was received by the carrier, and it is not possible to show that the loss was the fault of the carrier.
- j. Since no exceptions were noted at the time of delivery and loss of or damage to the item, which was not discoverable at the time of delivery, was not reported within 75 days of delivery, it is presumed that the damage did not occur in transit.
- k. No allowance can be made for loss of money or currency incident to travel or transportation in connection with a permanent change of station.
- l. The allowance was limited to the local (Navy Exchange), (___ catalog) price for substantially similar property (less depreciation).
- m. The allowance for the item was limited to the maximum amount allowable as stated in Enclosure (1) to the Claims and Litigation Manual.
- n. While the Coast Guard will pay up to \$50 per item for loss of personal property from a government office, no allowance can be made in the absence of a statement from your supervisor describing why the item was necessary for the performance of your official government duty.

2. Sample letter of demand on a carrier resulting from the loss of household goods

Settlement Authority
Address
(Number assigned to the claim)
Date

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(Carrier's or warehouseman's) address (block 2 or 5, CG-4111)

Re: Shipment of (rank/rate and name of shipper/owner) (blocks 2 and 3, CG-4112) (Your Reference No. _____) (if any from previous ltr from addressee) (GBL No.) or (Basic Agreement No.) or (Contract No.) (block 4 or 8 or 9, CG-4111) (Date of Delivery) (block 16, CG-4111) or (Period of Storage) (blocks 6 and 7, CG-4111)

Dear Sir:

A demand of \$____ (block 11, CG-4111) was made upon you as carrier (or warehouseman) (block 2 or 5, CG-4111) for (damage) (loss) or (damage and loss) (block 10, CG-4111) done during the above referenced move (storage). The Coast Guard member also filed a claim with the Coast Guard on (date) (block 1, CG-4112) and has been paid by the Coast Guard.

Since the Coast Guard has paid this claim, it has become subrogated to the rights of the claimant. (The Coast Guard holds you as carrier liable to pay according to your agreement with the Coast Guard that losses reported within 75 days create the same liability as damage or losses noted on the date of delivery.) (The enclosed forms indicate that your company was informed of all losses within ____ days of delivery.) We request prompt action on this claim.

Demand is hereby made for \$____ (Amount stated in paragraph 1 or on the enclosed voucher, whichever is smaller) as supported by the enclosed documents. (We expect payment of this amount by ____ (The first weekday date which is 120 days or more from the date carrier was notified of the entire claim)) or (We expect payment of this amount immediately because 120 days have elapsed since you were notified of the entire claim and you have failed to respond). To settle your debt, you should make your check or money order payable to "U.S. Coast Guard", to be mailed to:

Collection Clerk
(Address)

Encl. (3) to COMDTINST M5890.9

It is my intent to collect this debt by offsetting the amount against monies owed to you by the federal government (If can be more specific, do so.) [If have not stated the basis and amount of the claim in another part of the letter, do so] The documents pertaining to this debt are held by _____. Offset action will not take place within 30 days of this letter. Before offset action is taken you may inspect and copy any or all of these records. Arrangements may be made through me for such inspection during the hours of _____, Monday through Friday, except holidays. Additionally, you may, in writing, request the Coast Guard to review this debt. The request may present any issues or documents for consideration.

If no reply is received by ____ (if there is not a date in the preceding paragraph, insert the first weekday date 120 days or more from the date carrier was notified of the entire claim), interest will accrue at a rate of ____ (obtain from Comptroller). Further, after that date the administrative costs of collection will be charged at \$12 per month plus costs identifiable to collecting this claim. Finally, should the claim remain unpaid past ____ (the first weekday date 210 days or more from the date carrier was notified of the entire claim), a late payment charge will accrue at the rate of 0.5% per month.

Sincerely,

Settlement Authority

Enclosure: (1) (Supporting documents as necessary)

Copy: District Supervisor, I.C.C., Bureau of Operations, (city and State) - the area in which the carrier has its principal place of business (A list of locations is contained in Bureau of Operations Form 103 which is an information pamphlet on household goods shipments. Use this copy line only if you demand immediate payment in paragraph 3.)

Blind Copy: (w/o encl.)
(Accounts Receivable Clerk)

Enclosure (4) to COMDTINST M5890.9

PREPARATION OF DEMAND ON CARRIER/CONTRACTOR (CG-4111)

1. The CG-4111 is used to:

- | a. Document damage or loss arising from incidents other than the
| shipment of household goods. For such claims, the claimant
| need only complete blocks 23b, 23c, 23e, and 23f, and then
| attach the CG-4111 as a supporting document to a completed
| CG-4112.

- | b. Document damage or loss arising from the shipment of
| household goods, mobile homes, privately owned vehicles
| (POV), and unaccompanied baggage incident to a permanent
| change of station (PCS) move or any other move for which the
| United States provided a carrier or contractor to move the
| personal property of Coast Guard military personnel or
| civilian employees. For such claims:
 - | (1) The CG-4111 should be used to notify the carrier of
| damage or loss only when a DD1840R is not available. See
| subparagraph 6-H-2-b-(1). When using this form to notify
| the carrier and not to submit a claim:
 - | (a) Label the form as follows: "NO DD1840R AVAILABLE.
| CG-4111 SUBMITTED AS A SUBSTITUTE." Place this
| notice prominently in block 20 of the CG-4111. This
| caution should help the carrier to avoid processing
| the notice as a claim when that is not intended.
 - | (b) If you have several pages of the CG-4111, complete
| blocks 1 through 22 only once for each submission.
| The number of continuation sheets should be stated in
| block 20.
 - | (c) Insert the date of dispatch in block 1.
 - | (2) The CG-4111 may be used to file a claim directly against
| the carrier. However, claimants are encouraged to
| contact the carrier to determine if it would be better to
| use the carrier's forms. Industry practice has
| associated the use of Coast Guard and DOD forms with
| demands made by the services. Because of this practice,
| carriers frequently forward claims which had been
| submitted to them on Coast Guard or DOD forms to the
| service's claims settlement authority without action.
| This delays settlement.
 - | (3) The CG-4111 may also be used to file a claim against the
| Coast Guard. For such claims, the claimant should
| complete the CG-4111 as described below and then attach
| the CG-4111 as a supporting document to a completed
| CG-4112.

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2. Number of Copies. Prepare an original and three copies. Photostatic copies are acceptable.
3. Time Limit. To insure maximum recovery from a carrier a claimant must send this form by certified or registered mail return receipt requested, to the carrier. Claimants should dispatch the form to the carrier within the time limits specified in Chapter 6. If a claimant requires the aid of a Claims Investigating Officer to complete this form, a claimant should attempt to complete a form in accordance with these instructions prior to an interview with the Claims Investigating Officer.
4. Completion of the form.
 - a. Block 1. Insert the date the CG-4111 is dispatched as notice or claim. See paragraph 7 (claimant) or paragraph 8 (Claims Investigating Officer) below.
 - b. Block 2. Insert the name of the carrier or the contractor who handled the shipment. Use the name found in block 1, the "Transportation Company Tendered To" block, of the U.S. Government Bill of Lading (SF1203) for the shipment. Use the home office address of the carrier and not that of the local agent. Usually the address can be found in block 9 of the DD1840 for the shipment; however, Claims Investigating Officers should verify the address by referring to the Military Traffic Management Command's (MTMC) Domestic & Mobile Home Personal Property Carrier Approval Printout. See block 5 for personal property which had been held in nontemporary storage.
 - c. Block 3. Insert the Government Bill of Lading number or the Contract Number (see "B/L NO." on SF 1203).
 - d. Block 4. If known, insert the carrier bill of lading number, baggage check number, MAC flight number, or MILSTAMP TCN (Transportation Control Number).
 - e. Block 5. If the household goods had been placed in nontemporary storage, complete this block rather than block 2. Insert the name and address of the warehouse where the goods were kept in nontemporary storage. If block 5 is completed also complete the following:
 - (1) Block 6. The date the property was placed in nontemporary storage;
 - (2) Block 7. The date the property was removed from nontemporary storage;
 - (3) Block 8. The lot (block) number assigned to the shipment; and

Enclosure (4) to COMDTINST M5890.9

- (4) Block 9. The service order number assigned to the shipment.

- f. Block 10. Complete the statement by indicating loss, damage, or both and the type of property involved (household goods, baggage, or other). If "other" specify the type of property.

- g. Block 11. After completing block 23 insert the total of column 23f.

- h. Block 12. Insert the mailing address of the origin transportation office.

- i. Block 13. Insert the address of the place at which the shipment was loaded.

- | j. Block 14. Insert the date the shipment was loaded.

- k. Block 15. Insert the mailing address of the destination transportation office.

- l. Block 16. Insert the address to which the property was delivered. If loss prevented the delivery of the shipment indicate the address to which the property should have been delivered.

- m. Block 17. Insert the date the property was delivered. In the case of loss indicate the date on which the property should have been delivered.

- n. Block 18. If block 23 is continued on an additional page or additional pages, check the block and add the number of additional pages. The reverse side of this sheet is not an additional page.

- o. Block 19. Insert the net weight of the shipment.

- | p. Block 20. If used to provide notice to the carrier, insert
| the words "NO DD1840R AVAILABLE. CG-4111 SUBMITTED AS A
| SUBSTITUTE" as required by subparagraph 6-H-2-b-(1). If used
| to submit a claim directly to the carrier, insert the words
| "THIS IS A NOTICE AND A CLAIM" as recommended in 6-H-3-a-(2)
| or the words "THIS IS A CLAIM AGAINST THE CARRIER," as
| appropriate. Block 20 should also be used to explain, in
| detail, any failure of the claimant to note exceptions on the
| DD1840 or DD1840R as identified by a "NO" entry in block 23d
| for any damaged or lost item. Remarks for each "NO" entry
| should be identified by the item's inventory number from
| block 23a. Block 20 may also be used to expand on the
| information required by any other block.

- q. [VACANT]

r. Block 21. Insert the following address:

Commander (dl-1)
Second Coast Guard District
Attn: Claims Office
1222 Spruce Street
St. Louis, MO 63103-2832

s. Block 22. Insert the name and grade of the claimant. Claimant's agent may also sign. If an agent signs, the agent's status shall be noted and the documents establishing the agent's status shall be attached (e.g., power of attorney).

t. Block 23.

- (1) Column 23a - insert the inventory number. If the item is not specified on the Inventory, you must determine in which container the item was packed. Leaving this block blank or using "unknown" will reduce recovery. If several column 23b items have the same inventory number, insure that they are listed in consecutive order. If there is no inventory (e.g., claim submitted following a fire in government quarters), number each line item consecutively beginning with "1".
- (2) Column 23b - describe the item. If there is more than one item, start the description with a number indicating the quantity. The claimant can hasten the settlement process by using specificity (e.g., include the manufacturer, model, size, and color or black and white as opposed to merely "T.V."; size of the bed whose headboard was damaged).
- (3) Column 23c - indicate "lost" or specify damage. If there is damage, this column must clearly indicate that the damage complained of differs from specified preexisting damage.
 - (a) The mere addition of the adjective "new" as in "new scratches" is not sufficient.
 - (b) Clearly indicate that the position of the new scratches differs in location from those noted as preexisting damage.
 - (c) If the location is the same as preexisting damage, specify those facts which differentiate new from old (e.g., the fresh unweathered appearance of the underlying wood).
 - (d) If the extent of the damage in this column differs from that indicated by the claimant on previous documents, explain this difference in block 20.

Enclosure (4) to COMDTINST M5890.9

If more space is required use an asterisk or footnote and the remarks section at the bottom of the page, block 20, or attach a continuation sheet.

- (4) Column 23d - indicate where exceptions were noted. This identifies the written document used by the claimant to make the carrier aware of the damage or loss.

- (a) DD1840 - "DD"
- (b) DD1840R - "DDR"
- (c) Other form - "X"
- (d) Not noted previously - "NO"

If the "X" is used, describe what "other" is in block 20. If the claim is one arising from transportation and the answer is "NO", give a detailed explanation of why exceptions were not noted for each item in block 20. For each document used, specify in block 20 when the document was sent to the carrier. Disregard this column if the loss does not involve transportation.

- (5) Column 23e - indicate month, year, and price.
- (a) Use total price rather than price per item in the case of multiple items. (e.g. Two glasses in a container of crystal break. They were purchased in November 1979 for \$6.25 each including tax. Column 23b begins with "2" and column 23e is "11/79-12.50".)
 - (b) For gifts indicate the month and year followed by a hyphen and "gift". If the gift was a new item, use the month and year of receipt. If the gift was an old item (e.g. hand-me-down, secondhand), indicate its original date of purchase.
- (6) Column 23f - indicate the repair costs for items which can be economically repaired and the replacement cost for all other items. If the item can be replaced at a cost which is less than the cost of repair, the item cannot be economically repaired. If two estimates or appraisals have been obtained, use the lower of the two. Place the total at the bottom of this column and in block 11.

5. The cost of necessary estimates and appraisals and pickup or delivery or both for items repaired is included on block 23 of the form as follows:

- a. Column 23a - consecutively letter each estimate (appraisal) fee beginning with "A".

b. Column 23b & c - insert:

- (1) "Fee for estimate (appraisal) of item(s) (applicable column 23a number(s))."
- (2) "Fee for pickup (delivery) of item(s) (applicable column 23a number(s))."
- (3) "Fee for pickup and delivery of item(s) (applicable column 23a number(s))."

c. Column 23d - blank

d. Column 23e - insert:

- (1) Date of estimate or appraisal;
- (2) Date of pickup or delivery or both.

e. Column 23f - insert the nonreimbursable fee charged.

6. The other columns of block 23 are discussed in paragraph 9 of this enclosure.

7. A claimant able to complete Coast Guard Form CG-4111 shall insert the date on which the form is mailed in block 1 and send the original and one copy to the addressee noted in block 2 or block 5 as applicable by certified or registered mail, return receipt requested.

| 8. When a claimant obtains assistance from the Claims Investigating
| Officer, the claimant shall deliver an original and two copies of
| the CG-4111 to the Claims Investigating Officer. Before turning
| the CG-4111 over to the Claims Investigating Officer, the
| claimant should circle, in pencil, the block numbers, column
| letters, or both which the claimant was not able to complete.

a. Upon receipt, the Claims Investigating Officer shall date stamp the copies and immediately return one of the date stamped copies to the claimant.

| b. Upon receipt, the Claims Investigating Officer shall complete
| blocks 4, 19, 21, and any others as necessary. The Claims
| Investigating Officer shall insure that the address in block
| 2 or 5 is correct and shall insert the date on which the
| CG-4111 is dispatched in block 1. Each date-stamped copy
| shall be corrected to conform to the original unless new
| copies are made and distributed as needed. If the CG-4111 is
| being used to:

| (1) Notify the carrier of loss or damage, it should be mailed
| to the addressee noted in block 2 or 5 as applicable.

Enclosure (4) to COMDTINST M5890.9

| (2) Submit a claim against the carrier, it should be mailed
| to the addressee noted in block 2 or 5 as applicable.

| (3) Submit a claim against the Coast Guard, it should be
| mailed to the claims office listed in block 21. See
| subparagraph 4-r.

| When the CG-4111 is mailed to the carrier, it should be sent
| by certified or registered mail, return receipt requested.

| c. Claims Investigating Officers are cautioned to mail the
| notice to the carrier promptly upon receipt of the CG-4111
| (or DD1840R) without regard to the 70 or 75 day deadlines.
| For example, a CG-4111 (or DD1840R) presented to a Claims
| Investigating Officer on the 74th day, and dispatched on the
| 75th day, as proven by a log or other suitable evidence,
| would provide sufficient notice to the carrier, allow for the
| best settlement to the claimant, and allow for the maximum
| recovery from the carrier. Similarly, CG-4111s (and
| DD1840Rs) dispatched after the 75 day deadline may, for good
| cause, still provide a basis for settlement vice denial of a
| claim.

9. Do not complete the remainder of the form. The remainder of the
form is for use of the Claims Settlement Authority.

PREPARATION OF PERSONAL PROPERTY CLAIM (CG-4112)

1. Preparation in general.

Prepare an original and two copies of the form. Claimant shall type or print clearly the information required by blocks 2-18 if known. If all blocks are completed, sign block 19 and place the date of signature in block 1. If a change is made to block 8, claimant shall initial the change and line out the incorrect amount in such a manner that the original amount is legible. The use of an eraser, correction tape, or correction fluid is prohibited in block 8.

2. Preparation of individual blocks.

- a. Block 1. Insert the day, month, and year on which block 19 is signed.
- b. Block 2. Insert the claimant's name. Use first name, middle initial, if any, and surname. Paragraph 6-C-1 of the Claims Manual lists those persons who can be claimants.
- c. Block 3. Insert identifying information (e.g. YN3, LT, GS-5 etc).
- d. Block 4. Insert the claimant's Social Security Number.
- e. Block 5. Insert the name of the local settlement authority for the command to which claimant was assigned at the time of the damage or loss. Paragraph 5-B-1 of the Claims Manual lists local settlement authorities. Select the first one in your chain of command. For the typical claim involving household goods during a Permanent Change of Station, the claimant's command is the command to which claimant is ordered by the Permanent Change of Station orders.
- f. Block 6. Insert intermediate commands, if any.
- g. Block 7. Insert current duty station if not stated in block 5. For the typical claim involving household goods during a Permanent Change of Station, the claimant's command is the command to which claimant is ordered by the Permanent Change of Station orders.
- h. Block 8. State the entire amount of the claim in a sum certain. This amount must be a specific dollar amount

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2. h. (cont'd) (i.e. "unknown" or "\$300.00+" are unacceptable). See paragraph 1 of this enclosure concerning any errors made in preparing this block. This figure is the same as the sum of column 23f and block 11 of Coast Guard Form CG-4111.
 - i. Block 9. Indicate the appropriate status. Use block 16 if more room is needed to explain.
 - j. Block 10. Indicate "yes" or "no". In return for any payment the U.S. makes, it must be able to recover an equal sum of money from third parties. A "no" answer may prevent the Coast Guard from settling claimant's claim.
 - k. Block 11. Indicate "yes" or "no". No one is entitled to double recovery for a single loss. A "no" answer will result in denial of the claim.
 - l. Block 12. Indicate "yes" or "no". A "no" answer shall be fully explained in the remarks section of block 16. A list of documents required to support a claim arising from a Permanent Change of Station move is found at paragraph 3-b of this enclosure.
 - m. Block 13. Indicate "yes" or "no". This requirement is consistent with block 11. A "no" answer may result in denial of the claim.
 - n. Block 14. Indicate "yes" or "no". If a previous claim has been made attach a copy of Coast Guard Forms CG-4111 and CG-4112 submitted with the previous claim and explain the necessity for this supplemental claim in block 16.
 - o. Block 15.
 - (1) Indicate "yes" or "no" in 15. If "yes", complete the applicable "amount" sections. If "no", any lengthy explanation is included in block 16. A short explanation, such as, "no carrier involved", may be inserted in the "amount" section of 15, if applicable.
 - (2) Indicate "yes" or "no" for 15a. If "yes", complete the applicable "amount" sections. (e.g. In 1982, the standard USAA Homeowner's Policy authorized payment of losses (not damage) incurred during PCS shipment of HHG. Holders of such policies must answer "yes" if their claim includes lost items.) Claimant may wish to seek advice from the claimant's insurance agent, the local settlement authority, or the Claims Investigating Officer (for

2. o. (2) (cont'd) claims arising from transportation losses) concerning the applicability of claimant's various insurance policies to the damage or loss sustained. If "no", any lengthy explanation is included in block 16. A short explanation, such as, "\$100 deductible" in the amount section of block 15a would expedite the settlement of a \$75 claim.
- (3) Indicate "yes" or "no" for 15b. This section is consistent with blocks 13 and 11. A "no" answer will probably lengthen the period of time necessary to settle the claim.
- p. Block 16. State all the facts giving rise to the damage or loss in detail. Lack of information will unnecessarily lengthen the period of time required to settle the claim. While each claim is unique, the following factors should be included in the typical claim.
 - (1) For damage to or loss of household goods or other personal property incident to a PCS move or other move for which the U.S. provides a carrier or contractor to move personal property:
 - (a) Identify the PCS or other orders;
 - (b) Identify when and where the household goods or other personal property were picked up and who picked them up;
 - (c) Identify when and where the household goods or other personal property were placed into storage and identify the owner of the place of storage;
 - (d) Identify when and where the household goods or other personal property were delivered and who delivered them;
 - (e) Identify the Government Bill of Lading;
 - (f) Identify when and where the exceptions were noted? (If several places, identify each document.) An exception is a difference between the condition or quantity or both of goods picked up and the condition or quantity or both of goods delivered;
 - (g) If an exception was not noted, explain in detail why claimant or claimant's representative was unable to indicate the exception;

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- 2. p. (1) (h) Indicate measures taken to locate lost items;
and
 - (i) Include any remarks necessary to explain the
answers given in blocks 9-15.

Note: If the information requested by subparagraphs (a) through (i) is contained in a copy of a CG-4111 provided with the claim, the information need not be duplicated on the CG-4112.

- (2) For damage to or loss of personal property arising from incidents other than those incident to a PCS or other move, claimant should be guided by sections 6-D, 6-E, and 6-F of the Claims Manual.
 - (a) The facts must fit into one of the section 6-D categories to allow recovery.
 - (b) The facts must not preclude recovery because of the prohibitions in sections 6-E and 6-F.
- q. Block 17. Insert claimant's present home address or other address to which claimant wants payment sent.
- r. Block 18. Indicate "yes" or "no". This insures claimant's understanding of the penalties for willfully making a false claim. A "no" answer prohibits approval of the claim. Military personnel are also subject to Article 132, Uniform Code of Military Justice.
- s. Block 19. Sign the claim. If anyone other than the person identified in block 2 signs this block, indicate relationship to the claimant and attach documentation of this relationship. Note, the spouse of a claimant is not permitted to sign for the claimant in the absence of a power of attorney or similar document. Indicate in block 1 the date that block 19 was signed.

3. Claimant's Responsibility.

- a. It is the claimant's responsibility to insure delivery to the block 5 or block 6 command, as appropriate. Official mail may be used to deliver a claim. The claim must be received by the appropriate block 6 or block 5 command within the two year statute of limitations. Note that the requirement is receipt not "mail" or "dispatch". See subparagraph 6-P-4-d of then Claims Manual regarding the claimant's relationship with the carrier or other third party in transportation claims.

3. b. The claimant is required to provide the block 5 or 6 command, as appropriate, with one of each of the following for transportation losses:
- (1) Copy of the orders authorizing shipment;
 - (2) Copy of Government Bill of Lading or other shipping document;
 - (3) The actual inventory (not a photostatic copy) left with the claimant at the time of loading which indicates the quantity and condition of the property shipped;
 - (4) The actual unloading inventory (not a photostatic copy), DD 1840, DD 1840R, carrier claim form, or other form indicating the quantity and condition of property when delivered (include any of these forms which are available);
 - (5) Copies of any correspondence indicating efforts to locate missing property;
 - (6) Copy of Coast Guard Form CG-4111 or other demand on carrier if already sent to carrier;
 - (7) Required repair estimates, bills or appraisals giving evidence of value;
 - (7) Any correspondence with insurers or other third parties; and
 - (8) Any document not included above which claimant used to notify carrier of property damage or loss or to present a claim against the carrier.

PREPARATION OF CLAIMS INVESTIGATING OFFICER'S REPORT
(CG-4112A)

1. Number of Copies. The Claims Investigating Officer shall prepare an original and two copies. The Claims Investigating Officer's original should be the reverse side of the claimant's original Coast Guard Form CG-4112.
2. Purpose. This form is primarily designed to aid in the investigation of small claims; however, blocks 1-4 and blocks 14-15 shall be completed in every case.
 - a. In addition, blocks 5-9 shall be completed for small claims (See Chapter 4).
 - b. For all claims that do not fit within the small claims procedure, the Claims Investigating Officer shall complete blocks 10-12 and prepare an investigative report.
 - c. Block 13 is intended for general remarks and may be used with either a small claims or regular claims procedure.
3. Preliminary Information.
 - a. Block 1. The date on which Coast Guard Form CG-4112 is received by the Claims Investigating Officer. If block 8 of Coast Guard Form CG-4112 is or should be in excess of \$750, a Coast Guard Form CG-4112 cannot be "received" unless blocks 8, 18, and 19 of Coast Guard Form CG-4112 are completed. If either block 8, 18, or 19 is incomplete, return Coast Guard Form CG-4112 and all attached documents to the command or the claimant as appropriate. Without regard to delays, only the claimant or claimant's agent may complete or change blocks 8, 18, or 19.
 - b. Block 2. Claims Investigating Officer's first name, middle initial, if any, and surname.
 - c. Block 3. Grade or rate of Claims Investigating Officer on the date shown in block 1.
 - d. Block 4. Duty station (including office routing symbols) of the Claims Investigating Officer on the date shown in block 1.

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3. e. If the Claims Investigating Officer is transferred (or becomes otherwise unavailable) before blocks 14 and 15 can be completed, the new Claims Investigating Officer shall correct blocks 1-4 to reflect this change. In making this correction, line out the original information so that it is still legible.

4. Small Claims Procedure.

a. Block 5. Whenever practicable the claimant should be present during the completion of blocks 5-9. This insures expeditious resolution of any questions that may arise. This also allows for the quick compromise discussed in section 4-C of the Claims Manual.

b. Block 6. Indicate whether the claim includes any damaged items. Inspection is important in cases of damage which is not documented (e.g. damage not constituting an exception noted on the inventory, DD1840, or DD1840R - see column 23d of Coast Guard Form CG-4111). While not excluding other explanations, the Claims Investigating Officer's failure to inspect can be explained by the fact that; (1) the damaged item is too large to be brought to the Claims Investigating Officer; or (2) the cost to the government of conducting an inspection is disproportionately large in relation to the amount claimed.

c. Block 7. This block is important in cases other than the ordinary household goods claim arising from transportation losses. As long as the witnesses' statements parallel those of the claimant in block 16 of Coast Guard Form CG-4112, there is no reason to request written statements or prepare a summarization of their statements. The method of interview column will normally be completed by inserting "in person", "tele.", or "ltr". If the statements of the witnesses appear to contradict those of the claimant in a material aspect which indicates possible disapproval of the claim, the small claims procedure is inappropriate, and the claim shall be investigated using the regular claims procedure. In most cases, the regular claims procedure requires that the claimant further complete Coast Guard forms CG-44111 and CG-4112 and provide additional documentation. The Claims Investigating Officer should contact the settlement authority concerning

4. c. (cont'd) the merits of continuing with the small claims procedure or switching to a regular claims procedure.
- d. Block 8. Cross-reference this block to column 23a of Coast Guard Form CG-4111 by using the same number or letter to identify each item.
 - (1) Block 8 need not be completed for any item for which the claimant has provided:
 - (a) Two appraisals for a lost or destroyed item;
 - (b) One appraisal and a bill of sale for a lost or destroyed item;
 - (c) Two estimates for a damaged item; or
 - (d) One estimate and a bill of repair for a damaged item.
 - (2) Block 8 also need not be completed if the depreciated replacement value of a lost or destroyed item or the cost of repair of a damaged item is \$50 or less. For items between \$50 and \$200, the Claims Investigating Officer and the claimant may agree upon a reasonable amount. If they cannot agree, the item will be treated as if its depreciated replacement value or cost of repair is over \$200.

If the value of a lost or destroyed item or the cost of repairing a damaged item exceeds \$200 and the claimant has not been able to obtain any estimates or appraisals, or a claimant has only been able to obtain one estimate or appraisal despite diligent effort, block 8 can be used by the Claims Investigating Officer to confirm this fact by indicating the required information and a statement that the particular company refuses to provide an estimate or that no other estimates are available. The "Person Contacted" column is not completed when the Claims Investigating Officer is merely obtaining an appraisal from a catalog. For catalog items indicate the name of the catalog, the item identification number or page number, as appropriate, and the price indicated. As in

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4. d. (cont'd) block 7 above, indicate the method of interview if a person was contacted (in person, tele., ltr.). The Claims Investigating Officer will indicate the dollar amount obtained.

e. Block 9. If the claimant is not a proper claimant, the small claims procedure cannot be used, and the settlement authority should be notified. In block 9b, indicate the total from column 231 of Coast Guard Form CG-4111 which should reflect the facts contained in block 8. This figure cannot exceed \$750. Block 9c can be completed by a short statement indicating Coast Guard liability (i.e. "damage to household goods during a PCS move", "fire in the BEQ which destroyed room 102 and its contents."). See section 6-D of the Claims Manual.

(1) Subparagraph 6-H-9-a-(4) contains a list of documents to be attached to each claim arising from transportation.

(2) Paragraph 6-C-1 of the Claims Manual lists proper claimants. See paragraph 3-A-5 of the Claims Manual on required documentation by authorized agents who present claims for claimants.

5. Regular Claims Procedure.

a. Block 10. Indicate whether the Claims Investigating Officer has been able to complete Coast Guard Form CG-4111. The completion of block 23 is discussed in subparagraph 4-t of Enclosure (4) to the Claims Manual. The explanation required will vary with the facts of the particular claim. If the Claims Investigating Officer's answer is "no", the Claims Investigating Officer shall contact the local settlement authority to determine what explanation is required.

b. The investigative report is discussed at:

(1) Subparagraph 6-H-9-c of the Claims Manual for claims arising from transportation; and

(2) Paragraph 6-G-1 of the Claims Manual for all other claims.

c. Block 12. Even if this information is included in the investigative report, include a brief updating if the date inserted in block 15 is more than 120 days after the carrier was notified of the damage or loss, or

5. c. (cont'd) more than 30 days after the last contact with an insurer or other third party.
6. Closing Information.
 - a. Block 13. Use the remarks section for any information which cannot be placed in the spaces provided. If more space is required, continue on a separate sheet and indicate the existence of the continuation sheet in this block.
 - b. Block 14. The individual indicated in block 2 signs here.
 - c. Block 15. The date on which the Claims Investigating Officer signs the form indicating completion of the investigative assignment.
7. If the command to which the claimant is attached intends to replace items in kind but has not completed block 16, the Claims Investigating Officer forwards the claim together with the Claims Investigative report, if applicable, to the claimant's command. For the purposes of this paragraph, the claimant's command is the first commanding officer, who is a lieutenant commander or above, in the claimant's chain of command. The settlement authority may also authorize replacement in kind.
8. Block 16. Disregard this block if the command to which the claimant is attached does not intend to replace items in kind. If an item will be replaced in kind the claimant's command completes block 16. For the purposes of this paragraph, the claimant's command is the first commanding officer, who is a lieutenant commander or above, in the claimant's chain of command. Replacement in kind is discussed at subparagraph 6-H-9-b-(6) and paragraph 6-I-4 of the Claims Manual.
 - a. The command lists items replaced in kind or authorized for replacement in kind.
 - b. On small claims, the command merely has to insert "RIK", in column 231 of Coast Guard Form CG-4111. If a Claims Investigating Officer has placed a dollar amount in column 231, the command lines out the particular amount in column 231 inserts "RIK" in column 23m and adjusts the total of column 231 to an accordingly lower figure. The command shall make a similar change to block 9b of Coast Guard Form CG-4112A insuring that the original lined out figure is still legible.

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8. c. The commanding officer is identified by name, grade, and title and signs and dates block 16. The command forwards the claim and investigative report, if applicable, to the local settlement authority.
- d. The settlement authority may also authorize replacement in kind by completing block 16.
9. Block 17. Completed by the local settlement authority.
 - a. If the local settlement authority determines that a claim investigated as a small claim should be disapproved, the settlement authority returns the claims file to the command ordering the investigation directing them to follow the regular claims procedure and specifying why the claim may eventually be disapproved.
 - b. The amount indicated in block 17a cannot be more than \$750 for a small claim, and it is prohibited from exceeding \$40,000 for any claim (\$40,000 is only payable under special circumstances; \$25,000 is the maximum for the vast majority of claims.). If the local settlement authority determines that a claim investigated as a small claim cannot be approved for \$750 or less, the claim file shall be returned to the command ordering the investigation directing them to follow the regular claims procedure.
 - c. The local settlement authority shall be identified by name, grade, and title. The local settlement authority shall sign the decision indicated in block 17 and indicate the date on which the decision was made.

ASSERTING AFFIRMATIVE CLAIMS

1. Demands for payment will be normally made in accordance with paragraph 16-G-3. See Figures 7-3 and 7-4 of Volume I of the Comptroller's Manual for standard demand letters. In those instances where variance from those procedures are appropriate the following sample letters may be used as a format.
2. General demand and intent to use a specific administrative collection method.

Certified Mail - Return Receipt Requested

(1)

Re: (2)

Dear: (3)

The file concerning the above referenced debt has been referred to this office for collection. A review of the file reveals that payment has not been received to date and the account is seriously past due.

<u>Bill/ Reference No.</u>	<u>Date</u>	<u>Principal</u>	<u>Interest Charges Assessed</u>	<u>Administrative Charges Assessed</u>	<u>Current Balance</u>
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REFERENCED DEPT FOR COLLECTION
(4)

You were provided a full explanation of the indebtedness, and you were given an opportunity to arrange to repay the debt by reasonable installment. If we are unable to resolve this matter, the debt is subject to being offset against any monies owed to you by the federal government, being forwarded to a debt collection agency, being reported to a credit reporting agency, or referred to the Department of Justice with a request that litigation be instituted to collect the amount involved. I trust you will agree that resolution of this claim is to our mutual benefit.

It is important to note that late payment interest charges at the current annual rate of (5)% and charges for administrative costs will continue to accumulate on this account until the debt is satisfied. [Furthermore, an additional 6% late payment penalty shall be assessed on the debt if payment is not received within 30 days of this notification. (If not already assessed)].

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It is my intent to (6)

Payment should be made within thirty days from the date of this letter by check or money order payable to the United States Coast Guard and mailed to my attention at:

(7)

Should you wish to discuss this matter feel free to call me at the above telephone number.

Sincerely,

- (1) Name and address of debtor
- (2) Reference of the debt
- (3) Salutation
- (4) accounting data for current balance
- (5) Rate of interest
- (6) Intention

(a) Debt Collection Agency

The Coast Guard has contracted with _____, for collection of delinquent debts. It is my intent to forward this debt for collection. (If not otherwise in the body of the letter, a description of the basis of the claim, the amount, and that it is overdue should be stated).

The claim will not be forwarded for collection within 30 days (60 days if an individual) of this letter. Before that time you may inspect and copy any and all records being held at _____ relating to this debt. Arrangements may be made through me for such inspection to take place during the hours of _____, Monday through Friday, except holidays. Should you have any questions concerning the basis or amount of the debt, I will endeavor to provide an answer. Additionally, you may, in writing, request the Coast Guard to review and/or terminate collection of the debt. This request may present any issues or documents for consideration.

[If an individual] - In addition to the amount of the debt, your name, address, social security or taxpayer number, the status and basis of the debt, and (any other information necessary to identify the debt and debtor) must necessarily be turned over to the collection agency.

(b) Consumer Reporting Agencies

It is my intent to forward notification to a consumer report agency. (If not in the body of the letter a description of the basis of the claim, the amount and that it is overdue should be stated.) In addition to the amount of the debt, I intend to report your name, address, social security or taxpayer number, the status and the debt and (any other information necessary to identify the debt and debtor).

No disclosure to a consumer reporting agency will be made within 60 days of this letter. Before that time you may inspect and copy any and all records being held at _____ relating to this debt. Arrangement for such inspections may be made through me for such inspection to take place during the hours of _____, Monday through Friday except holidays. Should you have any questions concerning the basis or amount of this debt, I will endeavor to provide an answer. Additionally, you may, in writing, request the Coast Guard to review and/or terminate collection of the debt. This request may present any issues or documents for consideration.

(c) Administrative Offset

It is my intent to collect this debt by offsetting the amount against monies owed to you by the federal government (If can be more specific, do so.) [If have not stated the basis and amount of the claim in another part of the letter, do so] The documents pertaining to this debt are held by _____. Offset action will not take place within 30 days of this letter. Before offset action is taken you may inspect and copy any or all of these records. Arrangements may be made through me for such inspection during the hours of _____, Monday through Friday, except holidays. Additionally, you may, in writing, request the Coast Guard to review this debt. The request may present any issues or documents for consideration.

(7) Address of collection clerk

Encl. (7) to COMDTINST M5890.9

3. Claims insufficiently certain in amount or liability are not appropriate for administrative collection methods other than direct collection. The following are examples of notification and demand letters to be used in these circumstances. The example uses an aid to navigation claim. Substitute other specifics for aids to navigation when appropriate.

a. Notification Letter.

(Claim file #)

(Date)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(1)

Dear Sir:

It has been reported that on or about (2) Coast Guard Aid to Navigation (3) was damaged by the (4) which vessel is strictly liable for the damages to the aid and the cost involved in the restoration of the aid.

(5) The purpose of this letter is to advise you, as owner of the vessel, that a claim on behalf of the government for the damages to the aid and the cost involved in the restoration of the aid will be made in due course.

(6) The sunken aid presently constitutes an obstruction to navigation. The United States intends to recover that aid if it is not sooner removed by you. If the aid is removed by the United States, the (4) will be held liable for the costs of removal as well as the above mentioned damages concerning the aid and its restoration.

Sincerely,

Copy: (Insert vessel's agent) (7)

- (1) Addressee (usually the owner of the vessel - copy to agent)
- (2) Date of collision or allision.
- (4) Vessel type (COMDTINST 16125.1), name, number, also include country (CG-371) if not State registered.

3-a (cont'd)

- (5) Optional paragraph 2 to be used if we have not yet determined the cost to the Coast Guard. All letters will contain either optional paragraph 2 or paragraph 4.
- (6) Optional paragraph 3 to be used in cases in which the aid now constitutes an obstruction to navigation.
- (7) If there is no local agent and the vessel is still available, send a copy to the master of the vessel.

b. Initial Demand.

(Claim file #)

(Date)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(1)

Re: (2) (3)

Dear (4):

Please refer to our letter of (5) regarding the Coast Guard's claim for damages to the above referenced aid to navigation.

The cost to the United States created by the damage to the aid and the restoration of the aid have been ascertained, a claim in the amount of (6), as supported by the enclosed bill, is asserted against you. Interest at the annual rate of (7) will accrue from the date of this letter but will be waived if payment is received within 30 days. If payment is not received in 30 days, in addition to the interest, an administrative charge of (8) for the cost of collecting this debt will be assessed. Furthermore, if the debt remains unpaid for over 90 days, an additional 6% per annum late payment penalty shall be assessed on the balance of the debt, the accrued interest, and administrative costs.

A check or money order in the amount of (6) payable to "U.S. Coast Guard", may be mailed to:

Collection Clerk

Sincerely,

Encl: Itemized Bill (9)

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3-b (cont'd)

Copy: (Insert vessel's agent) (10)
(9)

- (1) Addressee (usually the owner of the vessel - copy to agent)
- (2) Date of collision or allision.
- (3) Official name of the aid to nav. and Light List number.
- (4) Salutation
- (5) Date of notification letter
- (6) Amount of claim
- (7) Rate of Interest.
- (8) Administrative costs.
- (10) Attach Form CG-3621 if making demand.
- (11) If there is no local agent and the vessel is still available, send a copy to the master of the vessel.
- (12) "Blind copy: collection clerk"

c. Second Demand.

(Claim file #)

(Date)

(1)

Re: (2)

Dear (3):

Please refer to my letter of (4) forwarding the government's billing for the cost incurred by the government for the damage to and restoration of this aid to navigation. A review of the file reveals that payment has not been received to date and the account is seriously past due.

I4299*IMAGES:

<u>Bill/ Reference No.</u>	<u>Date</u>	<u>Principal</u>	<u>Interest Charges Assessed</u>	<u>Administrative Charges Assessed</u>	<u>Curren Balanc</u>
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SERIOUSLY PAST DUE PAYMENT
(5)

The claim in the amount of (6) for this damage remains due and owing. Payment may be made by check or money order, payable to the "United States Coast Guard" and should be sent to:

Collection Clerk

3-c (cont'd)

Please give this matter your immediate attention.

Sincerely,

Copy: Vessel's agent
(7)

- (1) Name of Debtor and address.
- (2) Reference line from Initial demand letter
- (3) Salutation
- (4) Date of initial demand letter
- (5) Fill in particulars
- (6) Amount of claim
- (7) Blind copy "Collection Clerk"

d. Third Demand

(Claim file #)

(Date)

(1)

Re: (2)

Dear (3):

Please refer to my letters of (4) and (5) regarding the Coast Guard's claim for damages. Payment has not been received. The account is seriously past due.

(6)

If we are unable to resolve this matter administratively, this case is subject to referral to the Department of Justice with a request that litigation be instituted to collect the amount of our claim. I trust you will agree that administrative resolution of the claim without resort to litigation, is to our mutual benefit.

Encl. (7) to COMDTINST M5890.9

3-d (cont'd)

The claim in the amount of (7) for this damage remains due and owing. Payment may be made by check or money order, payable to the "United States Coast Guard" and should be sent to:

Collection Clerk

Please give this matter your immediate attention.

Sincerely,

Settlement Authority

Copy: Vessel's agent
(8)

- (1) Name of debtor and address
- (2) Reference line from initial demand letter
- (3) Salutation
- (4) Date of initial demand letter
- (5) Date of second demand letter
- (6) Fill in the particulars
- (7) Amount of claim
- (8) Blind copy "Collection Clerk"

64. Sample complaint.

UNITED STATES DISTRICT COURT
DISTRICT OF (1)

UNITED STATES OF AMERICA,

Plaintiff,)

CIVIL NO. _____

v.

COMPLAINT FOR DAMAGE

The (2) , her engines,)
tackle, appurtenances, etc.,
in rem,

TO AID TO NAVIGATION

and

(3),
in personam,)

Defendants.)

_____)

Plaintiff, United States of America, complaining
of the defendants, alleges as follows:

1. This is a case of admiralty and maritime jurisdiction,
as hereinafter more fully appears, and within the meaning of
Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff is the United States of America, a sovereign
nation, which may bring this action pursuant to the original
jurisdiction conferred upon this court by 28 U.S.C. ^1345.

3. Defendant (2) is now and was at all material times a
motor (towing) vessel duly documented under the laws of the
United States, having (Official Number) (State Registered
Number) (4) and a home port at (5), and is now or will during
the pendency of this action be within this district and the
jurisdiction of this Court.

4. Defendant(s) (3), is (a corporation) (an individual)
maintaining (an office and place of business) (a residence) at
(5) , within this district and within the jurisdiction of this
Court.

5. At all times hereinafter mentioned, defendant (2)
was owned, managed and operated by (3)

Encl. (7) to COMDTINST M5890.9

6. At all times material to this action, plaintiff United States of America was the owner of (7), Light List Number (8), located in (9)

7. On or about (10), the defendant (2) was towing (11) from (12) to (13) when the said (11) (was) (were) caused or permitted by the (2) and her crew to strike and collide with the said aid to navigation, severely damaging the same.

8. The cost of repairing (7), the cost of providing a substitute aid to navigation while repairs were being made and other costs attributable to the result of the said collision amount to \$ (14) as nearly as can be determined at the present time.

9. No part of the foregoing amount has been paid by the defendants although payment has been duly demanded.

10. The initial demand was sent to the defendants on (15). Interest at the rate of (16) has been accruing at \$(17) per month from that date. The costs incurred in attempting to administratively collect costs attributable to the foregoing collision are (18). The penalty charge for the non payment of the debt accruing at 0.5% per month since (19) totals (20).

FIRST CAUSE OF ACTION: AGAINST DEFENDANT VESSEL

11. Plaintiff repeats and realleges Paragraphs 1 to 9 of this complaint with the same force and effect as if fully set forth below.

12. Defendant (2) unlawfully damaged the aforementioned aid to navigation in violation of statutory law of the United States. 33 U.S.C. ^ 408.

13. Defendant (2) is strictly and absolutely liable to the United States in the aforementioned amount with interest and with costs from (15), and late payment penalties from (19). 33 U.S.C. ^ 412.

SECOND CAUSE OF ACTION: AGAINST INDIVIDUAL DEFENDANT(S)

14. Plaintiff repeats and realleges Paragraphs 1 to 9 of this complaint with the same force and effect as if fully set forth below.

15. Defendant(s) (3) unlawfully damaged the aforementioned aid to navigation in violation of statutory law of the United States. 33 U.S.C. ^ 408.

16. Defendant(s) (3) is(are) strictly and absolutely liable to the United States in the aforementioned amount with interest and costs from (15) and late payment penalties from (19).

THIRD CAUSE OF ACTION: AGAINST INDIVIDUAL DEFENDANT(S)

17. Plaintiff repeats and realleges Paragraphs 1 to 9 of this complaint with the same force and effect as if fully set forth below.

18. Defendant(s) (3), as a result of violating 33 U.S.C. ^ 408 is (are each) liable for a pecuniary penalty not exceeding \$2,500.00, nor less than \$500.00. 33 U.S.C. ^ 412.

FOURTH CAUSE OF ACTION: AGAINST DEFENDANT (TUG) (VESSEL)

19. Plaintiff repeats and realleges Paragraphs 1 to 9 of this complaint with the same force and effect as if fully set forth below.

20. Defendant (2), as a result of violating 33 U.S.C. ^ 411, is liable for a pecuniary penalty not exceeding \$2,500.00, nor less than \$500.00. 33 U.S.C. ? 412.

FIFTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS

21. Plaintiff repeats and realleges Paragraphs 1 to 9 of this complaint with the same force and effect as if fully set forth below.

22. The aforesaid collision and the damages resulting therefrom were caused solely by the fault and negligence and unseaworthiness of the defendant (2) and by the fault and negligence of the defendant(s) (3) and its(their) agents, servants and employees.

23. By reason of the matters aforesaid, defendants (2) and (3) are each liable to plaintiff United States of America for the sum of \$ (14) and such further amount of damages as may hereafter be ascertained, with interest thereon, costs, and late payment penalties.

24. The aforesaid collision and the damages resulting therefrom were not caused or contributed to in any way by any acts or omissions of plaintiff United States of America, its officers, agents, servants or employees.

WHEREFORE, plaintiff United States of America prays:

1. That a warrant be issued for the arrest of the (2) her engines, tackle, appurtenances, etc., with notice to all persons claiming or having an interest in said vessel to appear

Encl. (7) to COMDTINST M5890.9

and answer this complaint, and that defendant(s) (3) may be summoned to appear and answer this complaint;

2. That, if the defendant(s) (3) cannot be found within this District, then all of said defendant goods and chattels, including other vessels, within the District, to the amount sued for herein, be attached and that the same be condemned and sold to pay plaintiff its damages.

3. That judgment may be entered in favor of plaintiff United States of America against defendants (2) and (3) and each of them, for the amount of damages set forth herein, plus interest thereon and costs and late payment penalties;

4. That judgment may be entered in favor of plaintiff United States of America against the defendant (2) for pecuniary penalties in the amount of \$2,500.00;

5. That judgment may be entered in United States of America against defendant(s) (3) pecuniary penalties in the amount of \$2,500.00 (for each said defendant);

6. That judgment for condemnation and sale be entered against the property arrested and attached herein and the amount of plaintiff's claim with interest and costs be paid out of the proceeds thereof; and

7. That the Court grant such other and further relief as it may deem just and proper.

- (1) Cognizant federal district court
- (2) Name of the vessel (see "re" line of demand letters)
- (3) Owner of the vessel (usually addressee on demand letters)
- (4) Number of the vessel (see "re" line of demand letters)
- (5) Home port of the vessel
- (6) Location of the owner (usually address of demand letter's addressee)
- (7) Official name of the aid to navigation (see "re" line of demand letters)
- (8) Light List Number (see "re" line of demand letters)
- (9) Location of aid to navigation (body of water as opposed to latitude and longitude)
- (10) Date of collision or allision (see "re" line of demand letters)
- (11) Identity of the tow (if applicable)
- (12) Place of vessel departure
- (13) Place of vessel arrival

- (14) Amount of costs incurred by the Coast Guard (amount in demand letters)
- (15) Date on which defendant received the first demand
- (16) Interest rate
- (17) Monthly interest accrual
- (18) Total of accrued administrative costs
- (19) Date debt delinquent
- (20) Total late penalty charges to date

When the aid to navigation is a buoy, replace "aid to navigation" with "buoy".

CONFESS-JUDGMENT NOTE

\$ _____, _____, _____

For value received (I) (we) (jointly and severally) promise to pay to the order of the Treasurer of the United States the sum of \$ _____, _____ Dollars, with interest at a rate of _____ per annum, in (monthly) (bimonthly) installments of not less than \$ _____, _____ dollars each, payable at the Collection Clerk, _____ on or before the first day of each calendar month until such obligation is fully paid. The first payment shall be made on _____, 19____ If any installment shall remain unpaid for a period of 10 days, the entire amount of this obligation, with interest, less payments actually made shall become immediately due and payable at the option of the U.S. without demand or notice, said demand and notice being hereby expressly waived.

I (we) do hereby authorize and empower any U.S. Attorney, Assistant U.S. Attorney, or any attorney of any court of record, State or Federal, to appear for me (us) and to enter and confess judgment against me (us) for the entire amount of this obligation, with interest, less payments actually made, at any time after the date indicated in the upper right hand corner, in any court of record, Federal or State; to waive the issuance and service of process upon (me) (us) in any suit on this obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering upon such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

I (we) hereby ratify and confirm all that said attorney may do by virtue hereof.

STATE OF _____)

SS.

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

REVIEW AND RECONSIDERATION PROCEDURES

1. The debtor may request the Coast Guard to review the validity and amount of the debt, including the assessment of late payment interest, administrative costs, and late payment penalties, and to reconsider the initial review decision. When the debt is to be collected by deduction from salary, the employee may additionally request review of the terms of the repayment schedule. The procedures contained in paragraph 2 of this enclosure are applicable to offsets pursuant to 31 USC ^ 3716. Paragraph 3 of this enclosure is reserved for procedures applicable to deduction from pay/ salary pursuant to 5 USC 5514. With the exception of Paragraphs 16-H-2-e and 16-H-2-h of this subpart, receipt of a written request for administrative review of a claim will suspend collection action until resolution of the review.

2. Collection by administrative offset (31 USC ^3716)

a. Request for review

- (1) A debt review will be automatically granted if before the debt becomes delinquent, the debtor mails or hand delivers to the claim settlement authority a petition requesting review of the validity or amount of the debt. A timely mailed or delivered petition for review may also request the suspension of the assessment of late payment interest, administrative costs, and late payment charges during the period of the debt review process.
- (2) If a petition for a debt review is mailed or hand delivered after the debt becomes delinquent, a review will be granted unless the debt has been collected in full. If a review is granted under this section, the accrual of late payment interest, administrative costs, and late payment charges will not be suspended unless the debtor had no reason to know the due date of the debt.
- (3) A petition for review must be in writing, and identify the debtor and the debt. The debtor may present documents, citation to authority, argument, and any others matters to be considered in evaluating the validity and amount of the debt. The debtor may request an oral hearing but should present his or her position as to what matters are in controversy, what witnesses including the debtor would appear, and the expected testimony. Oral hearings will be granted when required by paragraph 2-b-(2).

- b. The claim settlement authority should promptly designate a claim reviewing official. The claim reviewing official may be a Coast Guard officer, warrant officer, or attorney employee. The function of the claim reviewing official is to determine the validity and current amount of the claim.
- (1) The claim reviewing official shall determine the current balance of the Coast Guard account receivable; obtain a listing of the account receivable by the principal amount, accrued late payment interest, administrative costs, and late payment charges, and any other charges not part of the principal debt; obtain documentation or citation for the underlying basis of the account receivable's principal amount, late payment interest rate, computation of administrative costs, and justification for any other charges; and obtain all demand letters or other documentation notifying the debtor of the debt and obligation to pay.
 - (2) After obtaining all documentation in accordance with paragraph 2-b-(1), the claim reviewing official will notify the debtor of the current balance of the debt, and the documents that exist in support of the debt. The debtor will be given fifteen (15) days to present or update documents, citations to authority, argument or other matters to be considered. The debtor may request an oral hearing, but should present his or her position as to what matters are in controversy, what witnesses including the debtor would appear, and the expected testimony. Oral hearings will be granted when:
 - (a) the determination of the validity and amount of the indebtedness or terms of the repayment schedule can not be resolved by review of the documentary evidence; and
 - (b) the Coast Guard is required or authorized to consider waiving the indebtedness, and the debtor has requested waiver of the indebtedness, and the determination of the whether waiver is appropriate turns on issues of credibility or veracity.
 - (3) If an oral hearing is not required by paragraph B-2-(b), the claim reviewing official after review of the material supporting the debt and those documents and materials presented by the debtor shall, in writing, make findings of the basis of the debt, if any, the amount, and responsible party,

provide an analysis of the issues presented by the debtor and any other meritorious issues, and recommend whether the claim should be terminated or collection action continued in a specific amount.

- (4) If an oral hearing is required pursuant to paragraph 2-b-(2), the claim reviewing official shall afford the debtor a hearing. Such hearing shall be an informal meeting between the debtor and the claim reviewing official. A verbatim record is not required. The debtor will be allowed to view and copy all nonprivileged documents relating to the claim, and be allowed to present any documents, statements, or arguments relating to the claim. Rules of evidence will not apply. The claim reviewing official will have the discretion to conduct the hearing in any manner to explore issues of fact or credibility. Subsequent to conducting the oral hearing the claim reviewing official will prepare a record summarizing the testimony and proceedings. Based upon the summary record of the oral hearing and materials obtained in accordance with paragraph 2-b-(1), written finding, analysis, and recommendations shall be made as per paragraph 2-b-(3).
- c. The claim reviewing official shall forward the findings, analysis, and recommendations with all documentary materials to the claim settlement authority. Based upon review of the materials and claim reviewing official's report, the claim settlement authority will notify the debtor in writing whether the debt is valid, and if so its balance and the party liable for the debt, and respond to any meritorious issues raised by the debtor's request. The claim settlement authority may reach a result differing from the claim reviewing official when the claim settlement authority believes the claim reviewing official's findings, analysis, or recommendations were not supported by the record or incorrect as a matter of law. If the claim settlement authority's position differs from the findings or recommendation of the claim reviewing official, the claim settlement authority will explain those differences. If the claim remains valid, the notification should also advise the debtor of the amount owed, that the debt is due and owing, and that collection action will be taken within thirty (30) days of the letter in order to provide the debtor an opportunity to pay the debt, enter a repayment agreement, or request reconsideration of the review.

d. Reconsideration

- (1) A request for reconsideration of the review decision should be in writing, mailed or hand delivered to the claim settlement authority, no more than thirty (30) days from the date the review decision was mailed or hand delivered to the debtor. The request for reconsideration should specify the factual or legal basis that the review decision was in error, provide any pertinent documents, and specify the relief sought. Any issues not raised in the request for review are deemed waived.
- (2) Reconsideration will be by the same claim settlement authority that decided the merits of the debtor's request for review. If unique issues of law are presented, the claim settlement authority may request an advisory analysis by the Chief, Claims and Litigation Division.
- (3) The claim settlement authority will advise the debtor of the decision on reconsideration and its basis. If the debt remains valid, the debtor will again be notified of the balance due and owing. The accrual of late payment interest, administrative costs, and late payment charges may be waived during the reconsideration period based on whether the issues raised by the debtor are frivolous or exhausted by the review, the length of time the reconsideration is expected to take, whether undue delay is caused by the Coast Guard's handling of the case, and whether the accrual of these charges during the reconsideration process will result in them being disproportionate to the principal amount of the debt.

e. For any claim, the review and reconsideration procedures need only be performed once. A debtor does not have the a right to additional review upon notification of intent to use a different collection method or disclosure to a credit reporting agency.

3. Collection by salary offset pursuant to 5 USC 5514

(RESERVED)

4. Costs incurred by debtors, including employees, incident to inspection and copying of government records, transportation to attend oral hearings, or representation at oral hearings shall be at no expense to the Coast Guard,

unless otherwise authorized by law. Charges for the inspection and copying of records will be assessed in accordance to schedules applicable to requests for records pursuant to 5 U.S.C. ^ 552. If the debt is found to be valid in some amount, the charges will be included as an administrative cost. If the debt is not found valid, these charges will be waived.

5. Nothing in this enclosure shall limit a claim settlement authority from terminating a claim in accordance with 4 CFR ^104.3 after receipt of a petition for review or request for reconsideration.

Enclosure (10) to COMDTINST M5890.9

ENCLOSURE - MEMO HEADER (Omitted)

Transportation

Subject: ACTION: Referral of Debts to
the Department of Justice

Date: DEC -6 1991

From: Roberta D. Gabel
Assistant General Counsel for
Environmental, Civil Rights and General Law

Reply to
Attn. of.

To: Chief Counsels

This is to advise you of modifications to the procedures for referring delinquent debts to the Department of Justice for enforced collection by litigation.

The previous procedures requested that, with the exception of debtors who had filed for bankruptcy protection, agencies refer all debts of \$200,000 or less to Justice's Nationwide Central Intake Facility (NCIF) rather than to the U.S. Attorney's Offices (USAOs). Cases involving debtors who had filed for protection under the Bankruptcy Code were to continue to be filed with the appropriate USAO.

Recent Justice modifications impact the referral of (1) claims for which the principal amount exceeds \$200,000, and (2) debtors who have filed for bankruptcy protection. The threshold for claims which should be referred to the NCIF has been increased from \$200,000 to \$500,000; i.e., now claims for which the principal amount does not exceed \$500,000 should be referred to the NCIF. In addition, all claims involving debtors who have filed for bankruptcy protection should also be referred to the NCIF; i.e., there is no longer an exception for debtors who have filed for bankruptcy protection.

Details relating to the above modifications to the referral procedures are contained in the attached memorandum for the Department of Justice. If you or members of your staff have further questions, please contact Paul Larsen of this office at x69161.

Attachment

cc: Assistant General Counsel for Litigation
Assistant General Counsel for Aviation
Enforcement Proceeding

Enclosure (10) to COMDTINST M5890.9
U.S. Department of Justice

Washington, D.C. 20530

DEC -6 1991

September 12, 1991

MEMORANDUM

TO: Agency General Counsel and Selected Debt Collection
Officials

FROM: Robert N. Ford
Deputy Assistant Attorney General
Debt Collection Management
Justice Management Division

SUBJECT: Change in the Department of Justice's Nationwide
Central Intake Facility (NCIF) Procedures Effective
October 1, 1991

Last August we wrote you that as of October 1, 1990, Justice was going to change the process for handling the delinquent debts your agencies refer to U.S. Attorneys' Offices (USAOs), under Part 105 of the Federal Claims Collection Standards (FCCS), 4 C.F.R. Part 105, for enforced collection via litigation. The change was that, after October 1, 1990, you should no longer refer such debts directly to the USAOs in whose districts the debtors lived. Instead, we asked you to send those debts to our new Nationwide Central Intake Facility (NCIF), where we would enter data on them into a new automated system. This change enabled us to get an accurate count of the number and dollar value of the debts being referred to the USAOs for litigation in Fiscal Year 1991. With your help, this new NCIF system has worked very well, and we have been able to capture reliable data on these referred debts. We thank you very much for your cooperation in this effort.

Because of the success of the original NCIF referral process, we now are going to expand it starting October 1, 1991, so that we can capture even more data. This expansion will be in the area of bankruptcy referrals. You may recall that the guidance we sent you last August said if one of your debtors had already filed for protection under the Bankruptcy Code, at the time you were going to refer the debt, you should send that debt under the former procedures -- directly to the USAO in whose district the debtor lived and not to the new NCIF. This, of course, meant that during Fiscal Year 1991, our NCIF did not capture data on all bankruptcy referrals in a single, central system.

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Now, after a year's experience with the NCIF referral process, we are ready, beginning October 1, 1991, to capture data on bankruptcy referrals as well as data on referrals where the debtors were not in bankruptcy.

Therefore, please notify all of those in your agencies involved in referring debts to USAOs for litigation that, as of October 1, 1991, there is no longer an exception for those debtors who have filed bankruptcy petitions prior to the referral date. In other words, whether or not a debtor is in bankruptcy, after October 1, 1991, if the debt is going to be referred to a USAO for litigation in accordance with 4 C.F.R. Part 105, it must be referred to our NCIF and not directly to a United States Attorney.

This new procedure is, just like the previous procedure, subject to a rule of reason, or common sense. That is to say, if there is a short deadline, say two weeks, within which someone must file a Proof of Claim, or appear in Bankruptcy Court to prevent the government from losing certain rights, then send the debt directly to the appropriate USAO to try to ensure that the government is not time-barred from asserting any of its legal rights. In these situations, where time is of the essence, however, be sure to send a copy of the CCLR referring the bankruptcy case to our NCIF in Silver Spring, Maryland at the address given below. It is not necessary to send a copy of your entire file to the NCIF in these emergency situations, just a copy of the CCLR you sent to the USAO will suffice.

With your cooperation, we hope these new procedures will work as well as last year's original implementation of the NCIF system and that we will, beginning October 1, 1991, be able to capture timely data on bankruptcy referrals. In the near future we expect to be able to use the NCIF data base to provide you periodically with data on the current status of all of the debts you have referred to us for litigation by the USAOs.

Finally, a reminder. On March 21, 1991, Assistant Attorney General Stuart M. Gerson signed Civil Division Directive No. 176-91, (56 FR 12666, March 27, 1991), implementing increased delegations of authority to the U.S. Attorneys from \$200,000 to \$500,000. This increase in the authority delegated to the U.S. Attorneys means that claims where the principal amount due does not exceed \$500,000 should be sent to our CIF at the following address:

**Department of Justice
Central Intake Facility
1110 Bonifant Street, Suite 220
Silver Spring, Maryland 20910-3312**

Enclosure (10) to COMDTINST M5890.9

- 3 -

Claims exceeding the \$500,000 delegated amount should continue to be referred to the appropriate Department Litigating Division.

If you or your staff have any questions about these new procedures, please call me on (202) 514-5343 or FTS 368-5343, or Diane Miller or Cecilia Petree at the CIF on (301) 585-2391.

Thank you for your help in this project.

cc: Tim Murphy
Chuck Larson
Diane Miller
Cecilia Petree
Rick Sponseller
Vicky McDowell
Richard Green

Enclosure (11) to COMDTINST 5890.9

|

[VACANT]

DOCUMENTS SUPPORTING FWPCA OR OPA 90 CLAIMS

1. After receiving an FWPCA or OPA 90 case, the National Pollution Funds Center (NPFC) should review the cost file to insure that the OSC Report is in a form that approximates the guidelines contained in the Coast Guard Marine Safety Manual, COMDTINST M16000.3, or other applicable guidance or instruction. It is particularly important:
 - a. That the OSC Report specifically identify the bills that support the contractor costs and relationship of the bill to specific clean up activity.
 - b. That these bills be attached in a chronological or other organized manner, with summary sheets totalling the various kinds of costs.
 - c. That the OSC Report describe the United States' resource costs being charged.
2. After appropriate demands have been made in accordance with Chapter 16, a declaration(s) should be prepared to be signed by a responsible officer(s) and copies of the following documents certified in accordance with Enclosure (14):
 - a. the OSC Report;
 - b. documentation that the contractor billings were in fact paid by the Coast Guard;
 - c. the total contractor costs incurred, and the total Coast Guard, Environmental Protection Agency, or other agency (federal or state costs incurred);
 - d. the copies of all demands for payment sent to the discharger, with copies of related correspondence;
 - e. copy of the Treasury Bulletin or other notification establishing the applicable interest rate for accounts receivable; and
 - f. when appropriate, the cost of claims paid by the OSLTF to third parties, or others.
3. Two copies of the declaration(s) and certified documents should be forwarded. The affidavits and documentation package should be bound together under seal and ribbon. The other copy is forwarded as a working copy to either the U.S. Attorney or G-LCL.

DECLARATION

DECLARATION OF _____ (Name) _____, (Rank, U.S. Coast Guard), declares that:

- | 1. I am Chief of the Case Management Division at the National
| Pollution Funds Center.
- 2. My responsibilities in this position include maintaining accounts
| of expenditures made from the Oil Spill Liability Trust Fund (or its
| predecessor, the 311(k) Revolving Fund) for the clean-up of oil
| discharges, and for the payment of claims arising from this incident.
- 3. I have reviewed the official records of the U.S. Coast Guard,
maintained in my Division in the normal course of the business of my
Division, documenting the actual costs to the United States, expanded
from (date) under Federal Project No. (FPN), for the
clean-up of oil discharged at (location(s)) on (date)
through (date).
- | 4. Attached hereto is a certified copy of the report of the Federal
(or State) On-Scene Coordinator for the above described Federal
Project, which includes certified copies of the billings paid by the
Coast Guard, and which also includes a description of costs incurred
| by personnel, equipment, and facilities of the United States, and, as
| appropriate, claims paid to date to third parties, or others.
- 5. My review of these above described records shows that the actual
total cost to the United States to date for these expenditures, all
of which were incurred in the course of the above described Federal
Project, was \$ (amount). Interest at the rate of (interest)
rate) % per month has accrued since (date). Administrative
cost totaling \$ (amount) have accrued since (date). Late
Payment penalty charges at 0.5% per month on the delinquent balance
have accrued since (date). The account for this project shows
that the amount owed the United States is \$ (amount).
- 6. Attached hereto are true copies of demands for payment made by
the coast Guard, and of associated correspondence.
- | 7. I reserve the right to amend this declaration, within the
| applicable statute of limitations, to reflect any future costs,
| including claims, incurred.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ of _____ 19

(Signature)

Page _____ of _____

REQUEST FOR REPRESENTATION

1. Requests for representation are to be submitted in accordance with 28 CFR 50.15. The thrust of the regulation is on the substance of the request establishing that the named defendant was acting in the scope of his/her employment rather than the form of the request. The following forms may be used as a format for making such requests.

Subj: REQUEST FOR DEPARTMENT OF JUSTICE
REPRESENTATION File#

From: (Named Defendant)

To: (Commanding Officer, District Commander, or at Headquarter
or district staffs - Chief of Staff)

1. I was served with a copy of the enclosed complaint. The complaint names me as one of the defendants and seeks _____ in relief alleging, among other things, that I, _____ (Brief description of the allegations). As the allegations stem from activities I performed within the scope of my employment in the Coast Guard, I request that action be taken to secure representation for me by the Department of Justice.
2. (The named defendant should provide a description of the relationship, if any, to the plaintiff [supervisor, reporting officer, boarding officer, etc.], and should provide a description of the defendant's actions relating to the plaintiff's allegations demonstrating that he/she was acting within the scope of employment.)

/s/ Named Defendant

Encl: (1) Copy of complaint

ENCLOSURE (13) to COMDTINST M5890.9

Subj: REQUEST FOR DEPARTMENT OF JUSTICE
REPRESENTATION

File#

From: (Commanding Officer, District Commander, or at district or
Headquarters staffs - Chief of Staff)

To: (Chief Counsel or District Legal Officer)

1. Plaintiff is a _____ (brief description of relationship of plaintiff to named defendant or Coast Guard). Plaintiff has filed suit in the United States District Court for the District of _____, _____ (name of case), naming _____ as defendants. By enclosure (1), _____ (Named defendant) requests Department of Justice representation.

2. I am familiar with the allegations against _____ (Named defendant) and as they arose from activities he/she performed within the scope of his/her employment, I request that you take appropriate steps to secure Department of Justice representation for him/her.

/s/ _____

Encl: (Named Defendant's memo _____ of _____)

ENCLOSURE (13) to COMDTINST M5890.9

(_____)
(____) ____ - ____

File#

U.S. Department of Justice
Assistant Attorney General - Civil Division
Washington, D.C. 20530

Re: (Named Defendant's) request for Department
of Justice representation in (Style of case)

Dear _____:

Attached is (Named Defendant's) request for Department of
Justice representation in the above referenced case. See
enclosure (1).

(Name of Plaintiff), plaintiff, is a (relationship of the
plaintiff to the defendant and/or the Coast Guard). (Named
defendant) is (official title of the individual and rank).

In the complaint, plaintiff seeks _____ in damages
alleging _____. This suit arises out of (brief
description of event(s))

The suit arises out activities (Named defendant) performed in
the scope of employment. I believe that it is in the best
interests of the United States to extend Department of Justice
representation to them. Accordingly, I request that they be
provided with such representation.

Sincerely,

(Name of Chief, Claims and Litigation)
(Rank), United States Coast Guard
Chief, Claims and Litigation
By direction of the Commandant

- Encl: (1) (Named Defendant's) request for representation
(2) _____ memo _____ of _____
(3) Copy of complaint

INSTRUCTIONS FOR PREPARATION OF CERTIFICATE OF TRUE COPY

1. Preparation. The form shown on the reverse, or an equivalent locally produced form, may be used whenever Coast Guard documents must be certified as true copies.
2. Compiling the Records Package. You must take this process seriously. Remember what you are doing: you, as the custodian, are attesting and certifying that the document(s) you have compiled are a true, complete, and accurate copy of the record in question. This calls for careful supervision and validation of the photocopying job. The authentication should be signed by the commanding officer of a unit having a seal, although signature authority is often delegated to the legal officer of larger units such as MLCs, districts or headquarters units.
2. Affixing the Ribbon & Seal. Single hole punch the document and the completed Certificate of True Copy form in the upper left corner approximately 1/2 inch in from the top and left edges of the document. Cut a piece of curling ribbon approximately 27 inches in length (longer for documents more than an inch thick). Create a bight in the center of the curling ribbon. Raise the upper left corner of the document (where the hole has been punched) and pass the bight through the hole (from the bottom to the top of the document), leaving about one inch of the bight visible above the hole. Take the bitter end and the standing part and pass them through the bight. Pull the bitter end and standing part towards the bottom left side of the document until the bight is snugged down. While holding the bitter end and standing part place a notarial seal over the two strands of ribbon in the lower left corner of the document. The seal should be placed approximately 1/2 inch from the left edge and 1/4 inch from the bottom edge of the document with the ribbon centered in the seal. Remove excess ribbon from the bottom of the document (ribbon should hang slightly over the bottom edge of the document). Execute the form.

[DIAGRAM ON PAGE 3]

Enclosure (14) to COMDTINST M5890.9

UNITED STATES COAST GUARD

CERTIFICATE OF TRUE COPY

Identification of Original Record:

Identification and Location of Coast Guard Command:

I certify and attest that: (1) the attached pages, _____ in number, are true and correct copies of pages in the original record identified above; (2) the original record identified above is held in my custody at this office of the United States Coast Guard; and (3) the record identified above is an official record setting forth activities of the United States Coast Guard and kept in the regular course of the official business of the United States Coast Guard under Title 14 of the United States Code. (See, Federal Rule of Evidence 803(6) & (8)).

Signature of Custodian:

Grade and Title:

Date:

AUTHENTICATION

I certify and attest that the signature executed above is that of

_____, and that (s)he is a custodian of the record identified above. In witness thereof, I have caused to be affixed below the official seal of this unit of the United States Coast Guard, an agency of the United States of America. (See, Federal Rule of Evidence 902(2)).

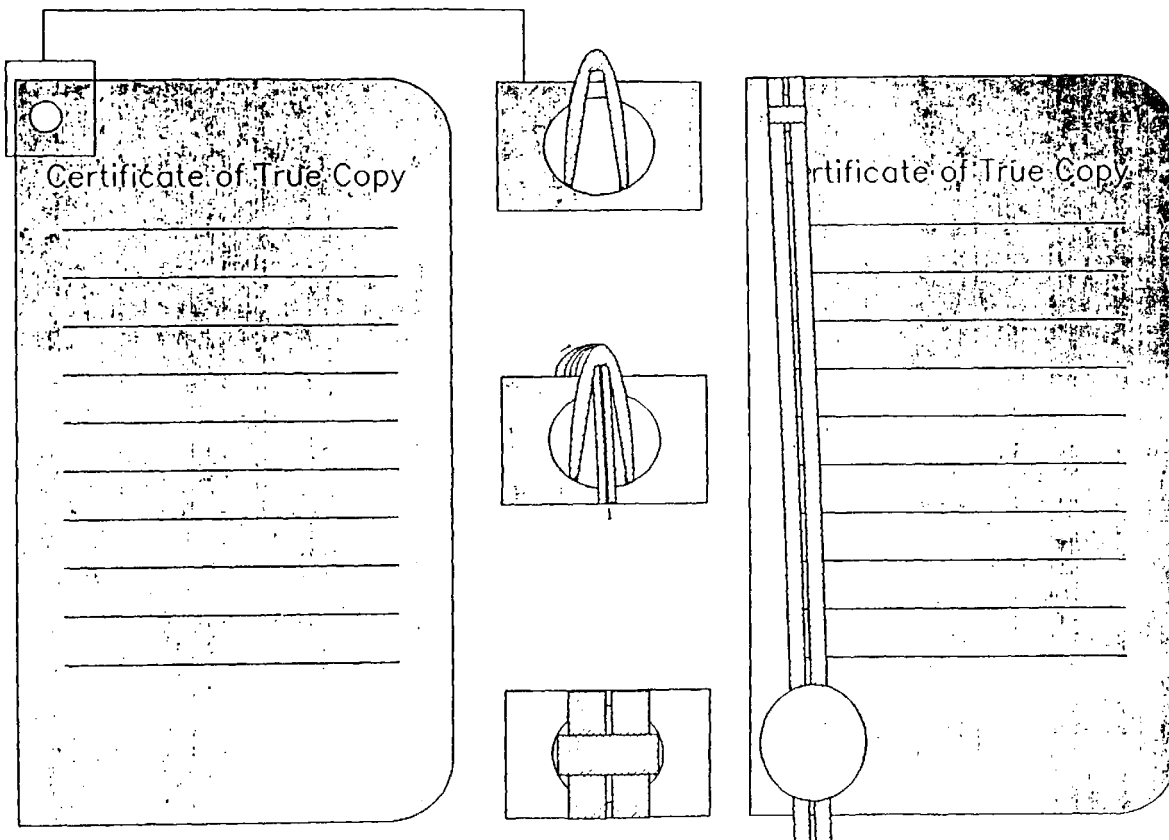
Signature of Official:

Grade and Title:

Date:

(Coast Guard Unit Seal)

CH-2



Enclosure (15) to COMDTINST M5890.9

OUT-OF-DISTRICT WITNESS REQUESTS FOR CIVIL LITIGATION

1. Background. Inter-district witness travel associated with civil litigation is funded by Commandant (G-LPD). This enclosure implements a standard format for requesting travel orders for out-of-district Coast Guard personnel and civilian employees who will appear as government witnesses in Coast Guard related civil litigation.
2. Procedure. Requests for out-of-district witness travel should be directed to "G-LPD" (Chief, Policy & Program Development Division) and "G-LCL" (Chief, Claims & Litigation Division), and formatted as follows:
3. Note. Requests for inter-district travel for civil litigation involving environmental compliance matters, or procurement matters, are handled in the same manner, the difference being that G-LEL, or G-LPL, as appropriate, should be substituted for G-LCL.

FM CCGD _____ CITY, STATE//DL//
TO COMDT COGARD WASHINGTON DC//G-LPD/G-LCL//
INFO (UNIT OF WITNESS)

BT

UNCLAS//NO1320//

SUBJ: REQUEST FOR CIVIL LITIGATION WITNESS

A. CLAIMS & LITIGATION MANUAL, ENCL. (15)

1. PER REF A, THE FOLLOWING IS PROVIDED:

- A. NAME OF CASE (e.g., CAHILL V. U.S.)
- B. TYPE OF INCIDENT (e.g., SAR, ATON, FTCA, etc.)
- C. WITNESS NAME, SSN, UNIT, FTS NUMBER
- D. DEPARTURE DATE
- E. REPORTING DATE/TIME
- F. ESTIMATED DURATION & DATE OF RETURN
- G. ESTIMATED COST (including airfare & per diem)
- H. DESTINATION (e.g., RHONDA LEE WATKINS, ASST U.S. ATTY, HAYES OFC BLDG, RUSSELL RD, ST. AUGUSTINE, FL, FTS & COMML NUMBER)
- I. COGNIZANT CG ATTY (i.e., LT AHERN, FTS/COMML NUMBER)
- J. PURPOSE OF TRAVEL (e.g., TRIAL, DEPOSITION, INTERVIEW).

2. OTHER PERTINENT INFORMATION/REMARKS (e.g., RECOMMEND STAY AT DOWNTOWN HOLIDAY INN, PHONE #, TO FACILITATE PRE-TRIAL PREPS W/DOJ ATTY THOMAS DEVINE. JUST PRIOR TO DEPARTURE, CALL DOJ PARALEGAL ALEX JONES AT 241-6261 TO CONFIRM THAT TRIAL DATE/TIME STILL FIRM).

BT

ACKNOWLEDGMENT OF RECEIPT OF SERVICE FOR COMPLYING WITH RULE 4,
FEDERAL RULES OF CIVIL PROCEDURE

The following format should be used, in appropriate circumstances, to
acknowledge receipt of summonses and complaints served by mail. See
Article 18-B-2-c.

UNITED STATES DISTRICT COURT
DISTRICT OF _____

_____,')	
Plaintiff.)	
)	
v.)	Civ. No. _____
)	
_____,')	
Defendant.)	
)	

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the
summons and of the complaint in the above captioned matter at
_____.

This acknowledgment is returned solely in order to comply with Rule 4
of the Federal Rules of Civil Procedure. In doing so, the defendant,
_____, does not admit or concede that the form or substance
of service of process in this case is proper or sufficient or that
the court has personal jurisdiction over the defendant. The
defendant does not waive any defenses, including those provided by
Rule 12 of the Federal Rules of Civil Procedure. All defenses are
specifically reserved.

(Date) _____

SAMPLE AGREEMENT WITH COUNSEL SELECTED FOR REPRESENTATION OF OVERSEAS PERSONNEL AT GOVERNMENT EXPENSE (IN CRIMINAL CASE)

AGREEMENT made this _____ day of _____ 19____, between the United States of America, hereinafter called the Government, and _____, Attorney at Law, of _____, hereinafter called the Attorney. This Agreement is entered into by the Government pursuant to the provisions of the Act of 2 September 1958. (10 U.S.C. ^ 1037; 72 Stat. 1445, 99 Stat. 665).

The Attorney undertakes and agrees to act as attorney for, and to diligently defend and represent, the interests of _____, hereinafter called the Defendant, at all stages of the trial in the proceedings before the judicial authorities of _____ (country), upon charges including, but not necessarily limited to, _____. In addition, the attorney agrees to file, when and if such becomes applicable and feasible, the appropriate notice of appeal, appropriate requests for release from confinement or other petition relating to the execution of the sentence, and other papers and pleading as necessary. This Agreement does not, however, obligate the Attorney to represent the Defendant at appellate proceedings or to prepare a brief in support of the appeal. Subject to reimbursement by the Government, and except as may be otherwise requested or directed by the Contracting Officer executing this Agreement on behalf of the Government, the Attorney further undertakes and agrees to pay the court costs and other necessary and reasonable expenses as may arise incident to the representation of the Defendant in these proceedings.

In consideration of the proper and faithful performance by the Attorney of all the services described above, the Government agrees to pay the Attorney a fee and expenses not to exceed _____ in total, representing a maximum fee of _____ and estimated actual expenses of _____. The attorney warrants and agrees that the counsel fees and other expenses in this case shall conform to amounts paid in comparable cases and under similar circumstances by nationals of _____ (country).

It is mutually understood and agreed that, if the proceedings in this case shall terminate or be concluded in advance of, or for reasons other than, completion of the normal order of proceedings contemplated in this Agreement (as, for example, by death of the Defendant, withdrawal of charges against the defendant, withdrawal of the Attorney from the case, or the loss of faith in the Attorney by the Defendant), the services of the Attorney under this Agreement shall thereupon terminate and the amount of the fee to be paid to the Attorney, independently of actual expenses theretofore incurred, shall be reduced appropriately as agreed between the Attorney and the Contracting Officer executing this Agreement.

ENCLOSURE (17) to COMDTINST M5890.9

It is further agreed and understood that if the case terminates in such a manner _____ (country) _____, or any political subdivision thereof, is required under law to pay the expenses of the proceedings and counsel fees, the Attorney agrees to request such payment from the appropriate governmental agency and deduct the amount so received from the contract price agreed upon herein.

Payment under this agreement will be made by upon properly certified vouchers which shall include the following certification over the signature of the Attorney:

I certify as follows: (a) the services listed herein have been performed as shown; (b) the items of expense listed herein have been incurred and paid as shown by the attached receipts; (c) no claim has been submitted previously or will be submitted to the Government or any other person for any of the services or items of expense listed herein, except as listed herein and deducted from the agreed contract price; and (d) no payment has been received previously for any part of these services or items of expense, except as shown herein and deducted from the agreed contract price."

Payment under this Agreement shall be made from the following appropriation account: (see Section 4-L of the Coast Guard Comptroller's Manual).

Any dispute under this Agreement shall be determined and resolved by the Contracting Officer executing this Agreement, whose decision shall be conclusive and binding for all purposes.

THE UNITED STATES OF AMERICA
by _____
U. S . Contracting Officer
by _____
Attorney

WITNESSES:

ENCLOSURE - U.S. Dept. of Trans. Letterhead

Subject: AUTHORITY TO CARRY OUT ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM Date: Oct 23 1992
5890

From: Commandant Reply to: G-LEL
Attn. of: Mr. Hayes
7-0056

To: Chief of Staff
Chief Counsel
Chief, Office of Engineering, Logistics and Development

Ref: (a) Public Law 101-225, Chapter 19 to Title 14 U.S.C
(b) 49 CFR Part 1

1. Reference (a) authorized the Secretary of Transportation to carry out the functions necessary to implement an environmental compliance and restoration program and to expend funds from the Environmental Compliance and Restoration Account (ECRA) for the U.S. Coast Guard in this regard. On 2 January 1991, the Secretary of Transportation signed a change to section 1.46 of Subpart C of reference (b) authorizing the Commandant of the Coast Guard to carry out this program. This authority is hereby redelegated as detailed below.
2. The Chief of Staff is authorized to enter into and sign, on behalf of the Coast Guard, any: federal facility compliance agreement (FFCA), administrative consent order, consent decree, or their equivalents, with the United States Environmental Protection Agency (EPA) or an appropriate state environmental regulatory agency. This includes agreements which, subject to the availability of appropriations, commit the Coast Guard to additional payments to be determined, or to future response or remediation activity at a site. Agreements which require prospective compliance activity at specific Coast Guard units will normally be cosigned by the respective shore unit commander in the rank of O-5 or above, or by the unit's next higher operational commander in the rank of O-5 or above.
3. The Chief Counsel is designated the settlement authority for all claims against, and affirmative claims for the benefit of, the ECRA. This includes monetary settlements negotiated in conjunction with administrative consent orders and consent decrees, or their equivalents, concerning current and former Coast Guard facilities or third party CERCLA sites for which the Coast Guard is a potentially responsible party (PRP). The Chief Counsel is authorized to enter into and sign, on behalf

5890
OCT. 23 1992

Subj: AUTHORITY TO CARRY OUT ENVIRONMENTAL COMPLIANCE
AND RESTORATION PROGRAM

of the Coast Guard, any de minimis settlement (in accordance with ^122(g) of CERCLA, 42 U.S.C. 9622(g) or sum certain cash-out agreement, administrative consent order, consent decree, or equivalent, which does not obligate the Coast Guard to additional undetermined payments or future response or remediation activity at a site. The Chief Counsel is, however, authorized to enter into and sign, on behalf of the Coast Guard, "cooperating PRP agreements" which enable the Coast Guard to participate with other third party CERCLA PRP's in a PRP steering committee for the purpose of negotiating with the EPA or equivalent state agencies. Such PRP agreements may, subject to the availability of appropriations, obligate the Coast Guard to make periodic contributions (which amounts are subject to subsequent determination) to finance appropriate activities of the PRP steering committee. The Chief Counsel may redelegate any or all of this authority to the Chief, Environmental Law Division.

4. The Chief, Office of Engineering, Logistics and Development, is delegated all residual authority necessary to establish and carry out an effective environmental compliance and restoration program for the Coast Guard. This authority includes, but is not limited to:

- Serve as the overall program director for the environmental compliance and restoration program;
- Coordinate the efforts of the various Headquarters staff elements as they impact on compliance and restoration;
- Manage and administer the Environmental Compliance and Restoration Account (ECRA);
- Promulgate policy and guidance to the field to implement the compliance and restoration program;
- Assist in the development and support of the necessary training programs:
- Contract, as necessary, for purposes of research, studies, investigation, response, and remediation;
- Enter into interagency agreements, as necessary, for purposes of research, studies, investigation, response, and remediation;
- Exercise oversight and management responsibility for all response and remediation activities at current and former Coast Guard facilities, as well as third party CERCLA sites.

Enclosure (18) to COMDTINST M5890.9

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AND RESTORATION PROGRAM

The Chief, Office of Engineering, Logistics and Development
may redelegate any or all of this authority to the Chief,
Civil Engineering Division.

J. W. KIME

Subject: REDELEGATION OF SETTLEMENT AUTHORITY Date NOV 2 1992
FOR THE ENVIRONMENTAL COMPLIANCE & 5892
RESTORATION PROGRAM

From: Chief Counsel

Reply to:
Attn. of: Mr. Hayes
7-0056

To: Chief, Environmental Law Division

Ref: (a) COMDT memo 5890 dtd 23 Oct 92

1. The Commandant signed reference (a), delegating his authority to carry out the Coast Guard's environmental compliance and restoration program. Paragraph 3 of the reference delegated settlement authority for all claims against and affirmative claims for the benefit of the Coast Guard Environmental Compliance Restoration Account which do not involve the obligation of the Coast Guard for indeterminate additional payments or for future response or remediation actions.
2. This settlement authority is hereby redelegated to the Chief, Environmental Law Division for matters not to exceed \$100,000.00. Decisions involving the following criteria must receive the Chief Counsel's review and approval before action:
 - (a) Non-routine matters involving congressional interest;
 - (b) Those involving potentially damaging public or political reaction; or
 - (c) Matters of a highly complex or unusual nature requiring top-level attention.

P. E. VERSAW

Encl: (1) G-C memorandum of 23 Oct 1992

(G-LCL)

2100 Second Street, S.W.
Washington, DC 20593-0001
(202) 267-2245

COMDTINST M5890.9

AUG 6 1991

COMMANDANT INSTRUCTION M5890.9

From: Commandant
To: See Distribution

Subj: Environmental Fee/Tax Policy

1. Environmental legislation and regulations continue to grow at all levels of government. The federal legislative scheme in environmental laws often delegates implementing and enforcement authority to the states. This precipitates state demands to federal facilities for fees to cover the cost of state programs and services. The Coast Guard continues to receive bills from state regulatory agencies for environmental fees. I recently provided a policy guidance memo to G-ECV (copy enclosed) on this topic which described our policy of presuming that environmental fees are constitutional, unless there is clear evidence to the contrary. Let this memo serve to explain the legal basis for the policy and to assist you in answering questions which may arise at the local level.
2. Background. The constitutional issue of state imposition of taxes or fees on the federal government has been with us for many years. It was recognized very early that the federal government is immune from taxation by the states absent Congressional authorization. See, McCulloch v. Maryland, 4 Wheat. 316 (1819). This doctrine has undergone significant change as federal, state, and local government functions have overlapped. The Supreme Court recognized the development of these changes in Massachusetts v. United States, 435 U.S. 444 (1978). Therein, the Court formulated a three-part test to evaluate what reasonable assessments one sovereign can levy upon another for providing necessary services. The case provides a useful tool in evaluating what state demands for fees are reasonable. However, applying the test to environmental regulatory fee assessments has caused some difficulty.
3. As noted above, federal environmental laws frequently call upon the states to implement various environmental programs and specifically waive federal immunity from state regulation. The trend in Congress is to fully waive federal immunity in new legislation and to expand waivers in existing law. See, S.596, 102d Cong., 1st Sess., Cong. Rec. S2947-S2949 (1991); H.R. 2194, 102d Cong., 1st Sess., Cong. Rec. H4878-H4887 (1991); Clean Air Act, 42 U.S.C. 7418(a) (1990). Several existing federal environmental laws have waiver provisions which specifically permit "reasonable service charges" to be collected from federal activities. See, Clean Water Act, 33 U.S.C. 1323(a); Resource Conservation and Recovery Act (RCRA),

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AUG 6 1991

Subj: COAST GUARD FEE/TAX POLICY

5890

42 U.S.C. 6961, 6991(f). Thus, in areas where Congress has waived immunity from state regulation, federal facilities are obliged to pay reasonable charges within the scope of the waiver.

4. **Recent Cases.**

- a. Federal agencies have lost some recent cases in which state fee assessments were contested as being outside the scope of the waiver and unreasonable under the Massachusetts test. In United States v. South Coast Air Quality Management District, 748 F. Supp. 732 (C.D. Cal. 1990), a state regulatory agency sought air permit fees from federal facilities while local rules had exempted state facilities from paying the fee. The federal facilities' contention that the fee was discriminatory and therefore outside the scope of the waiver was not persuasive to the court. The decision disregards the practice of not requiring state agencies to pay the same fees assessed against the rest of the regulated community as being discriminatory. The case stands for the proposition that so long as a broad waiver of immunity exists, the assessment must be paid. The Department of Justice has not appealed the case.
- b. Focusing on the waiver issue can lead to unexpected results. Hazardous waste generator fees and penalties were the contested topic in State of Maine v. Department of the Navy, 702 F.Supp. 322 (D.Me. 1988). Maine had assessed the Navy a hazardous waste generator fee, a portion of which went into the state "mini-Superfund." The State also sought payment of civil penalties for hazardous waste violations. The Navy contested both the generator fee and the imposition of penalties as outside the scope of the waiver found in RCRA. The Navy maintained that the generator fee was discriminatory towards the federal facility because it could not access the fund in the event of a release requiring remediation. Again, the court's analysis focused upon the waiver provisions of the statute instead of the Massachusetts test and found that both the fee and penalties were within the scope of the waiver. The case is pending appeal.
- c. Another case has been briefed and awaits the trial court's decision on preliminary motions. The Coast Guard and other federal agencies have withheld payment of various "regulatory charges" assessed by the state of New York for a variety of environmental media programs. Among these was the New York State superfund used to remediate waste sites within the state. The United States has asked the trial court to rule that the charges are impermissible taxes because they exceed the value of the services provided by the state regulators. See, New York v. United States Department of Energy, et. al., 89-CV-194 through 197 (N.D.N.Y.). The outcome of this case will further refine the positions of the states and federal agencies on the fee/tax issue.

Subj: COAST GUARD FEE/TAX POLICY

5. **Discussion.** Experience has shown that litigating fee/tax cases is very draining on limited legal resources (at both agency and DOJ levels), and often with unsatisfactory results. Additionally, it can create a combative atmosphere with state regulators and attorneys general offices which, in turn, leads to increased and unwelcome scrutiny of our field units. Our sister armed services have tried a variety of approaches to the issue. The most workable appears to be the Air Force's policy of presuming that state and local regulatory assessments are constitutional "fees" unless there is clear evidence to the contrary. This policy makes sense given the unfavorable trial court decisions to date, and especially in light of the intent of Congress to grant expansive waivers of sovereign immunity in the environmental area. See, Clean Air Conf. Rept., 101st Cong., 2d Sess., 136 Cong. Rec. S16971 (daily ed. Oct. 27, 1990).

6. **Policy.** The Coast Guard will presume that environmental assessments are legitimate and constitutional fees. As a general rule, therefore, our units should pay the assessments without disputing whether they constitute a "fee" or a "tax." (This policy does not preclude disagreement as to the amount of the fee depending upon the facts and the law or regulation under which the fee is imposed.) The presumption of legitimacy can be overcome where there is publicly available evidence which indicates that the "fees" demanded are blatantly discriminatory, unreasonable, or for a state regulatory program for which there has been no waiver of sovereign immunity. Examples of questionable fees:
 - (a) **Discrimination** - if, for example, the Coast Guard is being singled out to pay a fee not applicable to others in the regulated community or the fee is calculated in a way which unfairly inflates our assessment the fee would be discriminatory.

 - (b) **No Benefit Received** - if the fee is used to support a Maine type of "mini-Superfund" to which the Coast Guard has no access, we may find the fee unreasonable and consider contesting.

 - (c) **No Waiver of Immunity** - Of course, the issue of the scope of the waiver of immunity is the primary consideration. For instance, were a state to charge a federal facility a fee to regulate home heating oil tanks, the charge would be outside the scope of the waiver of immunity. That category of tank is specifically excluded from the provisions of the Solid Waste Disposal Act (RCRA), 42 U.S.C. 6991(1)B. The same analysis applies to state attempts to regulate above-ground tanks found on federal facilities.

In the event your client receives a demand for payment which is questionable, counsel the unit to defer payment and evaluate the case in accordance with the above guidance. If you believe

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Aug 6 1991

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the fee should be contested, forward the file through the respective MLC Legal Division to this office. We, or the MLC's may recommend payment under protest in situations where nonpayment would jeopardize operational Coast Guard missions.

7. As with all policies in this changing field, our fee/tax policy is subject to change due to legislative or judicial developments. Given the present state of the law, the presumption that state fee assessments are reasonable will promote positive relations with state regulators and allow the Coast Guard to carefully choose which fees it will contest. However, nothing in this general guidance shall be construed as creating a duty to pay any fee not otherwise required by law, and this guidance may be modified by G-LCL as deemed appropriate in any particular case. My points of contact for environmental fee/tax issues are CDR Buckingham and Mr. Hayes.

W. B. THOMAS
By Direction

Enclosure

Dist: All Coast Guard Legal Offices

Subject: FEES VS TAXES

Date: JUL 9 1991
5890

Reply to: G-LCL: 7-2245

From: Chief, Claims and Litigation Division Attn of: Buckingham/Hayes

To: Chief, Civil Engineering Division

Ref: (a) Your memo 11000 dtd 21 Mar 1991

1. You have requested policy guidance on the need to pay environmental fees to state and county regulating agencies.

permissible "fee" charged to the federal government, versus an impermissible "tax" on the federal government, is a question that all the military services have been struggling with for several years. This has been particularly true in the area of environmental fees, which Congress has repeatedly evidenced a desire for federal agencies to pay. The Department of Justice is currently litigating two important cases which may provide additional judicial guidance on this issue. Also, the Department of Defense is working on developing a uniform DOD policy which the Coast Guard may want to eventually follow. In the interim, however, we are following the policy articulated below in a desire to: comply with the perceived intent of Congress, preserve the Coast Guard's reputation as an "environmental good neighbor," and to build solid working relationships with state and local environmental regulators.

2. **POLICY.**

- (a) Presumption of legitimacy. There is a presumption that environmental assessments by state and local regulatory agencies are constitutional fees, unless there is a compelling reason to think otherwise. As a general rule, therefore, our units should pay the assessments without disputing whether they are legitimate "fees" or "taxes." This policy does not preclude disagreement or negotiation at the local level over the amount of the fee properly chargeable to the unit based on the facts and the law or regulations under which the fee is imposed.
- (b) Questionable fees. The presumption of legitimacy can be overcome where there is publicly available evidence (i.e., the language of the state statute/regulations/billing documents, or information in the news media, etc.) which

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G-LCL

clearly indicates that the "fees" in question are discriminatory, unreasonable, or for a state regulatory program for which there has been no Congressional waiver of sovereign immunity. **Examples:** (1) the Coast Guard is being assessed a fee not applicable to private industries or entities in the same area, or using a different method of computation which unfairly inflates our assessment [**discriminatory**]; (2) the "fee" is being used to finance a state "superfund" or insurance fund which the state does not make available for the benefit of federal agencies or facilities [**unreasonable**]; or (3) the state agency has assessed a fee for above-ground storage tanks, or underground storage tanks used only for heating oil consumed on the premises [no waiver of sovereign immunity]. In such a case, which should be the exception rather than the rule, the Coast Guard unit should defer payment and seek guidance from its respective legal office. A final decision to refuse payment should only be made based on a determination by the appropriate MLC Legal Division (after consultation with G-LCL) that the assessment is constitutionally not payable. The MLC may recommend payment under protest in situations where nonpayment would jeopardize operational Coast Guard missions.

3. **SPECIFIC QUESTIONS.** I wish to address the two specific questions you posed in your memo.

- (a) Can federal agencies be subjected to permit fees for which state and/or local government agencies are exempt? Yes. At one time, the fact that fact or local agencies were exempt from fees of a type being assessed against federal facilities was considered conclusive evidence that the fee was discriminatory and thus improper. However, this is no longer the case as states have been able to persuasively argue in some cases that, while their governmental components may be exempt from the fee, those same agencies are paying their fair share of the environmental program costs through other state funding avenues or mechanisms (i.e., up-front budget cuts, or interagency transfers). So now, rarely will this factor alone render an otherwise valid fee suspect.
- (b) Do we need to make a determination on each charge as to whether we receive a "service" at a reasonable cost or is it appropriate to pay the fee on the basis that it is applied to all persons equally? No, our units do not need to make an inquiry into, and determination of, the reasonableness of the amount of each environmental fee. **In most cases, if the amount is not outrageous, it should be presumed reasonable and paid.** If the local unit believes the fee is excessive for the service rendered or benefit received, an inquiry to the state

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may be appropriate. However, a detailed accounting of the basis for the fee is not necessary; the state need only provide a rough approximation to justify the charge.

4. Nothing in this general guidance shall be construed as creating a duty to pay any fee not otherwise required by law, and this guidance may be modified by G-LCL as deemed appropriate in any particular case. We will continue to coordinate with the other services and the Department of Justice on this topic. This policy guidance is subject to change as more information becomes available. My points of contact for environmental fee/tax issues are CDR Buckingham (7-0053) or Mr. Hayes (7-0056).

W. B. THOMAS

COPY: MLCPAC (1)
MLCLANT (1)

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