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TITLE 7—AGRICULTURE

Chapter VIII—Production and Marketing Administration (Sugar Branch)

PART 801—GENERAL SUGAR REGULATIONS

ENTRY OF SUGAR INTO CONTINENTAL UNITED STATES

Basis and purpose. This determination is issued pursuant to the regulations in this part and deals with the entry of sugar into the continental United States. Section 801.52 of General Sugar Regulations, Series 3, No. 2, as amended, states that certification to the Collector of Customs by the Secretary that the sugar or liquid sugar to be entered is within the applicable quota or allotment established by the Secretary for the area in which such sugar was produced, except as otherwise specified therein, shall not be required as to any quota or portions thereof until the Director of the Sugar Branch determines that such quota or portion thereof is filled to the extent that certification is required to maintain effective quota control. That section also provides that upon publication of such determination in the FEDERAL REGISTER certification by the Secretary shall be required for the remainder of the applicable calendar year.

The 1948 sugar quota for Puerto Rico is 982,436 short tons of sugar, raw value. As of October 4, 1948, approximately 792,436 short tons, raw value of sugar for further processing and direct-consumption purposes have been brought into the continental United States from Puerto Rico, hence only approximately 190,000 short tons, raw value, may be entered during the remainder of the calendar year 1948. In order to assure an orderly and adequate flow of sugar, prevent disorderly marketing, and to maintain an effective quota system, it is necessary that the certification prescribed by regulations be required for raw sugar for further processing hereafter brought in from Puerto Rico.

It is presently estimated that current production of Puerto Rican sugar will exceed the 1948 quotas for marketing in the continental United States and locally by some 26,000 tons. Consequently, each

producer appears to be moving sugar into trade channels as rapidly as possible so as to reduce to a minimum the amount of carryover he will be compelled to retain at the end of the year. During the month of September alone approximately 163,000 tons were shipped to the continental United States. In view of the foregoing, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest and consequently this determination shall become effective when published in the FEDERAL REGISTER.

Pursuant to the authority contained in § 801.52 of General Sugar Regulations, Series 3, No. 2, as amended (13 F. R. 127, 1076, 2063, 4590), it is hereby determined that the 1948 sugar quota for Puerto Rico, amounting to 982,436 short tons of sugar, raw value, has been filled to the extent that certification is required to maintain effective quota control. Accordingly, for the remainder of the calendar year 1948, Collectors of Customs shall not permit the entry into continental United States from Puerto Rico of any raw sugar for further processing, unless or until certification described in § 801.52 (a) of General Sugar Regulations is issued.

(Pub. Law 388, 80th Cong.; 61 Stat. 922; 7 U. S. C., Supp. 1100)

Issued this 7th day of October 1948.

[SEAL] LAWRENCE MYERS,
Director, Sugar Branch, Production and Marketing Administration.

[F. R. Doc. 48-9058; Filed, Oct. 12, 1948; 8:57 a. m.]

TITLE 10—ARMY

Chapter III—Claims and Accounts

TRANSFER AND REVISION OF REGULATIONS

CROSS REFERENCE: For revised regulations formerly contained in this chapter, see Title 34, Chapter V, Parts 531 through 538, *infra*.

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TITLE 34—NATIONAL MILITARY ESTABLISHMENT

Chapter V—Department of the Army

Subchapter B—Claims and Accounts

REVISION OF REGULATIONS

The regulations contained in 10 CFR, Subtitle B, Chapter III, are hereby revised and transferred to Title 34, Chapter V, Subchapter B, Code of Federal Regulations, as follows:

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PART 531—BONDS OF ACCOUNTABLE OFFICERS

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| 531.1 Individuals as sureties. | |
| 531.2 Release of sureties. | |

AUTHORITY: §§ 531.1 and 531.2 issued under R. S. 161; 5 U. S. C. 22.

DERIVATION: AR 35-220, Dec. 31, 1946.
CROSS REFERENCE: Issue of duplicate checks of the United States: See Money and Finance: Treasury, 31 CFR Part 204.

§ 531.1 *Individuals as sureties*—(a) *Liability.* Sureties to bonds given by disbursing officers, if individuals, will be bound jointly and severally for the whole amount expressed therein, and must satisfy the Secretary of the Army that they are worth, jointly, double such amount, each surety making affidavit that he is worth that sum over and above his debts and liabilities, and stating in the affidavit his place of residence.

(b) *Affidavit to be submitted every two years.* Where the sureties are individu-

als, an affidavit of surety, on the prescribed Treasury Department form,¹ must be submitted at the end of two years.

(c) *Government contractor may not be surety.* The Secretary of the Army may not approve as surety on the bond of a disbursing officer the name of a person appearing as a Government contractor in the district in which that officer is on duty.

§ 531.2 *Release of sureties*—(a) *Secretary of the Army may not release by cancellation of bonds.* While the Secretary of the Army may, if he deems the security insufficient, require further security, he may not without authority of Congress release security which has been accepted by the cancellation of a bond once accepted.

(b) *New bond does not release sureties on old bond.* Where under the act of March 2, 1895, which provides that "every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates", an officer renews his bond by giving a bond during the same term of office, the new bond does not operate to release the sureties on the first bond from liability for future transactions, but the sureties on the old and new bonds are jointly and severally liable therefor. (See 5 Comp. Dec. 918.)

PART 533—GRATUITY UPON DEATH

- Sec. 533.1 Computation of amount of death gratuity.
- 533.2 Six months' death gratuity exempt from indebtedness.
- 533.3 Payment.
- 533.4 Classes of beneficiaries.
- 533.5 Will not a designation.
- 533.6 Settlement of accounts.
- 533.7 Letters testamentary or letters of administration.

AUTHORITY: §§ 533.1 to 533.7 issued under 41 Stat. 367, 766, 42 Stat. 24, 1385, 55 Stat. 796, 57 Stat. 599; 10 U. S. C. 456, 903, 31 U. S. C. 71.

DERIVATION: AR 35-1540, Apr. 19, 1945; AR 600-600, Apr. 12, 1944; AR 35-1545, Dec. 9, 1947.

§ 533.1 *Computation of amount of death gratuity.* The amount of the death gratuity due the beneficiary of an officer or enlisted person includes the compensation of every kind and character received by such officer or enlisted person at the date of his death and is distinguished from allowances.

§ 533.2 *Six months' death gratuity exempt from indebtedness.* The amount of the six months' pay cannot be used for the debts of the officer or enlisted man, not even for overpayments.

§ 533.3 *Payment*—(a) *Beneficiaries.* (1) Payments of the six months' gratuity pay may be made to beneficiaries in the order indicated below:

(i) If there be a widow (widower), payment will be made to such person only.

¹ Form may be obtained from the Office of the Commissioner of Accounts and Deposits, U. S. Treasury Department, Washington, D. C.

(ii) If there be no widow (widower), payment will be made to the child or children, if there are any entitled to payment.

(iii) If there be no widow (widower) or child, payment will be made to the dependent relative previously designated by the deceased as his beneficiary to whom the gratuity is to be paid. The classes or relatives who may properly be designated as beneficiaries are stated in § 533.4.

(2) Payment of six months' gratuity pay may not be made to:

(i) Any married child or unmarried child over twenty-one years of age of a deceased officer or enlisted man who is not actually a dependent of such deceased officer or enlisted man. Payment may not be made to any married child, notwithstanding the allegation of dependency on the deceased officer or enlisted man.

(ii) A person who takes the life of another, whether or not the act be punished by the State or other civil authority concerned.

(3) If the deceased person had designated two beneficiaries to receive the six months' death gratuity payment and the claim of the first designated beneficiary has been disapproved because the evidence submitted did not clearly establish

dependency upon him for support, or otherwise an insurable interest in him, the claim of the second designated beneficiary may not be considered unless the first beneficiary—who may desire to submit additional evidence tending to show dependency—has relinquished the right to claim the gratuity payment.

(4) If there be no widow (widower), child, or previously designated beneficiary, the Director, Office of Special Settlement Accounts, 27 Pine Street, New York 5, New York, will determine dependency in accordance with approved policies and regulations.

(b) *Evidence.* (1) The evidence required to establish the right, under the law, of any person to receive payment of the six months' gratuity is set forth for the different classes of beneficiaries in figure 1.

(2) No affirmative showing of dependency is required in making payments of six months' death gratuity pay authorized by the act of December 17, 1919, as amended, to fathers, mothers, brothers, or sisters, designated as beneficiaries of deceased Army personnel, who had an insurable interest in the life of the deceased by reason of relationship alone, but as to more distant relatives evidence of insurable interest is required.

FIGURE 1

| Class of beneficiary | Evidence required of— | | | | | |
|--|---|--------------|----------|--------------------|----------------------|----------------------------|
| | Nonexistence of widow (widower) | Relationship | Age | Conjugal condition | Actual dependency | Designation as beneficiary |
| Widow or widower: ¹ | | | | | | |
| Previously designated..... | No..... | No..... | No..... | No..... | No..... | Yes. ² |
| Not previously designated..... | No..... | Yes..... | No..... | No..... | No..... | No. ³ |
| Unmarried child or children under 21 years of age: | | | | | | |
| Previously designated..... | Yes..... | No..... | Yes..... | Yes..... | No..... | Yes. ² |
| Not previously designated..... | Yes..... | Yes..... | Yes..... | Yes..... | No..... | No. ⁴ |
| Unmarried child or children over 21 years of age: | | | | | | |
| Previously designated..... | Yes..... | Yes..... | Yes..... | Yes..... | Yes..... | Yes. ² |
| Not previously designated..... | Yes..... | Yes..... | Yes..... | Yes..... | Yes..... | No. ⁴ |
| Other beneficiaries: | | | | | | |
| Previously designated..... | Yes; and evidence that there is no child (children) and of insurable interest in deceased. | Yes..... | No..... | No..... | See § 533.3 (b) (2). | Yes. |
| Not previously designated..... | Yes; and evidence that there is no child (children) or previously designated beneficiary and of insurable interest in deceased. | Yes..... | No..... | No..... | See § 533.3 (a) (4). | No. |

¹ A waiver by the lawful widow (widower) of a deceased person of her (his) statutory right to the six months' death gratuity pay authorized by the act of 17 December 1919, as amended, is without force or effect, and does not operate to entitle the mother of the deceased, his designated beneficiary, to payment of the gratuity.

² The fact, if it be a fact, that the widow (widower) or child (children), as the case may be, was designated as beneficiary, will in itself be regarded ordinarily as sufficient to establish the identity of the payee.

³ Where a payment is to be made to a widow (widower) not previously designated as beneficiary, affidavits from two disinterested persons, not related by blood, attesting to the following facts will be obtained and filed with the voucher: The length of time they have known the widow (widower), that they have known her (him) to be the lawful wife (husband) of the deceased person at the time of his (her) death and that to the best of their knowledge and belief no divorce has been granted.

⁴ Where payment is to be made to a child (children) not previously designated, affidavits from two disinterested persons, not related by blood, attesting to the following facts will be obtained and filed with the voucher: That they knew the deceased person, knew the mother (father) and know that the child (children) is (are) the legitimate child (children) of the deceased person, and know that the deceased person was not survived by a lawful widow (widower) at the time of his (her) death and that the child (children) is (are) the only living child (children) of the deceased person.

(c) *By whom payment made*—(1) *Beneficiaries residing within the continental limits of United States, exclusive of Alaska.* Payments of the six months' gratuity pay to beneficiaries residing within the continental limits of the United States exclusive of Alaska, will be made by the disbursing officer at Office of Special Settlement Accounts, 27 Pine Street, New York 5, New York.

§ 533.4 *Classes of beneficiaries*—(a) *Preferred beneficiaries.* Under the law, preferred beneficiaries in the order named, are first, the widow or widower, and second, the child or children, and are so referred to in these regulations. Under the law as now construed payment may not be made to a married child in any case, or to an unmarried child over 21 years of age unless actually de-

pendent on the deceased. An unmarried child over 21 years of age will be required to furnish proof of actual dependency to establish eligibility for the gratuity.

(b) *Designated dependent relative.*
 (1) A designated dependent relative means a relative other than a preferred beneficiary, with an insurable interest, and who has been designated by the deceased member of the Army of the United States as the person to whom the 6 months' gratuity should be paid in the event there is no preferred beneficiary eligible at the time of decease to receive such gratuity. A designated dependent relative may include any person who is related to the member of the Army of the United States either by consanguinity (that is, by blood) or by affinity (that is, by marriage) and who has an insurable interest (see subparagraph (2) of this paragraph) in the person making the designation. Only those designated relatives found to have an insurable interest are eligible as beneficiaries. A husband is related by affinity to all persons related to his wife by consanguinity, and the wife is related by affinity to all persons related to her husband by consanguinity. Neither is related by affinity to any person related to the other by affinity, and blood relations of the husband and blood relations of the wife are not related to each other by affinity. A friend is not eligible for designation as a beneficiary.

(2) (i) A father, mother, brother, or sister of a member of the Army of the United States is deemed to have an insurable interest in such member by relationship alone, without affirmative proof of dependency.

(ii) Insurable interest in a member of the Army of the United States on the part of other relatives must be demonstrated affirmatively for payment. The term "insurable interest" is dependent upon the facts in each individual case at the time of death, but as an aid to a determination as to what constitutes an insurable interest the following should be considered, and will ordinarily meet the requirements of the law: Evidence tending to show that such relative stood in place of parent to such member of the Army of the United States; contributions from one to the other for support, education, etc., or a debtor-creditor relationship between the member of the Army and the relative; other conditions and circumstances resulting in the reasonable expectation of some benefit or advantage from the continuance of the life of such member of the Army of the United States.

(iii) The test of insurable interest has no application in the determination of the rights of preferred beneficiaries.

(c) *Undesignated dependent relative.* In the absence of an eligible preferred or designated beneficiary at the time of death, undesignated grandchildren, parents, brothers or sisters, and grandparents may, under conditions set forth in this paragraph, be beneficiaries eligible to receive the death gratuity.

(1) If there is no widow, widower, child, or eligible previously designated dependent relative the gratuity is payable to any grandchild, parent, brother or sister, or grandparent shown to have

been dependent upon the officer or enlisted person prior to his death. This provision of law is effective from August 27, 1940.

(2) "Dependent prior to death" is construed to define a class of dependents of the relationship specified and having an insurable interest in the life of the deceased person. All determinations relative thereto are made within the Department of the Army as directed by the Secretary of the Army.

(3) Insurable interest is established by relationship without requirement for affirmative evidence in the cases of parents and brothers or sisters. In the cases of grandchildren and grandparents it is to be determined from the circumstances in each case, due consideration being given to factors stated in paragraph (b) (2) (ii) of this section.

(4) The order of succession for these payments is:

- (i) Grandchildren,
- (ii) Parents,
- (iii) Brothers or sisters,
- (iv) Grandparents,

each constituting a group all the eligible members of which having an insurable interest share equally in the amount of gratuity payable.

§ 533.5 *Will not a designation.* A will is not a designation within the meaning of the act providing the six months' gratuity pay, as that gratuity is not a debt or money due the officer or enlisted person and cannot become a part of his estate.

§ 533.6 *Settlement of accounts.* Claims for settlement of arrears of pay of deceased Army personnel, except in the case of Regular Army retired personnel not on active duty on date of death, will be processed through the St. Louis Finance Office, U. S. Army, Army Finance Center, Office, Chief of Finance, Building 205, St. Louis 20, Missouri, to the Claims Division of the General Accounting Office, Washington 25, D. C., the latter office having jurisdiction in the settlement of such accounts under the provisions of the act of June 10, 1921 (42 Stat. 24). Claims for settlement of arrears of pay of deceased Regular Army retired personnel not on active duty on date of death will be processed through the Washington Finance Office, U. S. Army, Washington 25, D. C., or in appropriate cases through the designated disbursing officer of the oversea command to the Claims Division of the General Accounting Office, Washington 25, D. C.

§ 533.7 *Letters testamentary or letters of administration.* When claim is filed by an executor or administrator of the estate, letters testamentary or letters of administration will accompany the claim for settlement of arrears of pay due deceased personnel.

PART 534—MILITARY COURT FEES

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| 534.3 | Witnesses. |
| 534.4 | Interpreters. |
| 534.5 | Service of subpoena. |
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Sec.

534.8 Compensation for attendance upon civil courts.

AUTHORITY: §§ 534.1 to 534.8 issued under R. S. 161, 41 Stat. 791, 44 Stat. 323, 324; 5 U. S. C. 22, 10 U. S. C. 1494, 28 U. S. C. 600a, 600c.

DERIVATION: AR 35-4120, July 30, 1943.

CROSS REFERENCE: General Accounting Office: See Accounts, 4 CFR Chapter I.

§ 534.1 *Use of term "court".* The term "court" as used in the regulations in this part will be understood to mean court martial, court of inquiry, military commission, or retiring board. "Military commission" shall be deemed to include any tribunal, by whatever name described, convened in the exercise of military government having jurisdiction over felonies and other serious offenses and consisting solely of officers of the United States Army.

§ 534.2 *Reporters—(a) General.* Reporters appointed under the provisions of the one hundred and fifteenth article of war (act of June 4, 1920 (41 Stat. 810; 10 U. S. C. 1587) including reporters properly appointed for retiring boards, are entitled for their services in such capacity to payment at the rates specified in paragraph (b) to (g) of this section, or at such lower rates as may be stated in the appointing instrument.

(b) *Per diem pay.* For each day in attendance at court, a reporter is entitled to a per diem payment of not to exceed \$5. In computing such per diem pay, the calendar day ending at midnight is the unit, and a fraction of such day will be considered a whole day. Only one per diem of not to exceed \$5 for any one day is authorized, even if the reporter attends two or more courts.

(c) *Hourly pay.* In addition to the per diem payment prescribed in paragraph (b) of this section, a reporter is entitled to an hourly payment of not to exceed 50 cents for each hour actually spent in court during the trial or hearing. In computing time spent in court for purposes of determining the hourly payment, the time will be reckoned for each day separately if only one court is attended in such day; time in attendance at each court will be reckoned separately, if more than one court is attended in one day; a fractional part of an hour, equal to or greater than one-half hour, at the end of a day's attendance or attendance before a court will be considered a whole hour; a fractional part of an hour, less than one-half hour, will be disregarded, except that if the total time in attendance in one day or at one court in one day is less than one hour such time will be considered as a whole hour.

(d) *Piece-work pay—(1) Rates.* In addition to the per diem and hourly pay prescribed in paragraphs (b) and (c) of this section, a reporter will be paid at not to exceed the following rates:

(i) For transcribing notes and for making that portion of the original record which is required to be typewritten, 25 cents for each 100 words; but no allowance will be made for original papers which are appended as exhibits.

(ii) For the first and each additional carbon copy of the record when authorized by the convening authority, 10 cents for each 100 words.

(iii) For copying papers material to the inquiry, 15 cents for each 100 words.

(iv) For each carbon copy of the papers referred to in subdivision (iii) of this subparagraph, when ordered by the court for its use, 2 cents for each 100 words.

(2) *Payment for second original.* Where an original copy is lost and no carbon copies are available from which a second original may be made, payment may be made for the preparation of a second original transcript from the stenographer's notes at the rate prescribed in subparagraph (1) (i) of this paragraph for original transcripts. (See MS. Comp. Gen., B-11667, August 15, 1940.)

(3) *Words, how counted.* In determining the amounts due under the provisions of subparagraph (1) of this paragraph the following rules for counting words will govern:

(i) The abbreviations "Q," standing for the word "question", and "A", standing for the word "answer", and all dates, as "25th" and "1942", will each be counted as one word.

(ii) Punctuation marks will not be counted as words.

(iii) The certifying officer may determine the total number of words by counting the words on a sufficient number of pages to arrive at a fair average of words per page and multiplying such average by the total number of pages.

(iv) The number of pages, as well as the number of words, in each respective transcript for which compensation for copying is claimed will be shown on vouchers covering payments to reporters at piece-work rates. (See MS. Comp. Gen., A-44019, January 4, 1937.)

(e) *Mileage.* Except for such portion of the journey as is covered by transportation furnished in kind, a reporter is entitled to mileage for traveling from his home or usual place of employment to the court and for his return journey at rates prescribed in § 534.3 (a) (2) for civilian witnesses not in Government employ. If the reporter returns each night to his home he does not thereby become entitled to additional mileage unless the sessions of the court are held on nonconsecutive days. The fact that a reporter may serve two or more courts in the same day does not warrant a duplication of his mileage allowance.

(f) *Allowance in lieu of subsistence.* When the official of the court having control in such matters keeps the reporter at his own expense away from his usual place of employment for 24 hours or more on public business referred to the court, a per diem allowance of not to exceed \$4 in lieu of subsistence will be paid to the reporter for himself. A like allowance when ordered by the court will be paid to the reporter for each necessary assistant.

The time for which the per diem allowance for expenses is to be paid will be computed in the manner prescribed in § 534.3 (a) (2) in the case of a civilian witness not in Government employ. The fact that a reporter returns each night to his home does not preclude the view that he is kept away from his usual place of employment for 24 hours.

Service as reporter before two or more courts in the same day does not warrant duplication of the per diem allowance in lieu of subsistence.

(g) *Constructive attendance.* A reporter duly employed, but who after arrival at court performs no service owing to adjournment, is entitled to mileage, to a day's pay, as prescribed in paragraph (b) of this section, for constructive attendance, and also to the per diem allowance prescribed in paragraph (f) of this section if kept away from his usual place of employment for 24 hours.

§ 534.3 *Witnesses—(a) Civilians.* (1) (i) Persons not subject to military law when called as witnesses are entitled to the fees and mileage allowed to witnesses attending courts of the United States.

(ii) When the court is sitting in a foreign country the commander of the theater of operations, defense command, department, base, service command, or task force within whose command the court is convened shall fix fees and allowances to be paid to witnesses, not in excess of the maximum rates permitted to witnesses attending the courts of the United States or the courts of the foreign country, whichever rates may be the higher. (MS Comp. Gen. B 28803, September 15, 1942, October 21, 1942.)

(2) (i) Witnesses (other than witnesses who are salaried employees of the Government, and detained witnesses) in the United States courts, who attend, shall be entitled to a per diem for each day of actual attendance and for each day necessarily occupied in traveling to attend court, and return home, and, in addition, mileage as hereinafter provided.

(ii) (a) Witnesses attending in such courts, shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, \$2 (but see subdivision (b) of this subdivision), and 5 cents per mile for going from his or her place of residence to the place of trial or hearing and 5 cents per mile for returning: *Provided*, That witnesses (other than witnesses who are salaried employees of the Government and detained witnesses) in the United States courts, who attend court at points so far removed from their respective residence as to prohibit return thereto from day to day, shall be entitled, in addition to the compensation provided by existing law, as modified by this act, to a per diem of \$3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to attend court and return home. In cases in which the United States is a party, witnesses on behalf of the United States shall be entitled to the payments provided by this section.

(b) The act of July 2, 1942 (56 Stat. 468) and other Department of Justice appropriation acts provided that no part of the sums therein appropriated shall be used to pay any witness more than one attendance fee for any one calendar day, which fee shall not exceed \$1.50 except in the District of Alaska.

(iii) In Alaska such witnesses are entitled to the witness fees and mileage prescribed for witnesses before the United States district court in the judi-

cial division in which the trial or hearing is held. In the Canal Zone such witnesses are entitled to the same witness fees and mileage as are prescribed for witnesses before the United States court in the Canal Zone.

(iv) In computing the mileage prescribed in subdivision (ii) of this subparagraph, travel must be estimated over the shortest usually traveled route (by established lines of railroad, stage, or steamer). Where, however, a witness by using his own automobile so reduces the time required for the round trip as to effect a definite saving in the matter of fees, he may be allowed mileage for the distance actually traveled by automobile provided the excess mileage does not exceed the saving in fees. (See 11 Comp. Gen. 60.) A civilian witness not in Government employ, when furnished transportation in kind by the Government, is entitled to 5 cents per mile less the cost of transportation furnished. A civilian witness residing within the jurisdiction of the court, who is subpoenaed and attends the trial in obedience to such subpoena, is entitled to mileage actually traveled by the shortest usually traveled route between his residence and the place of trial, regardless of whether both are in the same city. (See MS. Comp. Gen. A-28041, July 30, 1929.)

(v) In computing the per diem of \$1.50 for travel and actual attendance and the per diem of \$3 for expenses of subsistence, the calendar day beginning at midnight is the unit, and the per diems accrue from the time it is necessary for the witness to leave his home in order to arrive at the place of trial at the appointed time until the time he could arrive at his home by the first available transportation after his discharge from attendance, any fractional part of a day under such computation to be regarded as a day for per diem purposes. (See 5 Comp. Gen. 1028, as modified by 6 Comp. Gen. 480.)

(vi) A person attending as a witness in more than one case on the same day under a general subpoena to appear and testify is entitled to only one per diem of \$1.50 for each day's attendance, but if separate subpoenas are issued in each case, the defendants being different, the witness is entitled to a separate per diem for actual attendance in each case. (See 3 Comp. Gen. 531, 7 Comp. Gen. 455, MS. Comp. Gen. A-31598, May 7, 1930.) The duplication of fees on account of attendance as witness in more than one case on the same day does not apply to the 5-cent mileage allowance nor to the per diem of \$3 in lieu of subsistence.

(b) *Attendance before an officer taking a deposition.* A witness who is required to appear before an officer (civil or military) empowered to take depositions and there to give testimony under oath to be used before a court, is entitled for such service and for the necessary travel incident thereto, including return travel, to the allowances prescribed in paragraph (a) of this section the same as though his appearance were before a court. (See 8 Comp. Gen. 18.)

(c) *Attendance before military courts or boards of limited jurisdiction.* A subpoena or other compulsory process addressed to a civilian by a military court or board which has not express statutory

authority to issue such process, such as a board of officers convened to investigate and report upon the facts connected with the death of an enlisted man while on detached duty, is void and civilian witnesses who appear before such a board in response to such void process must be regarded as having done so voluntarily and are not entitled to witness fees, in the absence of a specific appropriation therefor. (See 8 Comp. Gen. 64.)

(d) *Tender of fees.* (1) The fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States (including fee for 1 day's actual attendance and mileage for the journey to and from the place where the witness is to appear under the subpoena) shall be duly paid or tendered said witness.

(2) The officer serving the subpoena for the appearance of a civilian witness before a general court martial, when ordered by proper authority, is entitled to reimbursement for fees and mileage necessarily advanced to the witness from personal funds at the time of the service, and there is no requirement that such advances be only by a disbursing officer, but the orders should be in writing, issued in advance of the payment directed and not confirmatory of the action previously taken, and a certified copy should be filed in support of the reimbursement voucher, as well as the cash receipt, evidencing actual payment. (See 18 Comp. Gen. 352.)

(e) *Expert.* (1) An expert witness employed in strict accordance with paragraph 99, Manual for Courts-Martial, 1928, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment. If any defect exists in the manner of employment, payment of fees in excess of those prescribed in paragraphs (a) and (b) of this section will not be made by a disbursing officer.

(2) An expert while employed on behalf of the Government is an officer or employee of the United States within the laws affecting traveling and subsistence expenses of officers and employees of the Government generally. His traveling allowances are therefore subject to the limitations prescribed in the Subsistence Expense Act of 1926 and the Standardized Government Travel Regulations. (See 6 Comp. Gen. 712.)

(3) There is no authority for payment by the Government of fees to an expert, who was employed by an officer or employee of the Government to aid in the performance of his duties, other than an expert witness who actually appears as such. (See MS. Comp. Gen., A-34039, November 14, 1930.)

(f) *Essentials to payment of witness fees.* (1) A person who, although not subpoenaed, is present at a trial or hearing before a court or other body authorized to compel the attendance of witnesses by compulsory process, and who is compelled or required to testify at such hearing, is entitled to fees and mileage allowable to witnesses. (MS. Comp. Gen. A-49634, July 13, 1933.)

(2) A person who was neither subpoenaed nor requested to appear as a witness, but who voluntarily requested and was granted permission to testify to

certain matters considered pertinent to an inquiry being conducted, is not entitled to mileage and witness fees. (See 9 Comp. Gen. 255.)

§ 534.4 *Interpreters.* An interpreter appointed under the provisions of the one hundred and fifteenth article of war (41 Stat. 810; 10 U. S. C. 1587) is entitled for his services as such to the allowances prescribed for witnesses.

§ 534.5 *Service of subpoena.* There being no fee or compensation prescribed by the laws of the United States for the service of a subpoena by a civilian, the fees and mileage allowed by the local law for similar services may be paid. If no specific fee or mileage is fixed by local law, reasonable allowances may be paid.

§ 534.6 *Taking of depositions.* (a) A civil officer before whom a deposition is taken may be paid the fees allowed by the law of the place where the deposition is taken (or a reasonable fee if no specific fee is fixed by local laws), but no mileage or other allowance for travel of the civil officer to the witness is provided for or authorized by law. (See 2 Comp. Gen. 65.)

(b) If the witness and the civil officer before whom the deposition is to be taken do not reside at the same place, the witness should be required to perform the necessary travel, and he is entitled to mileage or other travel allowance therefor as prescribed in § 534.3 (b).

(c) Where the service of one of the officers designated in the one hundred and fourteenth article of war (act of June 4, 1920, 41 Stat. 810; 10 U. S. C. 1586) is not available, fees may be paid to civil officers for administering oaths in matters relating to military administration, subject to the conditions indicated in paragraph (a) of this section.

§ 534.7 *Furnishing copies of official records or documents.* The fees provided by the local laws may be paid to the proper officials for furnishing such certified copies of public records or documents and expenses in connection with the procurement of photostatic copies, photographs, and negatives as are required by the court.

§ 534.8 *Compensation for attendance upon civil courts.* Compensation to civilians in or out of Government employ for attendance upon civil courts is not payable by Army disbursing officers.

PART 535—PAYMENT OF BILLS AND ACCOUNTS

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AUTHORITY: §§ 535.1 to 535.30 issued under R. S. 161, 3477, 3737, 35 Stat. 411, 54 Stat. 1029; 5 U. S. C. 22, 31 U. S. C. 203, 41 U. S. C. 15.

DERIVATION: AR 35-1040, May 13, 1942; AR 35-6040, Feb. 18, 1947; AR 35-6080, Mar. 24, 1922; AR 35-6100, July 23, 1942; AR 35-6120, Feb. 27, 1947; AR 35-6200, Mar. 15, 1948.

CROSS REFERENCE: General Accounting Office: See Accounts, 4 CFR Chapter I.

VOUCHERS PERTAINING TO MONEY ACCOUNTS

§ 535.1 *Certification; general.*—(a) *By creditor.* A voucher for funds disbursed will be made out in full before being certified by a public creditor. The original voucher must be signed and certified to in the space provided in the voucher form by the creditor or by his duly authorized agent, except that if a payee submits for payment an invoice or bill or which is shown the required certificate or certificates duly signed (see paragraph (b) of this section), such invoice or bill may be accepted if it constitutes a valid claim against the Government, and will be fastened securely to the voucher in lieu of stating the invoice or bill in detail on the voucher form and securing the payee's certificate thereon.

(b) *Vendor's certificate.* (1) The following certificate will be furnished by the vendor:

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed.

(See MS. Comp. Gen. A-51607, A-49009, August 15, 1941, and MS. Comp. Gen. A-49009, December 12, 1941.)

(2) Where a contract for supplies is awarded on the basis of including State and local sales taxes in the purchase price without the deduction of an amount representing such taxes, the general certificate for vouchers and invoices pre-

scribed in subparagraph (1) of this paragraph may be modified by eliminating therefrom the phrase "and that State or local sales taxes are not included in the amounts billed": *Provided*, That, in all cases where the legal incidence of such taxes is upon the vendee, appropriate steps are taken to obtain appropriate tax exemption certificates from the dealers. (See MS. Comp. Gen. B-22885, January 30, 1942.)

(3) The following procedure is prescribed for the certification of invoices and vouchers of contractors and their subcontractors under contract with the United States on a cost-plus-a-fixed-fee basis:

(i) The general certificate prescribed in subparagraph (1) of this paragraph will be used on "cost-plus-a-fixed-fee" contractors' and subcontractors' invoices and vouchers covering material or equipment which is exempt from taxation by the laws of States or ordinances of municipalities in which the material or equipment was procured.

(ii) For "cost-plus-a-fixed-fee" contractors' and subcontractors' invoices or vouchers covering transactions in States or municipalities which do not exempt the United States from taxation, the general certificate prescribed in subparagraph (1) of this paragraph will be used with the deletion, or noninclusion, of the statement "that State or local sales taxes are not included in the amounts billed." (See MS. Comp. Gen. A-51607, A-49009, February 9, 1942.)

(c) *Form in which vendor's certificate will be furnished.* The prescribed certificate may be printed, stamped, typed, or written on vendor's bill of sale or invoice and must be signed (in original only) by the vendor or its duly authorized representative. (See MS. Comp. Gen. A-51607, August 26, 1937, and A-51607, A-49009, August 15, 1941.) In cases where it is physically impossible to include the additional certificate on the face of the voucher or invoice, the certificate will be placed on the reverse of the voucher or invoice. Additional (separate) sheets for, duplicates, or copies of certifications only will not be accepted by the General Accounting Office. (See MS. Comp. Gen. A-51607, A-49009, April 2, 1938.) Under no conditions should the certificate on Government vouchers or on invoice forms to be attached to such vouchers be signed in blank or at any time prior to the submission of the voucher or invoice but only after delivery or performance by the claimant. To do so may result in the submission of a false claim against the Government for which the person signing the certificate may be held liable under the law. (See MS. Comp. Gen. A-51607, A-49009, April 2, 1938, June 2, 1938, and August 15, 1941.)

NOTE: The Comptroller General of the United States in his letter, A-51607, A-49009, August 15, 1941, stated that in order to avoid unnecessary delay and confusion in the payment of vouchers otherwise properly prepared it appeared desirable that until such time as vendors and contractors have had ample opportunity to become acquainted with the above-prescribed certificate, the various Government agencies and the General Accounting Office accept certifications that have heretofore been approved.

(d) *Zones to be stated on vouchers covering payments for gasoline under TPS contracts.* The zone in which delivery was made will be stated on vouchers covering payments for gasoline under TPS contracts, where such zone deliveries are specified in such contracts and noted on purchase orders or other procuring instruments.

§ 535.2 *Certification when payment made by check.* If payment is made by check to the order of any company (incorporated or unincorporated) or firm or individual by name, and the fact that the check has been so drawn is stated on the voucher, giving its number, date, amount, and United States depository on which drawn, the certificate to the voucher may be signed by an officer, attorney, or agent of the company, or by an attorney or agent of the firm or individual, stating the capacity in which he signs, without filing with the voucher evidence of his authority to sign. In all such cases the disbursing officer will deliver the check to such person only who, to his satisfaction and by positive identification, is authorized by the principal to certify to the voucher and receive the check.

§ 535.3 *Certification and receipt when payment made in currency—(a) General.* Payment in currency will not be made to the holder of a power of attorney or to a holder of an instrument operating as a transfer or an assignment.

(b) *Payments to companies—(1) General.* If payment in currency is made to an incorporated or unincorporated company, the money will be delivered to and the voucher certified to and receipted by a duly authorized officer or agent of the company, the certificate and receipt to be signed with the company name, followed by the autograph signature of the officer, with his title, or of the agent to whom the money was delivered, and except as prescribed in subparagraph (2) of this paragraph the receipted voucher will be accompanied by evidence showing his authority. This evidence will consist of extracts from the articles of incorporation or association, the by-laws, or the minutes of the board of directors duly certified by the custodian of such records (under the company seal, if there is one), showing that the signer is properly vested with authority to receive and receipt for money due the company.

(2) *Payments of small sums to corporations.* Receipts for small sums paid in currency to a corporation, such as a railroad, telegraph, turnpike, transfer, express, steamboat, hotel, newspaper, or ice company, for an occasional service rendered may be signed and the vouchers certified by the local agent in charge of the business of the company at the place where the service is rendered or where it begins or terminates. The certificate of the officer who made the payment that the person to whom payment was thus made was then the local agent of the company in charge of its business at the place designated will be sufficient evidence of the agent's authority to certify to the vouchers and to receipt for the money paid.

(c) *Payments to individuals or copartnerships doing business under com-*

pany titles. If payment in currency is made to an individual or to a copartnership doing business under a company title, the certificate and receipt will be signed with the company name, followed by the autograph signature of the individual proprietor or of one of the members of the firm with the words "proprietor" or "one of the proprietors" affixed thereto.

(d) *Payments to copartnerships doing business as such.* If payment in currency is made to a copartnership doing business as such, the certificate and receipt will be signed with the firm's usual signature by one of the members of the firm, who will be required to affix his own signature as "one of the firm."

(e) *Payments to individuals.* If payment in currency is made to an individual creditor, the certificate and receipt will be signed by him in person.

§ 535.4 *Signatures—(a) General.* The form of the signature to the certificate, and to the receipt when required, and the name of the person or business firm as entered at the head of an account must be literally alike.

(b) *When signed by "X".* When a signature is not written by the hand of the party, due to inability to write, and such signature is signed by mark "X", it must be witnessed by a disinterested party with his address. Such witness will be a commissioned officer when practicable.

(c) *In case of physical disability of person signing.* Where there is a mere physical inability to write on the part of a claimant and he causes his amanuensis to sign his name in his presence, such signature is regarded as a signing by the claimant. (See vol. II, Digest of Decisions, Second Comptroller of the Treasury, 1869-1884, par. 1109.) A physician's certificate as to the affliction should be filed with the first voucher. The signature of the amanuensis must be certified to by two witnesses.

(d) *In case of mental disability.* If a claimant is afflicted with a mental disability that disqualifies him from signing his name, the law requires the appointment of a committee or guardian. (See vol. II, Digest of Decisions, Second Comptroller of the Treasury, 1869-1884, par. 1109.)

(e) *Certified copies of court papers in cases of guardianship.* Certified copies of court papers appointing a guardian should be filed with the first voucher, and in future payments reference to such voucher, by number, should be made. If the payee is in an asylum, the superintendent's certificate that the payee was alive at the time payment was due should be filed with each voucher. The guardian should sign the name of the payee, followed by his own signature as guardian.

PAYMENTS UNDER CONTRACTS FORMAL AND INFORMAL

§ 535.5 *To whom payment may be made—(a) Other than lowest bidder.* Payment may be made to other than the lowest bidder where the award was made in accordance with current procurement procedures set forth in Subchapter G of this chapter.

(b) *Other than original contractor.* Payment may be made to other than the

original contractor when the rights under the contract have been validly assigned or transferred. See Subchapter G of this chapter. (Also see R. S. 3477; 31 U. S. C. 203; R. S. 3737; 41 U. S. C. 15; M. L. 1039, Sup. III, sec. 739; act of Oct. 9, 1940, 54 Stat. 1029; 31 U. S. C. 203; 41 U. S. C. 15)

§ 535.6 *When payment may be made—*
(a) *Advances of public money prohibited.* Section 3648, Revised Statutes (31 U. S. C. 529), as amended by act of August 2, 1946 (60 Stat. 809) prohibits payments in advance of the delivery of supplies or rendition of service unless authorized by the appropriation concerned or other law. Purchases of coupon books for gasoline and oil are within the prohibition, and payment may not be made until the supplies are actually furnished. (See 8 Comp. Gen. 454.) For authorized exceptions to the general prohibition contained in section 3648, Revised Statutes, as amended see section 1 (c), act of July 2, 1940 (54 Stat. 712); as amended by section 103, act of September 9, 1940 (54 Stat. 875; 50 U. S. C. App. Sup. V, 1171); sec. 201, Title II, First War Powers Act December 18, 1941 (55 Stat. 839; 50 U. S. C. App., Sup. V, 611); Title I, Executive Order 9001, December 27, 1941, 3 CFR, Cum. Supp.

(b) *Procedure for making advance payments.* The procedure for effecting advance payments to contractors under the statutes and Executive order set forth in paragraph (a) of this section is set forth in Subchapter G of this chapter.

§ 535.7 *What payment is authorized—*
(a) *Payments under contracts for indefinite quantities and unlimited amounts.* It has been stated that contracts for indefinite quantities are invalid. This is merely the statement of the general legal principle that the undertakings of the parties to a contract must be sufficiently definite to be capable of enforcement. Thus in 14 Comp. Gen. 446, it was stated that one of the first and most important requisites of a valid contract is that the terms thereof shall be certain definite, and specific and that, while it may not be possible to determine definitely the quantities which may be required under certain conditions, there appears no reason why there should not be an estimated quantity specified with a variance of 10, 20, or 25 percent. It has also been stated that contracts purporting to obligate the Government to pay unlimited amounts are not authorized. This statement reflects the principle that, with certain exceptions, no contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment (R. S. 3732; 41 U. S. C. 11); whereas an obligation involving payment of an unlimited amount might exceed the appropriation. 15 Comp. Dec. 405, 407; 5 Comp. Gen. 450, 454. These principles do not invalidate the so-called "indefinite quantity contract" under which the contractor undertakes to furnish all of the actual requirements of a Government agency for a particular item and the Government agency in turn agrees to purchase from the contractor all of its requirements of that item during the

specified period. See 19 Comp. Gen. 599. Likewise, these principles do not affect the validity of cost-plus-a-fixed-fee contracts expressly authorized by statute (sec. 2, act June 28, 1940 (54 Stat. 676; 50 U. S. C., App., 633); sec. 1, act July 2, 1940 (54 Stat. 712)), pursuant to which a contractor agrees to deliver a specified quantity of items or to perform a specified service, and the Government agrees to pay an undetermined amount to be computed by adding to the fixed fee the actual cost incurred.

(b) *Rates effective "until further notice".* In the absence of competition there is no objection to entering into agreements for public utilities service at stipulated rates "until further notice," without necessity for new agreements or annual renewals except to cover changes in rates or service, unless the interests of the Government require otherwise in a particular case, the original agreements and all changes to be filed in the General Accounting Office, and the vouchers to cite the agreement involved and bear a statement by a responsible officer of the public utility concerned as to the rates charged. Payment may not be made for service in an amount stipulated in a substitute agreement which is in excess of the rate stated in the original contract, effective "until further notice," prior to the date of actual receipt of the substitute agreement by the proper administrative representative of the Government. (See 15 Comp. Gen. 920; MS. Comp. Gen. A-65231, December 15, 1936.)

(c) *Customs duties on foreign purchases—*(1) *Duty free purchase.* The act approved June 30, 1914 (38 Stat. 399; 34 U. S. C. 568) authorized the Secretary of the Navy to make emergency purchases of war material abroad and provided that the same shall be admitted free of duty. By Executive Order 9177, dated May 30, 1942, this authority was extended to the Secretary of War and others.

(2) *Payment of customs duties.* Where the importation is not duty free the amount of the customs duty is properly chargeable to the same appropriation as the purchase, notwithstanding the fact that the importation and the purchase are in different fiscal years; the customs duty is not chargeable to the appropriation for the fiscal year in which the importation occurs (26 Comp. Dec. 610). Checks issued in payment of customs duties will be drawn payable to and forwarded to the Collector or Deputy Collector of Customs at the port where entry was made.

(3) *Philippine export tax.* No export tax shall be imposed or collected by the Philippines on articles exported to the United States. (See sec. 322, act of April 30, 1946, 60 Stat. 141.)

(d) *Taxes—Federal, State and local.* See Subchapter G of this chapter.

§ 535.8 *Adjustments—*(a) *Mistakes in contract price.* Where a contractor claims payment in addition to the contract price on the ground that a mistake was made in the contract price, consideration may be given to whether the contract should be amended in accordance with current procurement procedures set forth in Subchapter G of this chapter.

In the event that the contract is amended in accordance therewith, payment will be made in accordance with the contract as amended. Otherwise, only the price specified in the contract will be paid and the contractor will be advised to present to the General Accounting Office any protests he may have in connection with the settlement as made.

(b) *Contract provisions for price adjustment.* The contract may contain provision for price adjustment. Payment will be made in accordance therewith.

(c) *Transportation costs—*(1) *Shipment from point nearer than f. o. b. point.* Shipment to the designated destination from a point nearer than the f. o. b. point does not entitle the contractor to the savings in freight charges over what the Government would have had to pay had shipment been from the f. o. b. point, even though the supplies cost the contractor more at the shipping point than they would have cost at the f. o. b. point. (See 3 Comp. Gen. 56.)

(2) *Land-grant deductions.* Effective October 1, 1946, land-grant deductions were discontinued except where transportation was specifically contracted for prior to such effective date.

(3) *Adjustments by General Accounting Office.* Where a contract requires the contractor to deliver at a point f. o. b. and provides that the Government may direct delivery to be made at other points, with an adjustment in the contract price corresponding to the resulting increase or decrease in the amount of the freight, a disbursing officer will not attempt to adjust the matter if the contractor refuses to accept payment on the usual basis and contends that he has paid transportation expenses which the Government was obligated to pay or that the deduction from the contract price sought to be made on account of freight paid by the Government is excessive. Such cases will be transmitted to the General Accounting Office for direct settlement as claims. (See 8 Comp. Gen. 500.)

(d) *Inferior goods.* Varying contract provisions are found dealing with goods that do not conform to specifications but are nevertheless retained and used by the Government. For instance, certain quartermaster contracts dealing with canned foods provide for deduction from the contract price and for cash reimbursement, in lieu of the right to reject and require replacement of defective cans. Other contracts provide that, if public necessity requires use of rejected goods not conforming to specifications, payment therefor shall be made at a proper reduction in price. Payment for rejected goods so retained and used has usually been on the basis of their reasonable value as distinguished from the contract price. (See *Barry v. United States*, 229 U. S. 47; *Cor & Sons v. United States*, 55 Ct. Cl. 7; 5 Comp. Gen. 993.) Where contract terms provide for payment of a lesser amount in the event that inferior goods are accepted under proper authority, payment may be made by disbursing officers on the basis of the determination of the contracting officer without reference to the Office of the Chief of Finance; *Provided*, there is re-

ceived by the disbursing officer an invoice certified by the contractor in the reduced amount covering the inferior goods. In all cases where inferior goods are accepted at reduced prices, and the covering contract does not provide for such acceptance, the disbursing officer will submit the voucher for such reduced payment to the Office of the Chief of Finance for consideration.

(e) *Set-off.* The Government always has the right to set off against an amount due a claimant any sum the claimant owes the Government, either under the same or other contracts or obligations. See *Barry v. United States*, 229 U. S. 47; 37 Op. Atty. Gen. 215; 7 Comp. Gen. 186; 18 id. 524. The right of set-off does not apply to unliquidated demands, but the Government has the equitable right to withhold payment of moneys due under one contract to a contractor who is in default under another contract until his indebtedness thereunder can be liquidated. (See 7 Comp. Dec. 213.) Where a contract so provides, payment to an assignee shall not be subject to reduction or set-off for any indebtedness of the assignor arising independently of the assigned contract. See act October 9, 1940 (54 Stat. 1029; 31 U. S. C. 203; 41 U. S. C. 15).

(f) *Delay in performance*—(1) *When no damages provided for in contract.* (i) Where no specific provision is made in a contract for either liquidated or actual damages, the contractor is, upon failure to complete the contract within the specified time, chargeable with actual damages caused the Government by the delay, unless the delay is excusable under the provisions of the contract or under statutory provisions. Act May 31, 1941 (55 Stat. 236); sec. 301, act March 27, 1942 (56 Stat. 177; 50 U. S. C. App. 633).

(ii) Where there has been delay in performance under a contract which does not contain a provision for damages, the contracting officer will determine whether or not the delay resulted in actual damage to the Government.

(iii) In cases where the contracting officer has determined that the delay resulted in actual damage to the Government, the contracting officer will furnish for file with the voucher a statement of the damage resulting from the delay.

(iv) In cases where the contracting officer has determined that the delay did not result in actual damage, the contracting officer will not be required to furnish a certificate to that effect, except as hereinafter provided. In all cases where the voucher is not accompanied by a statement as to damages, it will be assumed that the contracting officer has determined that no actual damages resulted or that the contractor was not responsible for the delay, and the disbursing officer will make full payment of the voucher, if otherwise correct. If in any such case the General Accounting Office should, after payment of the voucher, request a certificate, the contracting officer will prepare and furnish a certificate that the delay did not result in any actual damage to the Government.

(2) *When actual damages provided for in contract.* Whenever under a contract containing provisions for actual

damages the contracting officer determines that the failure to complete the contract within the specified time did not result in any actual damage to the Government, the provisions of subparagraph (1) (iv) of this paragraph will apply.

(3) *When liquidated damages provided for in contract*—(i) Whenever under a contract containing a liquidated damages clause, the contractor fails to perform within the stipulated period and the time is not extended or the liquidated damages waived, the disbursing officer will deduct the maximum amount of liquidated damages for which the contractor may be liable and claim credit for the net amount only, crediting the amount so deducted to the open allotment and project account for the reserve for settlement of claims subject to a determination whether all or part of the amount of liquidated damages withheld is due to the contractor and, if appropriate, the taking of repayment action. Except in such instances where repayments are made, amounts withheld on account of liquidated damages will not again become available for obligation or for payment by disbursing officers, and any protests made by the contractor against the deduction of liquidated damages will be forwarded, together with a statement of all payments made, citations to all vouchers, and a detailed statement from the contracting officer, through the Chief of Finance, Attention: Receipts and Disbursements Division, The Pentagon, Washington 25, D. C., to the General Accounting Office. (See 16 Comp. Gen. 374.)

(ii) Where a contract contains a liquidated damages clause based on the contract price and also contains an offer of discount for prompt payment, the liquidated damages should be deducted on the basis of the gross contract price and without regard to the discount. The discount is likewise to be computed on the gross contract price without regard to the amount of the liquidated damages.

(iii) Where a contract contains a liquidated damages clause based on the contract price, which price is subsequently modified, and also contains an offer of discount for prompt payment, the liquidated damages and the discount should each be computed on the basis of the modified contract price.

(iv) Where a contract contains a liquidated damages clause based on the contract price and also contains clauses providing for price reduction and for penalties, the liquidated damages should be computed on the price as revised but without regard to any penalties that may be assessed. (See 18 Comp. Gen. 784.)

(v) In the event that liquidated damages are credited to the open allotment account established for the reserve for settlement of claims, and subsequently it is determined that such amounts were withheld erroneously or are otherwise found to be due to the contractor, by reason of changes in the contract terms or by reason of any other procedures approved by appropriate authority providing for repayments of amounts so withheld, the amounts so determined to be payable may be certified on a payment voucher and charged to the open allot-

ment account established for the reserve for settlement of claims under the applicable appropriation.

(g) *Disposition of amounts collected by reason of contractor's default.* Amounts collected on account of actual damages or excess costs charged to defaulting contractors should be credited to Miscellaneous Receipts (see MS. Comp. Gen. A 26073, March 20, 1929, August 8, 1929; 10 Comp. Gen. 510), but amounts refunded because of the rejection of unsatisfactory supplies may be credited to the appropriation from which the original payments were made. (See 8 Comp. Gen. 103.)

(h) *Violations of 8-hour law*—(1) *Disposition of amounts collected.* Amounts withheld from a contractor as a penalty for violation of the 8-hour law of June 19, 1912 (37 Stat. 137; 40 U. S. C. 324), are moneys collected for the use of the United States as specifically provided in said law, and, accordingly, are for depositing and covering into the Treasury as miscellaneous receipts as provided by sections 3617 and 3618, Revised Statutes. Such amounts, however, may be permitted to remain to the credit of the appropriation involved until such time as the right of appeal to the head of the department, as provided in the act of June 19, 1912, has expired (6 months), or until final action on such appeal in case same is duly filed. (See 10 Comp. Gen. 504.)

(2) *Suspension of law.* Because of the national emergency, Congress provided in section 5b, act of June 28, 1940 (54 Stat. 679), that the provisions of the 8-hour law should be suspended for work covered by Army, Navy, and Coast Guard contracts. This act was superseded by section 303, act September 9, 1940 (54 Stat. 884; 40 U. S. C. 325a), by the terms of which work in excess of 8 hours a day is now permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. The effect of this latest statute is to reinstate the provisions of the act of 1912, and to provide a statutory waiver thereof where time and one-half is paid. Hence, if the contractor fails to pay such extra compensation, he still violates the 1912 statute and is subject to its penalties. (See 20 Comp. Gen. 233; id. 890; 21 id. 1110.)

(i) *Partial payments in doubtful cases.* Where a disbursing officer is in doubt as to the legality of a portion of the amount covered by a voucher which is before him for payment, only the amount in doubt will be withheld for submission to The Comptroller General or transmission to the General Accounting Office, and payment will be made to the contractor of such portion of the voucher as is not in question. Disbursing officers will consider such vouchers with a view to paying the maximum amount consistent with protection of the interests of the Government.

§ 535.9 *Payment where there is no valid contract*—(a) *Lost contract.* Where all executed copies of a contract have been lost, its contents may be proved by the production of the original proposal, a certified copy of its accept-

ance, and an unsigned copy of the contract, so as to authorize payment at the contract rates for supplies which have been actually delivered. (See 4 Comp. Dec. 82.)

(b) *Completed transactions.* When payment has been made and accepted under an agreement shown to be reasonable, but informally executed, the transaction is complete and both parties are bound thereby. (See 24 Comp. Dec. 226.)

(c) *Quantum meruit.* (1) Accounts covering supplies furnished or services rendered before the making of a contract, without a valid contract, or where otherwise settlement is on a quantum meruit basis, should be transmitted through the Chief of Finance to the General Accounting Office. (See MS. Comp. Dec. A. D. 4997, August 6, 1920.) For exception, see (3) below.

(2) The agreed price, if any, is *prima facie* but not conclusive evidence as to the amount of liability. (See 8 Comp. Dec. 526; 20 id. 437.)

(3) Notwithstanding the provisions of subparagraph (1) of this paragraph, a cost-plus-a-fixed-fee contractor may be reimbursed for proper expenses which were not included in the fixed fee and which were incurred in connection with expediting performance of work under the contract prior to its formal execution, but after verbal notification that the contract would be awarded. (See 21 Comp. Gen. 462.)

(4) Where a military order commandeered labor and property upon the terms and with compensation as set forth therein, and the parties to whom the order was directed could not have refused to obey it, the Government is liable on an implied contract to pay them on a quantum meruit basis the value of the labor, material, supplies and equipment furnished thereunder. Such an agreement may not be considered a contract within the meaning of that word, as used in statutes prohibiting the procurement of supplies or labor under contracts on a cost-plus-a-percentage-of-cost basis. However, in support of reimbursement vouchers, there should be furnished such evidence as will satisfactorily establish that the labor and materials involved were actually furnished pursuant to orders, and, where reimbursement is to be made for the actual cost thereof, evidence that the amounts claimed have actually been paid. (See MS. Comp. Gen. B 36873, October 16, 1943.)

PAYMENT UNDER LEASES

§ 535.10 *Who entitled to rental.* (a) The United States, having occupied land under a lease, can not avoid the payment of rent therefor by reason of any defect in the title of the lessor at the time the lease was made. (See 9 Comp. Dec. 593.)

(b) The United States, having occupied land owned by several tenants in common under an agreement with one of them, and without objection by the others, such tenant in common is entitled to receive the rent therefor. (See 9 Comp. Dec. 593.)

(c) When property leased to the United States is sold on one day and the deed of conveyance is executed on another day,

the grantee is entitled to receive rental from said property only from and after the date of execution of the deed. (See 15 Comp. Dec. 195.)

(d) Where leased premises, under the lease of which the annual rental was payable in quarterly installments on the first days of October, January, April, and July, were sold under a mortgage foreclosure and the new owner took title November 23, the new owner is entitled to the rent for the whole quarter under the well-settled common-law rule that in such cases, the apportionment of rent is not allowable, as the rent does not accrue from day to day, but only accrues at the time it becomes due under the terms of the lease and is indivisible. (See *Musselman v. U. S.*, 52 Ct. Cls. 436.)

§ 535.11 *Written agreement required.* A disbursing officer who charges in his accounts a payment for rent, unsupported by evidence of a contract fixing the rent to be paid, is not entitled to a credit therefor (5 Comp. Dec. 701). The General Accounting Office will refuse credit for vouchers paid for rent unless supported by a written agreement signed by both parties.

§ 535.12 *Computation of rent.* The provision in the act of April 28, 1904 (33 Stat. 513), for computing payments of annual or monthly compensation of officers, agents, and employees of the United States, has no application to contracts for the payment of monthly rental for leased premises, and payments for fractional parts of a month should be on the basis of the actual number of days in the month. In computing the time between two specified dates the general rule is to exclude the first and include the last date. (See 11 Comp. Dec. 494.)

§ 535.13 *Payment of rent in advance.* Payment of rent in advance, by the month, year or quarter, for naked lands leased to the Government, of which it has been placed in possession by the lessor, is in violation of R. S. 3648 (31 U. S. C. 529), and will not be recognized by the General Accounting Office. (See 23 Comp. Dec. 653.)

§ 535.14 *Payment of rent under improperly executed lease.* Where a writing in the form of a lease purporting to be entered into between the lessor and an officer of the Army on behalf of the Government, as lessee, was not signed on behalf of the Government or deposited in the General Accounting Office, as provided by R. S. 3743, 3744, and 3745 (41 U. S. C. 20, 16, 17), a stipulation therein contained that liquidated damages should be paid for all claims, costs of labor and materials, etc., reconstructing the premises as they were at the commencement of the tenancy, imposed no valid obligation upon the Government, and payment of the amount stipulated is not authorized. (See 26 Comp. Dec. 232.)

§ 535.15 *Payment for cost of improvement of rented premises.* The laying of conduits and wires in premises occupied by the United States under a lease from the owner is an improvement of the premises, and unless provision has

been made in the lease for the making of such an improvement by the United States as a consideration in whole or in part for the use thereof, payment of the cost of such an improvement is not authorized. (See 6 Comp. Dec. 943.)

§ 535.16 *Payment of taxes on property.* Although taxes are not payable by the Federal Government as the owner of real property, they are properly payable as part of the rent when specifically included in the terms of the lease. (See 24 Comp. Dec. 705.)

§ 535.17 *Payment of rent in connection with termination of lease.* Under a lease for a year, where the rent was payable monthly, which provided that the tenancy might be terminated by giving 30 days' notice, a notice given on the 10th of a month does not become operative until the end of the ensuing month. (See 9 Comp. Dec. 366.)

PAYMENTS FOR TELEPHONE, TELEGRAPH AND TELETYPEWRITER SERVICE

§ 535.18 *Telephone service—(a) Rates, general.* Where a contract for the furnishing of telephone service to the Government provides for payment at legally established rates, payment for services currently rendered is authorized at the increased rates established by city ordinance after court determination of insufficiency or prior rates. (See 15 Comp. Gen. 896.)

(b) *Flash calls made by ground observers.* Flash calls made by ground observers in connections with Aircraft Warning Service may be billed as a group from a given point to a filter center, if such calls do not consume more than the minimum talking period. Where such calls consume more than the minimum talking period, they will be listed separately. (See MS. Comp. Gen., B 25280, April 28, 1942.)

(c) *Private residences.* Payment is unauthorized from public funds for the installation or rent of a telephone installed in a private residence irrespective of its use for official business, but long-distance tolls for messages received or transmitted over such telephone, strictly for the public business, may be so paid. (See also 15 Comp. Gen. 885.)

§ 535.19 *Telegraph service, rates—(a) Official messages.* The rates for communications by telegraph between the several departments of the Government and their officers and agents in their transmission over the lines of any telegraph company to which has been given the right-of-way, timber, or station lands from the public domain are fixed annually by the Federal Communications Commission pursuant to the provisions of section 5266, Revised Statutes, as amended.

(b) *Personal messages.* Administrative offices may increase amounts claimed for telegraph services by the difference between the Government rate billed and the commercial rate for messages of a personal nature where collection at the commercial rate, plus tax, has been made from the individual for whose benefit the services were rendered, and deposited in special deposit funds, provided the voucher shows the full cost of the telegrams at commercial rates is

being charged to the special deposit funds. (See 17 Comp. Gen. 873.)

§ 535.20 *Bills paid monthly*—(a) *General.* In general, all official telegrams will be charged to and paid for at the sending office on monthly bills, which will be submitted by the local telegraph office directly to the local commanding officer.

(b) *Supporting evidence.* (1) Telegraph bills will be supported by proofs of service which, except "Government collect" messages or telegrams of a confidential nature, will be original telegrams bearing the operator's original pencil notations or indorsement of transmission showing actual performance. (See 14 Comp. Gen. 825, 16 id. 217.) As to what constitutes an original within this rule, the basic reason for the requirement that the original be filed is to insure that the charges for transmission were correctly computed for the services actually rendered and to prevent duplicating payment of such charges. This is best accomplished by accompanying the voucher with the copies of the telegrams used for transmission, showing thereon the company notations with respect to the time filed, the number of words paid for, etc., such copies being commonly referred to as transmission or wire copy. It is immaterial for audit purposes whether the transmission or wire copies be written in long hand or consist of carbon copies; on the other hand, a ribbon copy not showing the transmission data would be of little, if any, use in auditing the charges. (See 21 Comp. Gen. 364.)

(2) If charges are included in monthly bills for messages received "Government collect," carbon copies will be accepted in support of the charges. (See MS. Comp. Gen. A-13067, December 18, 1935.)

(3) Vouchers for telegraph services furnished by a foreign government in transmitting alleged confidential messages in code may not be passed by the General Accounting Office upon a blanket certification that they were confidential, but copies of the telegrams in code and untranslated will be submitted in support of the account. (See 4 Comp. Gen. 860.)

(4) While the general rule is that claims for telegraphic services not of a confidential nature must be supported by the originals of the outgoing messages when presented for payment (subparagraph (1) of this paragraph, where the messages originate in a foreign country in which the transmitting company is not permitted by its regulations to surrender the originals, copies of the originals will be accepted in support of vouchers, provided appropriate steps are taken by the administrative office to prevent a duplicate payment for the same services. (See 21 Comp. Gen. 94.)

(5) (i) Bills for multiple-address telegram transmission services will be supported by evidence that the official message required to be sent was the message actually transmitted, that the message was in fact transmitted, and that the class of service rendered and charged for was that requested by the sender. Therefore a self-serving statement by a telegraph company official that the serv-

ices were performed as requested cannot be accepted in lieu of the required data.

(ii) Where transmission of a multiple-address telegram is from the originally filed copy of the message, the voucher covering payment for the transmission services will be supported by such original and the list of addresses with appropriate data placed thereon at the time of transmission, but where transmission is from copies of such original, the copies containing the necessary data for a proper audit are required to be filed with the voucher. (See MS. Comp. Gen., B 28733, October 24, 1942.)

(6) (i) Where telegraph or cable service is rendered outside the continental United States under conditions which make it impossible for the contractor or the contracting officer to secure the original telegrams or cablegrams, vouchers may be supported by copies of the original telegrams or cablegrams, together with a certificate executed by the contractor and approved by the contracting officer, setting forth the circumstances in the case and the reason that the originals of the messages required by subparagraph (1) of this paragraph cannot be obtained.

(ii) Where the cost of a telegram or cablegram has been paid by a bank or similar agency and the expenditure is otherwise correct, a debit note, statement, or other similar document from the bank or similar agency may be accepted in support of the voucher if the contractor certifies that the amount is not in excess of the minimum cost for similar services, that the telegram or a copy thereof cannot be secured and the reason therefor and if the certificate is approved by the contracting officer.

(c) *Bills to be paid within 5 days.* Disbursing officers to whom bills are submitted for payment will settle such accounts within 5 days after receipt, making payment to the local telegraph office rendering the account. This will not be construed as authorizing payment when papers necessary to support the voucher are not in the possession of the disbursing officer.

(d) *Payment to initial company.* In settling accounts for telegrams which pass over the lines of more than one company (bond-aided excepted), payment may be made on the original telegram to the initial company for the entire service.

§ 535.21 *Teletypewriter service*—(a) *Certificate.* The general certificate prescribed in § 535.1 (b) is required.

(b) *Copies of teletypewriter messages not required.* Accounts for teletypewriter service need not be supported by the originals or copies of messages prescribed in § 535.20 (b) for official telegrams.

PAYMENT OF TRANSPORTATION ACCOUNTS

§ 535.22 *By whom paid*—(a) *Within continental limits of United States.* All transportation accounts pertaining to Department of the Army bills of lading and transportation requests issued for service to and from and within the continental limits of the United States and Alaska (except those payable from appropriations for civil functions of the

Corps of Engineers) will be paid by the Finance Officer, U. S. Army, Transportation Division, Washington 25, D. C.

(b) *Outside continental limits of United States.* Transportation accounts pertaining to Department of the Army bills of lading and transportation requests issued for service within the Panama Canal, Hawaiian, Philippine, or Antilles Departments, and in foreign countries will be paid by a disbursing officer in the department or area concerned.

(c) *Officers of the Army detailed to the Navy, Marine Corps, or Coast Guard and officers of those services detailed to the Army for duty.* Payment of transportation accounts for packing, crating, drayage, unpacking, uncrating, and shipment of authorized baggage (household goods), or reimbursement therefor, for officers of the Army detailed to the Navy, Marine Corps, or Coast Guard and officers of those services detailed to the Army for duty, will be made by the designated disbursing officer or agent of the service issuing the orders. (For example: Upon initial detail of a Navy officer (under Navy orders) to the Army, payment of transportation accounts will be made by the Navy. Upon future movements of this detailed Navy officer, including relief from duty with the Army (under Army orders), payment of transportation accounts will be made by the designated Army disbursing officer.) The amount will be chargeable to the appropriation of the service issuing the orders and no transfer of funds is necessary.

(d) *Civil functions of the Corps of Engineers.* Accounts covering transportation payable from appropriations for civil functions of the Corps of Engineers will be paid by district officers of the Corps of Engineers specially designated to settle the accounts for the specific project.

§ 535.23 *To whom paid; responsibility and action in case of loss, destruction, or damage.* (a) Payment for transportation for freight or express will be made to the last carrier, unless otherwise provided in the bill of lading, and only for the quantity of property delivered at destination, except that in case of loss of weight by natural shrinkage en route the weight shipped as shown in the bill of lading will be paid for, provided the packages are delivered intact.

(b) The carrier will be held responsible for loss, destruction, or damage to property while in transit in accordance with discrepancy notations on bills of lading, unless the cancellation of any such notation is authorized by the consignee who made it or the carrier is relieved of such responsibility by a report of survey. Reports of survey submitted and approved pursuant to AR 35-6640¹ are the final authority under which common carriers are held responsible or relieved from responsibility.

(c) Loss, destruction, or damage for which the carrier is held responsible will be deducted in making settlement for services.

¹ Administrative regulations of the Department of the Army relative to loss, destroyed, damaged, or unserviceable property.

§ 535.25 *Action when transportation appears to have been furnished improperly.* If it appears to the paying officer that transportation has been improperly furnished by the issuing officer, he will make payment to the carrier for the service actually rendered, and will call upon the issuing officer for the authority upon which such transportation was furnished.

§ 535.26 *Payment when personal transportation lost or destroyed—(a) Lost or destroyed request.* Payment of transportation charges, where the original transportation request has been lost or destroyed may be made only when the provisions of Army Regulations pertaining to transportation requests have been accomplished.

(b) *Lost or destroyed ticket.* Where the passenger has lost or destroyed the ticket issued on a transportation request no refund can be secured from the carrier, nor can a new transportation request be issued for the same journey except as provided in Army Regulations pertaining to transportation requests.

§ 535.27 *Payment on bills of lading—(a) On original only.* Payment of transportation charges will ordinarily be made on the original accomplished Government bill of lading and never on memorandum copies or shipping orders.

(b) *When original lost.* Payment of transportation charges where the original bill of lading has been lost will be made on Standard Forms 1108 and 1108a (Certificate in Lieu of Lost U. S. Government Bill of Lading).

PROMPT PAYMENT OF BILLS AND ACCOUNTS

§ 535.28 *General.* Disbursing officers will not pay an account until it is due, but payments will be made promptly of all accounts as they become due and payable. Whenever a bill or a communication with reference to a bill is received, and it is not possible to make prompt payment, an acknowledgment will be sent to the firm or individual, advising of the status of the account. A form letter or a post card may be used for this purpose.

§ 535.29 *Cash discounts.* (a) In all cases of bills for the payment of which on or before a certain date or within a certain time a cash discount is offered, advantage will be taken of the offer of such discount and payment made on or prior to the date on which the discount feature expires, if possible to do so.

(b) In cases in which there is involved any question, as between the Government and the payee, of the right to deduct the discount, in the interest of making prompt payments, and to save the right of the Government to the discount if it subsequently should be determined to have been properly deductible at the time of payment, the discount should be deducted and payment of the balance tendered the payee, who, if not satisfied, may accept the payment under protest and file claim in the General Accounting Office, either directly or through military channels, for a refund of the amount deducted. (See 7 Comp. Gen. 537.)

(c) Where a contract for furnishing water provided for payment therefor at certain specified meter rates, with dis-

count for prompt payment, the contractor is entitled to the full specified meter rates upon failure of the Government to make payment within the time specified for the allowance of discount. (See 12 Comp. Dec. 274, 16 Comp. Dec. 151.)

§ 535.30 *Partial payments.* Partial payments are authorized under a contract for construction of a number of airplanes and spare parts which provides for such payments as the work progresses and contains a provision that title to all property for which any partial payments are made prior to completion of the contract shall vest in the Government in its condition at the time the partial payments are made, notwithstanding a provision in the contract giving the Government the right to reject upon final inspection, such a provision not operating to divest the title acquired by the Government to the materials and supplies on which partial payments have been made. (See 1 Comp. Gen. 143.)

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AUTHORITY: §§ 536.1 to 536.10, issued under R. S. 161; 5 U. S. C. 22.

DERIVATION: AR 25-20, June 30, 1948.

GENERAL PROVISIONS

§ 536.1 *Definition.* The word "claims" as used in the regulations in this part refers to those demands for payment in money submitted in writing by individuals, partnerships, associations, or corporations, including countries, and states, territories, and other political subdivisions of such countries, but excluding the Federal Government of the United States and its instrumentalities, other than such demands for payments as arise under ordinary obligations incurred by the Army in the procurement of services or supplies. As to claims in favor of the United States, see §§ 537.3 to 537.5 inclusive.

§ 536.3 *Basic regulations to govern.* The general provisions of the regulations in this part so far as applicable, govern and will be followed in the investigation, processing, and disposition of all claims. However with respect to marine casualties, see § 536.44.

§ 536.4 *Statutory authority of the Department of the Army and the Army.* Authority to settle claims has by statute been granted to the Department of the Army and the Army, as shown in the following chart which will be used as a guide in determining which sections in this subchapter have application to any claim:

DEPARTMENT OF THE ARMY CHART

| Sec-tions | Statute | Provision | Coverage | Amount | Method of settle-ment | Personal injury | Per-sonal prop-erty | Real prop-erty | Subrogation | Time limit | Remarks |
|---------------|---|----------------------------|---|---|--|---|---------------------|----------------|---|---|---|
| 536.12-536.23 | Sec. 1, act 3 July 1943 (57 Stat. 372; 31 U. S. C. 223 b), as amended by act 29 May 1945 (59 Stat. 225); act 28 June, 1946 (60 Stat. 332); act 26 July 1947 (61 Stat. 501); and as repealed in part by the Federal Tort Claims Act (60 Stat. 842; 28 U. S. C. 921). | Military claims provision. | Damage to or loss or destruction of property, or personal injury or death, caused by military personnel or civilian employees, or otherwise incident to non-combat activities of the Department of the Army, or of the Army, settlement of which under these provisions is not precluded by the Federal Tort Claims Act, infra. | \$1,000 maximum, claims in excess of the maximum may be reported to Congress. | Approved by designee of Secretary of the Army, with appeal to the Secretary of the Army. Payment by local disbursing officer on certification by any authorized officer. If in excess of \$1,000: Approval by Secretary of the Army, who submits to Bureau of the Budget for report to Congress for consideration. Payment by Treasury Department on certification by Comptroller General. | Yes, to extent of medical hospital, and burial expenses. | Yes. | Yes. | Entire amount allowed to subrogor but no payment to subrogee. | 1 year except that if claim arises in time of war or when war intervenes within 1 year, and good cause for delay is shown, 1 year after peace is established. | Applicable if not within AR 25-70 (§ 536.29), AR 25-80 (§ 536.25), AR 25-90 (§ 536.26), or not payable under provisions of AR 25-100 (§ 536.27). |
| 536.29 | Title IV, act 2 Aug. 1946 (60 Stat. 842; 28 U. S. C. 921), as amended by act 1 Aug. 1947 (61 Stat. 722). | Federal Tort Claims Act. | Claims against the United States for money only, accruing on or after Jan. 1, 1945, on account of damage to or loss of property or on account of personal injury or death, where the total amount of the claim does not exceed \$1,000 caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred ("Employee of the Government" includes members of the military forces.) | \$1,000 maximum, claims in excess of maximum may be sued upon in United States District Courts. | Approval by Secretary of the Army or his designee, subject to appeal to Secretary of the Army. Payment by disbursing officer on certification by duly authorized officer. | Yes, including allelements of damage allowed in jurisdiction where act or omission causing injury occurred. | Yes. | Yes. | do | 1 year | Applicable on or after Jan. 1, 1945, to claims arising only in the United States, its territories, and possessions to the exclusion of all regulations. |
| 36.25 | Art. 105, ch. II, act 4 June 1920 (41 Stat. 808; 10 U. S. C. 1577). | Article of War 105. | Damage to or loss or destruction of property by persons subject to military law caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or such reckless disregard of property rights as to carry implication of guilty intent. | No limit | Approval by offender's commanding officer. Payment by local disbursing officer out of stoppages against offender's pay. | No | Yes. | Yes. | Uninsured portion allowed to subrogor but no payment to subrogee. | None | Applicable if not within AR 25-25 (§ 536.12-536.23), AR 25-70 (§ 536.29), AR 25-90 (§ 536.26), or AR 25-100 (§ 536.27). |

RULES AND REGULATIONS

DEPARTMENT OF THE ARMY CHART—Continued

| Sections | Statute | Provision | Coverage | Amount | Method of settlement | Personal injury | Personal property | Real property | Subrogation | Time limit | Remarks |
|----------|---|--------------------------------------|--|---|---|-----------------|-------------------|---------------|---|---|--|
| 536.26 | Sec. 1, act Jan. 2, 1942 (55 Stat. 880; 31 U. S. C. 224d), as amended by act Apr. 22, 1943 (57 Stat. 66). | Foreign claims provision. | Damage to or loss or destruction of property, or personal injury or death, caused by Army forces in foreign countries. | \$5,000 maximum, claims in excess of the maximum may be reported to Congress. | Approval by a foreign claims commission, if in excess of \$2,500 must also be approved by theater base, or comparable commander or by The Judge Advocate General. Payment by local disbursing officer on certification by such commission: If in excess of \$5,000: Approval by Secretary of the Army who submits to Bureau of the Budget for report to Congress for consideration. Payment by Treasury Department on certification by Comptroller General. | Yes..... | Yes. | Yes. | Entire amount allowed to subrogator but no payment to subrogee. | 1 year..... | Applicable to exclusion of all other regulations when claimant is an inhabitant of the foreign country in which claim arose. |
| 536.27 | Act of May 29, 1945 (59 Stat. 225; 31 U. S. C. 222c) as repealed in part by the Federal Tort Claims Act, infra. | Military personnel claims provision. | Damage to or loss, destruction, capture, or abandonment of personal property of military personnel or civilian employees occurring incident to their service, settlement of which under these provisions is not precluded by the Federal Tort Claims Act, infra. | No limit.... | If not replaced by commanding officer, approval by designee of Secretary of the Army as provided in § 536.27 (v). Payment by local disbursing officer on certification by any authorized officer. | No..... | Yes. | No.. | Uninsured portion allowed to subrogator but no payment to subrogee. | 1 year, except that if claim arises in time of war, or if war intervenes within 2 years, 1 year after peace is established, provided good cause is shown for delay in filing claim. | Applicable to the exclusion of all regulations except AR 25-70 (§ 536.29) and if not payable hereunder, AR 25-25 (§§ 536.12-536.23). |

§ 536.6 *Action by claimant*—(a) *Claimant*—(1) *Claims for property damage, loss, or destruction.* Claims for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner", as so used, includes bailees, lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others, having title for purposes of security only or subrogees. The claim, if filed by an agent or legal representative, should show the title or capacity of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary. The claim, if filed by a corporation, should show the title or capacity of the officer signing and be accompanied by evidence of his authority to act.

(2) *Claims for personal injury or death.* Claims for personal injury or death may be presented by the injured person or his duly authorized agent or legal representative. Claims for medical, hospital, and burial expenses, not presented by the injured person or his duly authorized agent or legal representative, may if it appears that no legal representative has been appointed be presented by any person who, by reason of family relationship, has in fact incurred the expenses for which claim is made.

(b) *Form of claim.* Claims should be

submitted by presenting in triplicate a dated statement in writing stating the claimant's address and setting forth the definite amount of the claim and, so far as possible, the detailed facts and circumstances surrounding the accident or incident, indicating the date and place, the property and persons involved, the nature and extent of the damage, loss, destruction, or injury, and the agency which was the cause or occasion thereof, whether or not a suit has been filed in a United States District Court on the subject matter of the claim and if so, the outcome or status of such suit. Department of the Army forms will be used whenever practicable.

(c) *Evidence to be submitted by claimant*—(1) *General.* The amount claimed for damage to or loss or destruction of property, or for personal injury or death, must be substantiated by competent evidence.

(2) *Property damage.* In support of claims for damage to personal property which has been or can be economically repaired, the claimant should submit in triplicate an itemized signed statement or estimate of the cost of repairs; if not economically repairable, or if the property is lost or destroyed, the value thereof, both before and after the accident, should be stated. In support of claims for damage to land, trees, buildings, fences, and other improvements, and similar property, the claimant should submit an itemized signed statement or

estimate of the cost of repairs; if not economically repairable, the value both before and after the accident, of the land damaged, or of the improvement or other property if it can be readily and fairly valued apart from the land, should be stated. In support of claims for damage to crops, the statement should show the number of acres, or other unit measure, of the crops damaged, the normal yield per unit, the gross amount which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing; if the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. All such statements or estimates should, if possible, be by disinterested competent witnesses, preferably reputable dealers of the type of property damaged. Such statements and estimates should be certified as just and correct; if payment has been made, itemized receipts evidencing payment should be included. In the case of claims for damage to or loss or destruction of registered or insured mail, the claimant should in addition submit, where possible, the registration or insurance receipt, or an attested copy thereof, showing the amount of fee and postage paid.

(3) *Personal injury.* In support of claims for personal injury or death, the claimant should submit in triplicate a written report by attending physician,

showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization or incapacitation, attaching itemized bills for medical, hospital or burial expenses actually incurred, and, if claim is made for loss of earnings, a written report in triplicate by claimant's employer showing claimant's age, occupation, wage or salary, time lost from work, whether or not a full time employee, and actual period of employment by dates.

(d) *Signatures.* The claim and all other papers requiring the signature of the claimant should be signed by the claimant personally or by a duly authorized agent, and should show the given name, middle initial, if any, and surname. The signature of such claimant or agent should be identical throughout.

(e) *Place of filing.* The claim will be submitted to the commanding officer of the unit involved if known, otherwise to the commanding officer of any installation or other military establishment, if practicable the one within which or nearest to which the accident or incident occurred. If in a foreign country where no military forces are stationed, the claim may be submitted to the United States military attaché or United States air attaché.

§ 536.7 *Duties of claims officer—(a) Procedure.* In proceeding with the investigation and making his report the claims officer will:

(1) Consider all information and evidence obtained as the result of any previous inquiry or investigation of any aspect of the accident or incident.

(2) Conduct further independent investigation of the matter in a fair and impartial manner.

(3) Secure and consider testimony of all competent witnesses on pertinent facts.

(4) Claims against the United States will not be solicited. In the event inquiry is made as to the procedure whereby a claim may be filed, the person making the inquiry will be informed of the provisions of § 536.6 (d) and furnished appropriate forms and advised as to where they may be filed; furnishing the claimant forms bearing on the reverse a substantial copy of such provisions will constitute compliance with such requirement.

(5) Reduce to writing and prepare in triplicate all pertinent testimony and all other evidence taken or considered by the claims officer.

(6) Make certain that repair bills or estimates are certified, by the persons rendering them, as just and correct. If the bills have been paid, the payees should so certify.

(b) *Consolidation of claims in a single report.* When several claims are presented as the result of a single accident or incident, they should normally be incorporated in a single report. Any claims presented subsequently may be processed with reference to the report already filed.

(c) *Ascertainment of amount of damage—(1) Property damage, loss, or destruction.* (i) If the property has been

or can be economically repaired, the measure of damage is the net cost, or estimated cost, as defined in subdivision (iii) of this subparagraph, of repairs necessary to restore the property to substantially the condition in which the property was immediately prior to the accident or incident, but not to exceed the value of the property immediately prior to the accident or incident less the value thereof immediately after the accident or incident.

(ii) If the property cannot be economically repaired, the measure of damage is the value of the property immediately prior to the accident or incident less the value thereof immediately after the accident or incident.

(iii) To determine the net cost, or estimated cost, of repairs under subdivision (i) of this subparagraph there should be deducted from the gross cost (actual or estimated) the value of any salvaged parts or materials, and the amount of any appreciation in value thereby effected; and there should be added to such gross cost the amount of any depreciation resulting; *Provided*, such deductions or additions are sufficiently substantial in amount to warrant consideration.

(iv) All such statements and estimates should if possible be by one or more disinterested competent witnesses, preferably reputable dealers of the type of property damaged, lost, or destroyed.

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

(vi) The measure of damage, in cases of total loss or destruction of registered or insured mail, is the value thereof immediately prior to the accident or incident plus, if claimed, the amount of any registration or insurance fee or other special fees and the amount of postage prepaid. In cases of damage only, or partial loss or destruction, the measure of damage is the value thereof immediately prior to the accident or incident less any salvage except that, if economically repairable, the measure of damage is the estimated or actual cost of repairs; no fees or prepaid postage are payable if actual delivery of the parcel or letter is made to the correct addressee.

(vii) The measure of damage in cases cognizable under the Federal Tort Claims Act is determined by the law of the place where the act or omission, out of which such damage arises, occurred. (See § 536.29.)

(2) *Personal injury or death.* (i) The measure of damage is as provided in the

specific regulations under which the claim is payable.

(ii) All statements and estimates of medical, hospital, and burial expenses should be substantiated by the originals or copies of any bills rendered.

(3) *Excluded items.* Interest, cost of preparation of claims and securing supporting evidence, inconvenience, and similar items may not be included as elements of damage.

(4) *Recoveries from joint tort-feasors.* If the claimant has elected to proceed against a third party as a joint tort-feasor, any amount so collected in respect of items of damage which otherwise may property be included in the claim against the Government will be deducted from the amount which would otherwise be approved for payment.

(d) *Acceptance of amount recommended and advice to claimant.* The claims officer will not advise the claimant as to the action taken on his claim unless approval thereof in an amount less than the amount claimed is recommended, in which event the claimant will be advised that such recommendation is subject to approval or disapproval by higher authority and will be requested to execute an amended claim form in the amount recommended. If in such a case claimant is unwilling to execute the amended claim form, his reasons therefor stated in writing will be obtained, if possible. If not obtained, then the claims officer will include in his report a statement of the action taken by him and the results thereof. In no case will the claims officer advise the claimant that his claim has been or will be disapproved.

§ 536.8 *Claims not provided for under any law.* All claims the settlement of which is not provided for by any specific law or appropriation will be referred to a claims officer for investigation and report in a manner similar to that prescribed in § 536.7 with such modification thereof as the features of the particular case may warrant. Such claims, with related files and recommendations, will be forwarded promptly in triplicate, retaining only a card record thereof, by or through the commanding general of the army areas or air material area, or the command claims service, to The Judge Advocate General, Washington 25, D. C., for appropriate administrative action.

§ 536.9 *Transfers and assignments of claims.* All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and all powers of attorney, orders, or other authorities for receiving any payment of any such claim, or of any part or share thereof, are (see R. S. 3477 (31 U. S. C. 203), as amended by the act of October 9, 1940 (54 Stat. 1029)) absolutely null and void, unless made after the issuing of a warrant for the payment thereof. The provisions of the statute, as amended, do not apply to assignments of claims by operation of law, as when a receiver or trustee in bankruptcy is appointed for an individual, firm or corporation, or an administrator for the estate of a deceased person; nor do they apply in any case in

which the moneys due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, under the conditions set forth in the act of October 9, 1940. (See §§ 535.5-535.9.)

§ 536.10 *Disclosure of information.* Except in the proper discharge of his official duties, no person in the military service or employed by the United States Army or the United States Air Forces, will furnish copies of official papers or give any information which can be used as the basis of a claim against the United States. Without prior approval of the office of The Judge Advocate General, claimants or their authorized representatives shall not be permitted to examine any part of the evidence of record except that submitted by such claimants.

CLAIMS FOR DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY, OR FOR PERSONAL INJURY OR DEATH, INCIDENT TO NON-COMBAT ACTIVITIES OF DEPARTMENT OF THE ARMY OR OF THE ARMY

AUTHORITY: §§ 536.12 to 536.23 and §§ 536.25 to 536.29 issued under 41 Stat. 808, 55 Stat. 880, 57 Stat. 372; 10 U. S. C. 1577, 31 U. S. C. 223b, 224d.

DERIVATION: AR 25-25, Aug. 2, 1946; AR 25-80, May 29, 1945; AR 25-90, July 31, 1945; AR 25-100, May 29, 1945; AR 25-70, Jan. 1, 1947.

§ 536.12 *Claims for damage to or loss or destruction of property or for personal injury or death, caused by military personnel or civilian employees, or otherwise incident to noncombat activities of the Army, except those cognizable under the Federal Tort Claims Act—(a) General.* Claims, arising on or after May 27, 1941, except claims arising from negligent or wrongful acts or omissions accruing on or after January 1, 1945 and cognizable under Part 2, Federal Tort Claims Act (Title 4, 60 Stat. 842) for damage to or loss or destruction of real or personal property, or for reasonable medical, hospital, or burial expenses actually incurred on account of personal injury or death, caused by military personnel or civilian employees of the Army while acting within the scope of their employment, or otherwise incident to noncombat activities of the Army, including claims for damage to or loss or destruction or registered or insured mail while in the possession of the military authorities even though resulting from criminal acts, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof under a lease, express or implied, or otherwise, and including claims of the foregoing categories arising out of civil works, are payable under the military claims provision provided they do not exceed \$1,000.

(b) *Claims payable under prior regulations payable hereunder.* Any claim, not cognizable under Part 2, Federal Tort Claims Act, arising on or after May 27, 1941, formerly payable under provisions of law and regulations now superseded is payable under provisions of

§§ 536.12-536.23, see, however, § 536.22 for special provisions as to subrogees.

(c) *Application to pending claims.* The provisions of §§ 536.12-536.23 apply to all claims otherwise within the scope thereof, not heretofore paid, arising out of accident or incidents occurring on or after May 27, 1941; see, however, § 536.22 (c) as to claims presented prior to July 3, 1943, if subrogation is involved. Claims arising out of accidents or incidents occurring prior to May 27, 1941, but otherwise within the scope of §§ 536.12-536.23, will be forwarded with related files and recommendations in triplicate, retaining only a card record thereof, by or through the commanding general of the army or air matériel area within the United States, its territories, and possessions, in which the accident or incident resulting in the claim occurred, or if within a theater of operations outside the continental limits of the United States by or through the command claims service, to The Judge Advocate General, Washington 25, D. C., for appropriate administrative action.

§ 536.13 *Acts or omissions—(a) Military personnel and civilian employees.* Military personnel and civilian employees whose acts or omissions may give rise to claims within the scope of these regulations include all military personnel and civilian employees of the Army, prisoners of war and interned enemy aliens engaged in labor for pay, and volunteer workers, and others, serving as employees of the Army even though without compensation.

(b) *Scope of employment.* Acts or omissions of military personnel and civilian employees may give rise to claims payable under the provisions of §§ 536.12-536.23 only if such acts or omissions occur while such military personnel or civilian employees are acting within the scope of their employment.

(c) *Proximate cause.* Claims for damage to or loss or destruction of property or for personal injury or death, proximately caused by willful, negligent, wrongful or otherwise tortious acts or omissions of military personnel or civilian employees acting within the scope of their employment, except those claims accruing on and after January 1, 1945 and cognizable under Part 2, Federal Tort Claims Act, are payable under the provisions of this section. Acts or omissions involving a lack of reasonable care are the usual basis of claims so payable. If the proximate cause of the accident or incident is the act or omission of persons other than military personnel or civilian employees, as defined in paragraph (a) of this section, the claim is not payable. If the proximate cause of the accident or incident is the joint, or concurrent tortious act or omission of military personnel or civilian employees and of one or more persons other than the claimant, his agent, or employee, the claim is payable except to the extent, if any, already paid by or on behalf of such other person or persons.

§ 536.14 *Claims—(a) Registered and insured mail.* Claims for damages to or loss or destruction of registered or insured mail while in the possession of the

military authorities are within the scope of §§ 536.12-536.23 if caused by military personnel or civilian employees of the Army, even though resulting from criminal acts, or if otherwise incident to non-combat activities of the Army. Claims for damage, loss, or destruction occurring prior to delivery by the Post Office Department (for distribution to the addressee) to authorized military personnel or civilian employees of the Army (e. g., unit, battalion, or regimental mail clerks, and postal officers), but excluding military personnel serving and bonded to the Post Office Department, are not payable under the provisions of §§ 536.12-536.23; nor are claims arising after resumption of possession by the Post Office Department (e. g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Army charged with distribution to the addressee. "Minimum fee" insured mail carrying no insurance number and not requiring hand-to-hand receipts is not within the scope of this section.

(b) *Bailed personal property.* Claims for damages to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government under an agreement, express or implied, except those cognizable under Part 2, Federal Tort Claims Act, are payable under the provisions of §§ 536.12-536.23 even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction.

(c) *Use and occupancy of real property.* Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, express or implied, or otherwise, except those cognizable under Part 2, Federal Tort Claims Act, are payable under the provisions of §§ 536.12-536.23 even though legally enforceable against the Government as contract claims. Claims for rent of real property are not payable under §§ 536.12-536.23.

(d) *Contract claims.* Claims for damage to or loss or destruction of property founded in contract, express or implied, except those under paragraphs (b) and (c) of this section, are normally not payable under the provisions of the regulations in §§ 536.12-536.23. Any claim which is apparently within the provisions of the statute but appears to be founded in contract, express or implied, except claims under paragraphs (b) and (c) of this section, will be forwarded with related files and recommendations in triplicate, retaining only a card record thereof, by or through the commanding general of the army or matériel area or command claims service to The Judge Advocate General for appropriate administrative action.

(e) *Other noncombat activities.* Claims for damage to or loss or destruction of property, or for personal injury or death, not caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Army, are payable under the provisions of this paragraph if otherwise incident

to the noncombat activities of the Army. Claims within the above category include claims for damage or injury arising out of, and which are natural or probable results or incidents of, maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft, use of barrage balloons, escape of horses, use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions, movement of combat vehicles or other vehicles designed especially for military use, and use and occupancy of real estate.

§ 536.15 Contributory negligence. Contributory negligence or wrongful act of the claimant, or of his agent or employee, acting within the scope of his employment, in whole or in part the proximate cause, bars a claim. Although the doctrine of comparative negligence is not applied, the law of the jurisdiction in which the accident or incident occurred will normally be followed in determining whether contributory negligence is present.

§ 536.16 Claims under Foreign Claims Act. Claims for damage to or loss or destruction of property, or for personal injury or death, arising out of accidents or incidents occurring in foreign countries which are cognizable under the provisions of the Foreign Claims Act (see § 536.26 and AR 25-90) are not within the provisions of §§ 536.12-536.23; claims within the scope of that act and which but for the existence thereof would be within the provisions of §§ 536.12-536.23, will be settled under that act, which has preemptive application. Subject, however, to the foregoing provision, there are no geographical limitations on the scope of application of §§ 536.12-536.23, for example, a claim arising in a foreign country which is not cognizable under the Foreign Claims Act because the claimant is not an inhabitant of the foreign country in which the accident or incident occurs may, if the claim is otherwise within the provisions of §§ 536.12-536.23, be paid hereunder. Claims, arising in foreign countries, of nationals of a country at war with the United States, or of any ally of such an enemy country, who are inhabitants of foreign countries may not be paid under the provisions of §§ 536.12-536.23, except as the approving authority or the local military commander determines that the claimants are friendly to the United States. (Sec. 1, 57 Stat. 372 as amended by sec. 4, 59 Stat. 225, 60 Stat. 332, 812; 31 U. S. C. Sup. 223b)

§ 536.17 Claims of or pertaining to military personnel or civilian employees—(a) Property. Claims for damage to or loss or destruction of personal property of military personnel or civilian employees of the Army occurring incident to their service will first be considered under the provisions of § 536.27, which, if applicable, take precedence over the provisions of §§ 536.12-536.23. Such claims found not to be payable under the provisions of § 536.27 may then be considered under the provisions of §§ 536.12-536.23 except those cognizable under Part 2, Federal Tort Claims Act.

Claims of such personnel and employees for damage to or loss or destruction of property not incident to their service are payable under the provisions of §§ 536.12-536.23 on the same basis as are claims of persons not military personnel or civilian employees of the Army, except that claims of military personnel for clothing being worn at the time when damaged, lost, or destroyed, and claims by such persons for souvenirs, ornamental jewelry, or articles acquired to be disposed of as gifts are not payable under the provisions of §§ 536.12-536.23; and such claims of civilian employees are also not payable under the provisions of §§ 536.12-536.23 unless the claimant was, at the time of the occurrence, off duty and also at such time not subject to military law.

(b) Injury or death of military personnel or civilian employees. Claims for medical, hospital, and burial expenses on account of injury or death of military personnel or civilian employees of the Army will first be considered under the provisions of §§ 577.1-577.9 (Medical Attendance—General Provisions), §§ 577.40-577.46 (Dental Attendance), or §§ 536.50-536.53 (Burial Expenses); those of civilian employees, not within those regulations, may be within the jurisdiction of the United States Employees Compensation Commission under the provisions of the act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended. Claims of such personnel and employees for medical, hospital, and burial expenses not within the scope of the above-mentioned regulations or statute are payable under the provisions of §§ 536.12-536.23 on the same basis as are claims of persons not military personnel or civilian employees of the Army.

§ 536.18 Depredation. Claims for damage to or loss or destruction of property, by persons subject to military law, caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or such reckless disregard of property rights as to carry an implication of guilty intent, and payable under the provisions of Article of War 105, as set forth in § 536.25, are not payable under the provisions of §§ 536.12-536.23.

§ 536.19 Combat activities. Claims for damage to or loss or destruction of property, or for personal injury or death, resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the provisions of §§ 536.12-536.23.

§ 536.20 Expenses; medical, hospital, or burial—(a) Medical expenses—(1) Included. Items properly allowable include, if reasonably necessary and reasonable in amount and actually incurred:

- (i) Transportation, by ambulance or otherwise, from the scene of the accident or incident to a physician or hospital, and to and from residence to physicians or hospitals, for examination or treatment.
- (ii) Services performed by physicians, surgeons, dentists, laboratory techni-

cians, anesthetists, masseurs, and registered and practical nurses.

- (iii) Physiotherapy.
- (iv) X-ray and roentgenological examination and treatment.
- (v) Laboratory tests.
- (vi) Medicines.
- (vii) Other reasonably necessary medical expenses.

(2) Excluded. No amount may be allowed, as an item of the claim, for medical services furnished at the expense of the United States.

(b) Hospital expenses—(1) Included. Items properly allowable include, if reasonably necessary and reasonable in amount and actually incurred:

- (i) Use of emergency and surgical rooms.
- (ii) Room and board.
- (iii) Anesthetics, medicines, laboratory feed, and dressings.
- (iv) Payments to blood donors.
- (v) Other reasonably necessary hospital expenses.

(2) Excluded. No amount may be allowed, as an item of the claim, for hospital services furnished at the expense of the United States.

(c) Burial expenses—(1) Included. Items properly allowable include, if reasonable in amount and actually incurred:

- (i) Undertaker's services.
- (ii) Casket.
- (iii) Transportation.
- (iv) Cemetery lot.
- (v) Services of a minister, priest, or rabbi.
- (vi) Interment or cremation.
- (vii) Other reasonably necessary burial and funeral expenses.

(2) Excluded. No amount may be allowed, as an item of the claim, for any portion of the expense of burial otherwise paid by the United States.

§ 536.21 Statute of limitations. Claims must be presented in writing within 1 year after the occurrence of the accident or incident out of which the claim arises, except that if the accident or incident occurs in time of war, or if war intervenes within 1 year after its occurrence, a claim may, if good cause for the delay is shown, be presented within 1 year after peace is established.

§ 536.22 Claims of subrogees—(a) Included. Settlement will be made solely with the insured, rather than with the insurer or with both the insured and insurer, in cases of damage, loss, destruction, injury, or death covered by insurance. No inquiry will be made into, nor determination made of, the relative interests as between insured and insurer. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount approved will be made in the name of the insured. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney, insurance policy provision, or other documentary evidence satisfactory to the approving authority. The foregoing provisions will be equally applicable in cases of subrogation based other than on insurance.

(b) Not included. Claims by subrogees in their own right are not within

the scope of §§ 536.12-536.23 and will not be considered.

(c) *Claims presented prior to July 3, 1943.* The provisions of paragraphs (a) and (b) of this section will, however, be inapplicable to claims filed prior to July 3, 1943.

(d) In those claims cognizable under Part 2, Federal Tort Claims Act, the rights of subrogees are determined in accordance with the law of the place where the act or omission, out of which the claim arises, occurred.

§ 536.23 *Procedure*—(a) *Sections 536.1-536.10 applicable.* So far as applicable, the procedure set forth in §§ 536.1-536.10 will be followed as to claims within the provisions of AR 25-25.

(b) *Conditions of payment.* Prior to payment of any claim within the provisions of AR 25-25, each of the following conditions must be fulfilled:

(1) The amount of the damage, loss, or destruction, or the amount payable on account of personal injury or death, must be determined.

(2) The payment must not exceed \$1,000, but claims in excess of that amount may be reported to Congress for consideration.

(3) Claims by subrogees will not be recognized except as an element of the subrogor's claim.

(4) The claim must normally be presented within 1 year after the occurrence of the accident or incident out of which the claim arises.

(5) Negligence or wrongful act of the claimant, in whole or in part the proximate cause, bars a claim.

(6) The claim must be approved in accordance with prescribed procedures or, on appeal, by the Secretary of the Army.

(7) The claimant must accept, in full satisfaction and final settlement, the amount approved if less than the full amount claimed.

(8) Claims payable under the provisions of Article of War 105 are not payable under the provisions of §§ 536.12-536.23.

(9) Foreign claims payable under the provisions of AR 25-90 are not payable under the provisions of §§ 536.12-536.23.

(10) Personnel claims payable under the provisions of § 536.27 are not payable under the provisions of §§ 536.12-536.23.

(11) Claims of military personnel or civilian employees for personal injury or death incident to their service are not payable under the provisions of §§ 536.12-536.23.

(12) Claims payable under the provisions of the Federal Tort Claims Act are not payable under the provisions of §§ 536.12-536.23.

(c) *Superseded provisions.* The act of July 3, 1943 (57 Stat. 372; 31 U. S. C., Sup., 223b), and the regulations in §§ 536.12-536.23 supersede several provisions of law and regulations but, any claim, arising on or after May 27, 1941, formerly payable under the superseded provisions is within the scope of §§ 536.12-536.23; see, however, the regulations of this section for special provisions as to subrogees.

§ 536.25 *Claims under the one hundred and fifth article of war*—(a) *Scope.*

Claims for damage to or loss or destruction of property by persons subject to military law are subject to the limitations of paragraph (b) of this section, within the provisions of AW 105 (Sec. 1, Ch. II, act June 4, 1920, 41 Stat. 808; 10 U. S. C. 1577): *Provided*, Such damage, loss, or destruction is caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or such reckless disregard of property rights as to carry an implication of guilty intent.

(b) *Limitations of application*—(1) *Claims payable under other regulations.* Claims for damage to or loss or destruction of property which are payable under the provisions of regulations in §§ 536.12-536.23 and 536.26 are not payable under the provisions of the regulations in this section, and no stoppage of pay will be made under the provisions of this section to reimburse the Government for payments made under such other regulations.

(2) *Claims resulting from negligence.* Claims for damage to or loss or destruction of property resulting from simple negligence, whether or not within the scope of employment, are not payable under the provisions of this section.

(3) *Claims of subrogees.* Claims of subrogees are not within the provisions of the regulations in this section. Any portion of the claim covered by insurance will be disallowed.

(4) *Claims for personal injury or death.* Claims for personal injury or death are not payable under the provisions of the regulations in this section.

(5) *Acts or omissions within scope of employment.* Claims for damage to or loss or destruction of property resulting from acts or omissions while the offender is acting within the scope of his employment, even though otherwise within the scope of AW 105, are not payable under the provisions of the regulations in this section. (See §§ 536.12-536.23.)

(6) *Absence of riotous, violent, and disorderly conduct.* Claims arising from larceny, forgery, deceit, embezzlement, fraud, misappropriation, and misapplication, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous, violent, or disorderly conduct, are not payable under the provisions of the regulations in this section.

(7) *Government property.* Reimbursement for damage to or loss or destruction of property of the United States may not be required under the provisions of the regulations in this section.

(c) *Procedure*—(1) *Sections 536.1-536.10 applicable.* So far as applicable, the procedure set forth in §§ 536.1-536.10 will be followed as to claims within the provisions of the regulations in this section. The claims officer appointed under §§ 536.1-536.10 will constitute the board of officers under Article of War 105.

(d) *Conditions of payment.* Prior to payment of any claim within the provisions of the regulations in this section each of the following conditions must be fulfilled:

(1) Amount of the damage, loss, or destruction must be determined.

(2) Claim must relate to property only, not including property of the Government.

(3) Claims resulting from simple negligence will not be recognized.

(4) Riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or reckless disregard of property rights, must be a proximate cause.

(5) Subrogation claims will not be recognized.

(6) Payment must be recommended in the claims officer's report and approved personally by the offender's commanding officer.

(7) Commanding officer personally must have ordered a stoppage of pay.

(8) Claims payable under the provisions of §§ 536.12-536.23 are not payable under the provisions of the regulations in this section.

(9) Foreign claims payable under the provisions of § 536.26 are not payable under the provisions of the regulations in this section.

(10) Personnel claims payable under the provisions of AR 25-100 (Claims of military personnel and civilian employees for property damaged, lost, destroyed, captured, or abandoned in the service) are not payable under the provisions of the regulations in this section. (41 Stat. 808; 10 U. S. C. 1577)

§ 536.26 *Claims for damage to or loss or destruction of property or for personal injury or death caused by Army forces in foreign countries*—(a) *Scope.* Claims for damage to or loss or destruction of real or personal property, and for personal injury or death, caused by Army forces, or individual members (whether military personnel or civilian employees) thereof, or otherwise incident to non-combat activities of such forces, in a foreign country to public property located therein or to the privately owned property, or to the persons, of inhabitants of such country are within the foreign claims provisions of the act of January 2, 1942 (55 Stat. 880), as amended by act of April 22, 1943 (57 Stat. 66; 31 U. S. C., Sup., 224d). The word "claims" as used in this section refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and states, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Army in the procurement of services or supplies.

(b) *Preemptive of other claims provisions.* Claims within the scope of the foreign claims provision and which but for the existence of that provision would be within the provision of §§ 536.12 to 536.23 or § 536.25 will be settled under the provisions of this section, which are preemptive of such other claims provisions.

(c) *Territorial application.* The provisions of the regulations in this section are applicable to claims arising out of accidents or incidents occurring in foreign countries, including territorial waters thereof. Claims arising at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States may be approved hereunder if the claims are otherwise within the provisions of the regulations in this section.

(d) *Bailed personal property.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government under an agreement, express or implied, are payable under the provisions of the regulations of this section even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction; except as payment may be barred by the provisions of paragraph (k) of this section, the cause of loss is immaterial. Claims payable under this paragraph may, if deemed preferable as in the best interests of the Government, be processed as contract claims. Claims for rent of personal property are not payable under this section.

(e) *Use and occupancy of real property.* Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, express or implied, or otherwise, are payable under the provisions of the regulations of this section even though legally enforceable against the Government, as contract claims; payment may, however, be precluded by the provisions of paragraph (k) of this section. Claims payable under this paragraph may, if deemed preferable as in the best interests of the Government, be processed as contract claims. Claims for rent of real property are not payable under this section.

(f) *Other noncombat activities.* Claims for damage to or loss or destruction of property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Army, are payable under the provisions of this paragraph if otherwise incident to the noncombat activities of the Army. In general the claims within the above category are those arising out of authorized activities which are peculiarly Army activities having little parallel in civilian pursuits and to situations which historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present or if present and though occurring within the scope of their employment is at least less obvious or less personal but where, because of the peculiar nature of the activity or of the resulting damage or injury, the burden of the loss should be borne rather by the Government than by the particular individual on whom the loss initially fell. Included also are claims arising out of activities such as those involving the use of explosives, whether or not involving negligent acts or omissions, of which damage or injury is a natural consequence. For example, included are claims for damage or injury arising out of, and which are natural or probable results or incidents of, maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft, use of barrage balloons, escape of horses, use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions, movement of combat vehicles or other vehicles, de-

signed especially for military use, and use and occupancy of real estate.

(g) *Elements of damage in case of personal injury and death.* Actual and reasonable medical and hospital expenses, reasonable compensation for physical pain and suffering, and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. In computing damages in cases of personal injury or death, local standards will be taken into consideration. In case of death, only one claim arises; the amount awarded therefor will be apportioned among the beneficiaries, and in the proportions, prescribed by the law or custom of the place in which the claim arises.

(h) *Persons excluded as claimants.* The following classes of claimants are among those excluded:

(1) Persons not inhabitants of the country in which the claim arises. The word "inhabitant" as used in this section refers only to those who dwell or reside in the country in which the claim arises. Citizenship of, or legal domicile in, such country is not required; transients having no abode or dwelling place in such country are not included. An inhabitant of any dominion, state, province, colony, territory, or possession constituting a part of a foreign country will be deemed an inhabitant of such foreign country within the meaning of this section as to a claim arising in any part of such country. The status of the decedent will control in cases of claims based on death.

(2) Military personnel of the United States.

(3) Nationals of a country at war with the United States, or of any ally of such enemy country, except as the foreign claims commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

(4) United States citizens not inhabitants of the country in which the claim arises.

(i) *Claims excluded.* The following classes of claims are excluded: Claims purely contractual in character; private contractual and domestic obligations of individual military personnel or civilian employees; claims based solely on compassionate grounds; bastardy claims; claims for patent infringement; claims arising in the Philippine Islands out of acts or omissions outside the scope of employment of personnel of the Philippine Army called into the service of the armed forces of the United States or other Philippine personnel; and workmen's compensation claims. If the claim is within the scope of any provision made for the payment of workmen's compensation claims (United States Employees' Compensation Act of September 7, 1916, as amended, or Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, as amended, or local law or custom), such specific remedy is exclusive; if, however, there is no compensation provision, or if the claim is not within the scope of any such provision, such claim may be considered under this section.

(j) *Contributory negligence.* No claim will be allowed where the damage, loss, destruction, injury or death is proximately caused in whole or in part by negligence or wrongful act on the part of the claimant, his agent, or employee, unless under the law or custom of the place where the claim arises such negligence or wrongful act is not recognized generally as a bar to recovery on tort claims, in which case such local law or custom will be applied so far as practicable in determining the effect of such negligence or wrongful act. Such local law or custom will normally be followed in determining whether contributory negligence, if pertinent, is present.

(k) *Combat activities.* Claims for damage to or loss or destruction of property, or for personal injury or death, resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act.

(l) *Claims of subrogees.* Settlement will be made solely with the insured, rather than with the insurer or with both the insured and the insurer, in cases of damage, loss, destruction, injury, or death covered by insurance. No inquiry will be made into, nor determination made of, the relative interests as between insured and insurer. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount allowed will be made in the name of the insured. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney, insurance policy provision, or other documentary evidence satisfactory to the Foreign Claims Commission. The foregoing provisions will be equally applicable in cases of subrogation based other than on insurance. Claims by subrogees in their own right are not within the scope of this section and will not be considered.

(m) *Claims within provisions of other regulations.* Claims for damage to or loss or destruction of property, or for personal injury or death, arising out of accidents or incidents occurring in foreign countries but not within the provisions of the regulations of this section for the reason that the claimant is not an inhabitant of the country in which the accident or incident occurred or for any other reason may be processed under the military claims provision (§§ 536.12 to 536.23), Article of War 105 (§ 536.25) or the personnel claims provision (§ 536.27) if applicable. Claims for damage to or loss or destruction of personal property of military personnel or civilian employees of the Army occurring incident to their service will first be considered under the provisions of § 536.27 even though the claimant is an inhabitant of the country in which the accident occurred; the provisions of § 536.27, if applicable, take precedence over the provisions of the regulations in this section. Such claims of civilian employees, but not of military personnel, found not to be payable under the provisions of § 536.27 may then be considered under the provisions of the regulations in this section. Claims of such employees for

damage to or loss or destruction of property not incident to their service are payable under the provisions of this section on the same basis as are claims of persons not civilian employees of the Army, except that claims of civilian employees for clothing being worn at the time when damaged, lost, or destroyed, and claims by such persons for souvenirs, ornamental jewelry, or articles acquired to be disposed of as gifts are not payable under the provisions of this section unless the claimant was, at the time of the occurrence, off duty and also at such time not subject to military law.

(n) *Statute of limitations.* No claim may be paid under the Foreign Claims Act unless presented within 1 year after the occurrence of the accident or incident out of which such claim arises except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944. Any claim not in excess of \$1,000 arising out of an accident or incident occurring on or after May 27, 1941, and prior to December 7, 1941, is barred unless it was presented within 1 year after the date of such accident or incident. Claims, regardless of amount, arising out of accidents or incidents occurring subsequent to December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944.

(o) *Foreign claims commissions.* It is the policy of the Department of the Army to provide one or more foreign claims commissions for each foreign theater of operations, base, or comparable command in which claims against the Government within the provisions of this section may arise. A sufficient number of commissions will be appointed to permit the prompt and final settlement of claims within practicable contact with the points where the claims originate. Commissions will be appointed by the Secretary of the Army or may be appointed by the Commanding General of any foreign theater.

(p) *Procedure—(1) Sections 536.1 to 536.10 generally applicable.* So far as not inconsistent with the provisions of this section, the procedure set forth in §§ 536.1-536.10 will be followed as to claims within the provisions of this section. Investigation of claims arising out of accidents or incidents occurring in foreign countries, and of accidents and incidents occurring in foreign countries which may give rise to claims, whether within the foreign claims provision, or apparently within the provisions of other regulations (see §§ 536.12 to 536.23, 536.25, and 536.27) or the payment of which is not provided for by any statute or regulation, will be conducted in a manner similar to that prescribed in §§ 536.1-536.10, and will be of the scope, completeness, and character directed therein to the extent that the exigencies of the service will permit. Direct correspondence within the command claims service, and between officers of the command claims service and other personnel within the command, is authorized. Any claim will be considered if it states substantially the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or in-

cident out of which the claim arose and an estimate or statement of the damage, loss, or destruction, and the amount claimed on account of personal injury or death, resulting. The claim should, before approval, be signed by or on behalf of the claimant and should, if practicable, be under oath.

(q) *Conditions of payment.* Prior to payment of any claim within the foreign claims provision each of the following conditions must be fulfilled:

(1) The amount of the damage, loss, or destruction, or the amount payable on account of the injury or death, must be determined.

(2) The payment must not exceed \$5,000, but claims in excess of that amount may be reported to Congress for consideration.

(3) The claim must be presented within 1 year after the occurrence of the accident or incident out of which the claim arises.

(4) Claims by subrogees will not be recognized except as an element of the subrogator's claim.

(5) Negligence or wrongful act of the claimant, in whole or in part the proximate cause, bars a claim unless not a bar to recovery on tort claims under local law or custom.

(6) The damage, loss, destruction, injury, or death must not have resulted from action by the enemy or directly or indirectly from any act by armed forces engaged in combat.

(7) The property lost, damaged, or destroyed must belong to an inhabitant of the foreign country in which the accident or incident occurred, or belong to the country itself or a political subdivision thereof.

(8) The injury or death must be to an inhabitant of the foreign country where the accident or incident occurred.

(9) If the claimant is a national of a country at war with the United States, or of any ally of such enemy country, there must be a determination by the foreign claims commission or by the local military commander that the claimant is friendly to the United States.

(10) The claim must be approved by a foreign claims commission and, if in excess of \$2,500, must be approved by the theater, base, or comparable commander or The Judge Advocate General.

(11) The claimant must accept, in full satisfaction and final settlement, the amount approved if less than the full amount claimed. (55 Stat. 880, as amended; 31 U. S. C. Sup., 224d)

§ 536.27 *Claims of military personnel and civilian employees for property damaged, lost, destroyed, captured, or abandoned in the service—(a) Scope.* Claims of military personnel and of civilian employees of the Army for damage to or loss, destruction, capture, or abandonment of personal property, reasonable, useful, necessary, or proper under the attendant circumstances, occurring incident to their service. Claims within the scope of the Military Personnel Claims Act of 1945 and this section and which would otherwise be within the provisions of §§ 536.12-536.23, 536.25 and 536.32 will be settled under the provisions of this section.

(b) *Classes of claims payable.* Claims are payable under the provisions of this section when damage, loss, destruction, capture, or abandonment of personal property occurs under any of the following circumstances:

(1) *Saving Government property or human life.* Where property is damaged, lost, destroyed, or abandoned in consequence of the claimant having given his attention to the saving of property belonging to the United States or to the saving of human life of another: *Provided*, such Government property or such human life was in danger at the same time and under similar circumstances and the situation was such that the claimant could have saved all or part of the property in relation to which claim is made if he had elected to do so.

(2) *Being engaged in military duties in connection with the disaster.* Where property is damaged, lost, destroyed, or abandoned while the claimant was engaged in the performance of authorized military duties in connection with the disaster in which such damage, loss, destruction, or abandonment occurred, provided the situation was such that the claimant could have saved all or part of the property in relation to which claim is made if he had not been engaged in the performance of such military duties.

(3) *Property endangered by efforts to save Government property or human life.* Where property becomes endangered in consequence of the claimant giving his attention to the saving of property belonging to the United States or to the saving of human life of another and as a result thereof is damaged, lost, destroyed, or abandoned.

(4) *Performing military duties in connection with civil disturbance, public disaster, or disorders.* Where property is damaged, lost, destroyed, or abandoned in consequence of the claimant performing military duties in connection with civil disturbance, with public disaster, or with disorders involving persons subject to military law.

(5) *Property subjected to extraordinary risks.* Where property is damaged, lost, destroyed, or abandoned as a direct result of extraordinary risks to which it has been necessarily subjected in consequence of the performance by the claimant of noncombat military duties.

(6) *Marine disaster.* Where property is damaged, lost, destroyed, or abandoned incident to the service of the claimant in consequence of shipwreck, fire on board, collision, sinking, capsizing, or stranding of a vessel, or perils of the sea.

(7) *Aircraft disaster.* Where property is damaged, lost, destroyed, or abandoned incident to the service of the claimant in consequence of hazards in connection with aircraft.

(8) *Property furnished to others.* Where property is damaged, or lost to the claimant, in consequence of the claimant having furnished it, at the direction or request of superior authority or by reason of military necessity, to others in immediate and urgent need thereof.

(9) *Property used for benefit of Government.* Where property is damaged, lost, destroyed, or abandoned while be-

ing used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(10) *Property located at quarters or other authorized places.* Where property is damaged or destroyed by fire, flood, hurricane, or other serious occurrence, while located at:

(i) Quarters wherever situated, occupied by the claimant, which were assigned to him, or otherwise provided in kind, by the Government; or

(ii) Quarters not within continental United States, occupied by the claimant, but not assigned to him, or otherwise provided in kind, by the Government (for the purposes hereof Alaska is deemed to be not within continental United States), except where the claimant, if a civilian employee, is a local inhabitant or not a national of the United States; or

(iii) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see subdivisions (i) and (ii) of this subparagraph), designated by superior authority for the reception of the property.

(11) *Transportation losses.* Where property, including baggage checked or in personal custody, is damaged, lost or destroyed incident to transportation by a carrier, an agent or agency of the Government, or private conveyance:

(i) When shipped under order; or

(ii) In connection with travel under orders irrespective of the purpose of such travel; or

(iii) In connection with travel in performance of military duty with or without troops.

Such claims may be approved only to the extent of the weight limit of the claimant's regulation allowance of baggage permitted to be shipped at Government expense.

(12) *Negligence of the Government.* Where property is damaged, lost, destroyed, or abandoned incident to the service of the claimant and a proximate cause of such damage, loss, destruction, or abandonment was the negligent act or omission of agents or employees of the Government acting within the scope of their employment; *Provided*, Claims which are cognizable under the Federal Tort Claims Act of August 2, 1946 (60 Stat. 812) are not payable under these regulations for the reason that the remedy provided by the Federal Tort Claims Act is exclusive with respect to claims within its purview. See §§ 536.12-536.23 and 536.26, in cases where the provisions of this part are not applicable.

(13) *Abandonment or destruction.* Where property is abandoned or destroyed:

(i) By order of superior authority, or

(ii) By reason of military emergency requiring such abandonment or destruction: *Provided*, if the claimant is a civilian employee not subject to military law, the abandonment or destruction occurred incident to the service of the claimant.

(14) *Enemy action.* Where property is damaged, destroyed, or captured by the enemy or is destroyed to prevent its falling into the hands of the enemy: *Pro-*

vided, if the claimant is a civilian employee not subject to military law, the damage, destruction, or capture occurred incident to the service of the claimant.

(15) *Lost in the field during campaign.* Where property is damaged, lost, destroyed, captured, or abandoned in the field incident to combat or to movement which is part of a combat mission: *Provided*, if the claimant is a civilian employee not subject to military law, the damage, loss, destruction, capture, or abandonment occurred incident to the service of the claimant.

(16) *Belligerent activities.* Where property is damaged, lost, destroyed, captured, or abandoned by reason of hostile or belligerent activities in the course of warfare to which the United States is not a party, confiscation, guerrilla activity, or organized brigandage, in a foreign country in which the claimant is present by reason of the performance of his duties for the Government of the United States: *Provided*, if the claimant is a civilian employee not subject to military law, the damage, loss, destruction, capture, or abandonment occurred incident to the service of the claimant.

NOTE: Any particular claim may be within one or more of the above classes. Civilian employees subject to military law are for the purposes of this section considered as military personnel. Claims of military personnel, and civilian employees subject to military law, based on subparagraphs (1) to (5), (8) to (11), or (13) to (16) of this paragraph are always incident to service. Claims of all personnel based on subparagraphs (6), (7), or (12) of this paragraph are payable only if the damage, loss, destruction, capture or abandonment occurred incident to the service of the claimant. Claims of civilian employees not subject to military law based on subparagraphs (1) or (3) or (6) to (16) of this paragraph are payable only if the damage, loss, destruction, capture, or abandonment occurred incident to the service of the claimant. Subparagraphs (2), (4), and (5) of this paragraph are not applicable to claims of civilian employees not subject to military law.

(c) *Claims not payable.* Claims otherwise within the scope of paragraph (b) are nevertheless not payable under the provisions of this section (but see §§ 536.12-536.23, 536.25 and 536.26) when the damage, loss, destruction, capture, or abandonment involves any of the following classes of property or when losses occur under any of the following circumstances:

(1) *Clothing being worn.* Clothing being worn at the time when damaged, lost, or destroyed.

(2) *Unserviceable property.* Worn-out or unserviceable property.

(3) *Souvenirs, etc.* Souvenirs, ornamental jewelry, and articles acquired to be disposed of as gifts.

(4) *Intangible property.* Chooses-in-action, or evidences thereof, such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and travelers' checks.

(5) *Government property.* Property owned by the United States, except such property for which the claimant is responsible to an agency of the Government other than the Army.

(6) *Non-personal items.* Property not personal to the use of the claimant, such as wearing apparel of other members of the claimant's household.

(7) *Motor vehicles.* Motor vehicles, of any type, except in cases where the damage, loss, destruction, capture, or abandonment occurred prior to July 1, 1942.

(8) *Enemy property.* Property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except as it is determined that the claimant is friendly to the United States; property of prisoners of war or interned enemy aliens; and property of civilian employees of questionable loyalty to the United States or who have collaborated with an enemy, or with an ally of an enemy, of the United States.

(9) *Losses of subrogees.* Losses of insurers and other subrogees.

(10) *Losses recoverable from insurer.* Losses, or any portion thereof, which have been recovered or are recoverable from an insurer. See paragraphs (k) and (l) of this section.

(11) *Losses recoverable from carrier.* Losses, or any portions thereof, which have been recovered or are recoverable from a carrier. See paragraphs (h) to (m) of this section.

(12) *Losses in quarters.* Where damage, loss, destruction, capture, or abandonment occurs at quarters occupied by the claimant within continental United States (excluding Alaska) which are not assigned to him, or otherwise provided in kind, by the Government.

(13) *Losses of seamen.* Losses of merchant seamen, and of Army seamen, to any part of which marine or war risk insurance issued by War Shipping Administration is applicable.

(14) *Contractual coverage.* Losses, or any portions thereof, which have been recovered or are recoverable pursuant to contract.

(15) *Negligence of claimant.* Where the damage, loss, destruction, capture, or abandonment was caused in whole or in part by any negligence or wrongful act on the part of the claimant, or of his agent or employee acting within the scope of his employment.

(16) *Losses concurrent with or after death.* Property damaged, lost, destroyed, captured, or abandoned concurrently with or subsequent to death.

(17) *Federal Tort Claims Act.* Claims cognizable under the provisions of the Federal Tort Claims Act of 2 August 1946 (60 Stat. 812). (See § 536.29.)

NOTE: Property, or the circumstances under which damage, loss, destruction, capture, or abandonment occurs, may be within one or more of the above categories.

(d) *Type and quantity of property.* Claims are payable under this section only for the damage, loss, destruction, capture, or abandonment of such types of tangible personal property including money, and such quantities or amounts thereof, as shall be determined by the approving authority to be reasonable, useful, necessary, or proper under the attendant circumstances. Among such items of personal property is such property as by law or regulations is required

to be possessed or used by military personnel or civilian employees of the Army incident to their service. Claims which are otherwise within this section will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, destruction, capture, or abandonment, or for the sole reason that the claimant was not the legal owner of the property in relation to which the claim is made; for example, property reasonable, useful, necessary, or proper to the claimant may be the subject of a claim even though borrowed from others.

(e) *Expensive articles.* Allowance for expensive articles, or for items purchased at unreasonably high prices, will be based upon fair and reasonable prices for substitute articles appropriate for the claimant under the particular circumstances of this service.

(f) *Statute of limitations.* No claim may be paid under this section unless presented in writing within 1 year after the occurrence of the accident or incident out of which the claim arises; *Provided*, that if the accident or incident occurs in time of war, or if war intervenes within 2 years after its occurrence, a claim may, if good cause for delay is shown, be presented within 1 year after peace is established. See § 536.29 for statute of limitations applicable to cases cognizable under the Federal Tort Claims Act of August 2, 1946 (60 Stat. 812).

(g) *Application to pending claims.* This section applies to all claims otherwise within the scope hereof, not heretofore paid, arising out of accidents or incidents occurring on or after December 7, 1939, including claims, or portions thereof, heretofore presented and disapproved as not within the scope of the then applicable laws and regulations.

(h) *Demand on carrier.* Whenever property is damaged, lost, or destroyed while being transported by a carrier, the claimant should make demand in writing upon the last carrier known or believed to have handled the shipment for reimbursement for such damage, loss, or destruction. If more than one bill of lading or contract was issued, a separate demand should be made upon the last carrier under each bill of lading or contract. Such demand should be made prior to the filing of a claim against the Government under this section and within the period provided by statute, by regulations of the Interstate Commerce Commission, or by other applicable limitation and, in any event, within 9 months subsequent to the date of delivery of the shipment or, if no portion of the shipment is delivered, within 9 months subsequent to the date when delivery would in the normal course have been made. The liability of the carrier is governed by the terms of the bill of lading or contract. The liability of a rail carrier with respect to property shipped on a Government bill of lading is normally limited to 10 cents per pound for each article damaged, lost, or destroyed; the liability is normally limited to 30 cents per pound if shipped by motor carrier. As the portion of any loss which is recovered or recoverable from a carrier must be deducted from the amount otherwise payable by the Government

under this section (see paragraph (c) (11) of this section), it is important that the claimant accept from the carrier any payment correctly determined in satisfaction of the carrier's limited liability as above outlined. Copies of such demand and of any subsequent demands and related correspondence, as well as the originals of any replies, should be retained by the claimant for presentation with any claim subsequently filed against the Government under the provisions of these regulations. In the event the carrier denies liability it will be presumed that no amount is recoverable, and if the carrier fails to reply to the claimant's demand within a reasonable time it will be presumed that the carrier denies liability.

(i) *Form of demand on carrier.* It is suggested that demands on carriers (see paragraph (h) of this section) be made by letter in substantially the following form:

DEMAND ON CARRIER

(Date)

(Name of carrier)

(Address)

GENTLEMEN: Claim is presented by the undersigned for ----- in connection with the following shipment:
(Loss or damage)

from -----
(Consignor) (City, town or station)

to -----
(Consignee) (City, town or station)

in connection with
(Bill of lading, contract, or baggage check)
No. -----, dated -----, covering shipment of
(Household goods, footlocker, flight bag, etc.)
described as follows:

| Description of container (or of article if uncrated) | Approximate weight (lbs.) | Nature and extent of damage | Amount claimed |
|--|---------------------------|-----------------------------|----------------|
| ----- | ----- | ----- | \$----- |
| ----- | ----- | ----- | ----- |
| ----- | ----- | ----- | ----- |
| ----- | ----- | ----- | ----- |
| Total amount of claim. | ----- | ----- | ----- |

Detailed description of property lost or damaged, including identifying marks on containers:

Remarks:

Yours very truly,

(Name)

(Address)

(j) *Failure to make demand on carrier.* In cases where, under this section (see paragraph (h) of this section), demand on a carrier is required and the claimant fails to make such demand seasonably or fails to make reasonable efforts to collect the amount recoverable from the carrier, the amount otherwise payable under this section will be reduced by the maximum amount recoverable from the carrier if claim therefor had been filed seasonably with the carrier: *Provided*, that the circumstances of the claimant's service were not such as to preclude seasonable filing of such claim with the carrier: *And provided*

further, that it shall not be found that a demand in any event was impracticable or would have been unavailing.

(k) *Demand on insurer.* Whenever property damaged, lost, destroyed, captured, or abandoned was insured in whole or in part (see paragraph (c) (10) of this section), the claimant should make demand in writing upon the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made prior to the filing of claim against the Government under this section and within the time limit provided in the policy. Copies of such demand and of any subsequent demands and related correspondence, as well as the originals of any replies, should be retained by the claimant for presentation with any claim subsequently filed against the Government under this section. In the event the insurer denies liability it will be presumed that no amount is recoverable, and if the insurer fails to reply to the claimant's demand within a reasonable time it will be presumed that the insurer denies liability.

(l) *Failure to make demand on insurer.* In cases where, under this section (see paragraph (k) of this section), demand on an insurer is required and the claimant fails to make such demand seasonably or fails to make reasonable efforts to collect the amount recoverable from the insurer, the amount otherwise payable under this section will be reduced by the maximum amount recoverable from the insurer if claim therefor had been filed seasonably with the insurer: *Provided*, that the circumstances of the claimant's service were not such as to preclude seasonable filing of such claim with the insurer: *And provided further*, that it shall not be found that a demand in any event was impracticable or would have been unavailing.

(m) *Transfer of rights against carrier or insurer.* Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under this section, without deduction of the amount for which the carrier or insurer is deemed liable, the claimant by the acceptance of payment of such claim under this section will be deemed to have assigned to the United States, to the extent of the deductions not so made, his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the United States a written assignment thereof together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer.

(n) *Proration of recovery from carrier or insurer.* When the amount recovered or recoverable by the claimant from a carrier or insurer is less than the total loss, the amount so recovered or recoverable will be prorated between:

- (1) The amount approved; and
- (2) The sum of:
 - (i) The amount disapproved for items not reasonable, useful, necessary, or proper;

(ii) The amount disapproved for items not personal to the claimant's use;

(iii) The disapproved portion of the actual value of expensive articles and of items purchased at unreasonably high prices; and

(iv) The amount disapproved as the portion of damage allocated to excess baggage (see paragraph o of this section).

(o) *Proration in event of excess baggage.* Where claim is made under paragraph (b) (11) of this section for damage, loss, or destruction of property comprising a shipment the total weight of which is in excess of the regulation allowance of baggage permitted to be shipped at Government expense, there may be approved for payment only that proportionate part of the total damage, loss, or destruction which the regulation allowance on the basis of weight bears to the total weight shipped. When two or more shipments are made under or in connection with the same orders and the regulation allowance is exhausted or exceeded by the first or by the first and succeeding shipments, all further shipments will be deemed to be not within this section.

(p) *Claims within provisions of other regulations.* Claims within the scope of this section and which but for the existence of the Military Personnel Claims Act of 1945 and this section would be within the provisions of §§ 536.12-536.23, 536.25 and 536.26 will be settled under the provisions of this section which are preemptive of other claims provisions. Claims for damage, loss, destruction, capture, or abandonment not within the provisions of this section should be processed under the military claims provision (§§ 536.12-536.23), or under Article of War 105, or under the foreign claims provision (§ 536.26) if applicable.

(q) *Sections 536.1 to 536.10 applicable.* So far as not inconsistent with this section, the procedure set forth in §§ 536.1 to 536.10 will be followed as to claims within the provisions of this section.

(r) *Claimants.* Claims may be presented by the military personnel or civilian employee (or his duly authorized agent or legal representative) incident to whose service the property was damaged, lost, captured, destroyed, or abandoned. The claim, if filed by an agent or legal representative, should show the title or capacity of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, or other fiduciary. In the event of the death of the military personnel or civilian employee subsequent to the accident or incident out of which the claim arose and prior to his filing a claim in person (or by a duly authorized agent), the claim may be presented by any of the following:

- (1) A duly appointed executor or administrator;
- (2) The widow or widower of the decedent;
- (3) Any child or other descendant of the decedent;
- (4) The father or mother of the decedent; or
- (5) Any brother or sister, or any descendant of any brother or sister, of the decedent.

(s) *Form of claim.* Claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on WD Form 30B. Attention is directed to the provisions of paragraph (t) of this section outlining specific types of evidence required in particular classes of claims; careful compliance with such requirements is essential to avoid delays resulting from the necessity of returning the claim for amplification.

(t) *Evidence in support of claim.* The claim should be supported by the data required by the claim form (WD Form 30B) and, when and to the extent applicable and feasible, supplemental data and exhibits as follows:

(1) Sworn statements, by the claimant's commanding officer if possible, or by others having personal knowledge of the facts to corroborate the claimant's statement of facts, in the claim form and other evidence submitted in support of the claim. The claimant should so far as practicable, and prior to filing the claim, obtain such evidence by personal correspondence or otherwise.

(2) Statement of property recovered or replaced in kind.

(3) Statement regarding insurance, if any such statement should include:

- (i) Type and amount of insurance.
- (ii) Insurance policy, or copy thereof, or explanation as to inability to furnish same.

(iii) Certificate in substantially the following form:

CERTIFICATE OF DEMAND ON INSURER

 (Date)
 I, the undersigned, hereby certify that on -----
 I made written demand on -----
 (Date) ----- in accordance with the terms and conditions of insurance coverage by said insurer by properly mailing to such insurer a letter, a copy of which, together with the originals or copies of the policy and other agreements evidencing such coverage, is attached to this certificate. I further certify that there are also attached to this certificate originals of all replies (if any) received from, and copies of all further correspondence (if any) sent to, said insurer.

 (Signature of claimant)

(4) Itemized bill for repairs, if damaged property has been repaired; or written estimates, by at least one competent disinterested witness, of the probable cost of repairs, if the property is reparable and has not been repaired.

(5) In any case where the military personnel or civilian employee is deceased, or if for any other reason the claim is submitted by an agent or legal representative, an attested copy of the power of attorney or a certificate of appointment of the executor or administrator or other fiduciary or, if no such appointment has been made, a statement as to the relationship which the person presenting the claim bears to the deceased.

(6) If claim is asserted under paragraph (b) (1) of this section (saving Government property or human life), or under paragraph (b) (2) of this section

(being engaged in military duties in connection with the disaster):

(i) A statement in detail as to the claimant's location, acts, and conduct immediately before, during, and immediately after the disaster, and stating facts (not mere conclusions) from which it can be determined whether (if under paragraph (b) (1) of this section) the claimant gave his attention to saving Government property or human life of another instead of property in relation to which claim is made, or whether (if under paragraph (b) (2) of this section) performance of authorized military duties in connection with the disaster prevented the claimant from saving property in relation to which claim is made; and

(ii) A statement in detail of the actual facts and circumstances surrounding the damage, loss, destruction, or abandonment from which it can be determined whether the situation was such that the claimant could have saved property in relation to which claim is made if (under paragraph (b) (1) of this section) he had not elected to save Government property or human life of another, or if (under paragraph (b) (2) of this section) he had not been engaged in the performance of authorized military duties in connection with the disaster.

(7) If claim is asserted under paragraph (b) (3) of this section (property endangered by efforts to save Government property or human life):

A statement in detail of the actual facts and circumstances surrounding the damage, loss, destruction, or abandonment, and as to the claimant's location, acts, and conduct immediately before, during, and immediately after the disaster, stating facts (not mere conclusions) from which it can be determined whether the property in relation to which claim is made was previously in a position of safety but was endangered, and was subsequently damaged, lost, destroyed, or abandoned, as a consequence of the claimant having given his attention to saving Government property or human life of another.

(8) If claim is asserted under paragraph (b) (4) of this section (performing military duties in connection with civil disturbance, public disaster, or disorders), or under paragraph (b) (5) of this section (property subjected to extraordinary risks), or under paragraph (b) (6) of this section (marine disaster), or under paragraph (b) (7) of this section (aircraft disaster):

A statement in detail of the actual facts and circumstances surrounding the damage, loss, destruction, or abandonment.

(9) If claim is asserted under paragraph (b) (8) of this section (property furnished to others), or under paragraph (b) (9) of this section (property used for benefit of Government):

A statement in detail including the date and occasion of furnishing the property, the name and designation of the superior authority directing or requesting such action, and the names of the persons to whom the property was delivered.

RULES AND REGULATIONS

(10) If claim is asserted under paragraph (b) (10) of this section (property located at quarters or other authorized places):

A statement in detail including, if the property was located at quarters, the geographical location thereof, whether such quarters were assigned or otherwise provided in kind by the Government, and whether the quarters were at the time regularly occupied by the claimant, and including, if the property was located at other authorized places, the geographical location thereof, the name and designation of the authority designating such place as a proper place for such property to be left or located, and, including also, whether located at quarters or other authorized place, the actual facts and circumstances surrounding the damage or destruction.

(11) If claim is asserted under paragraph (b) (11) of this section (transportation losses):

(i) Copy of orders authorizing the travel, transportation, or shipment. If such copies are not obtainable, there should be included in lieu thereof a certificate, corroborated if possible by a sworn statement by at least one person explaining the absence of such orders or copies thereof, stating the substance thereof and setting forth sufficient facts to establish the travel, if any, by the claimant and the transportation or shipment of the property.

(ii) Statement specifying the weight limit of claimant's regulation allowance of baggage under the attendant circumstances and total weight of the shipment.

(iii) Statement, in cases where the weight of shipment is in excess of the regulation allowance, showing whether such shipment included any articles not personal to the use of the claimant (such as wearing apparel belonging to members of the claimant's household) and, if so, a list thereof showing the approximate weight of each article.

(iv) In cases of missing baggage or effects, a statement as to the steps taken by the claimant in an effort to locate the property, attaching all correspondence, including replies, with former organizations, hospitals, and other installations.

(v) Statement, in cases where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, setting forth the following:

- (a) Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer.
- (b) Date property was turned over.
- (c) Condition when property was turned over.
- (d) When and where property was packed.
- (e) Methods of packing and crating.
- (f) Date when property was shipped and reshipped.
- (g) Copies of all manifests, bills of lading, and contracts.
- (h) Date and place of delivery of property to claimant.
- (i) Date property was unpacked.
- (j) Statement by quartermaster, transportation officer, or supply officer as to condition of property when received

and delivered, as to handling and storage, as to reasons for and conditions of storage, whether property was handled by local carrier, and whether damage occurred during such handling.

(k) Whether negligence on the part of any Government employee acting within the scope of his employment caused the damage, loss, or destruction.

(l) Whether last common carrier was given a clear receipt.

(m) Whether local civilian carrier was given a clear receipt.

(vi) Certificate, if a carrier is involved, in substantially the following form:

CERTIFICATE OF DEMAND ON CARRIER

 (Date)
 I, the undersigned, hereby certify that on ----- I made written demand
 (Date)
 on ----- by properly mailing
 (Carrier)
 to such carrier a letter, a copy of which is attached to this certificate. I further certify that there are also attached to this certificate originals of all replies (if any) received from, and copies of all further correspondence (if any) sent to, said carrier.

 (Signature of claimant)

(12) If claim is asserted under paragraph (b) (12) of this section (negligence of the Government):

A statement in detail setting forth the actual facts and circumstances surrounding the damage, loss, destruction, or abandonment, including the names and addresses of the Government agents or employees whose negligent acts or omissions caused the damage, loss, destruction, or abandonment, and specifying the acts or omissions claimed to have been negligent and the facts relied upon to establish that such agents or employees were acting within the scope of their employment.

(13) If claim is asserted under paragraph (b) (13) of this section (abandonment or destruction):

A statement in detail by claimant, corroborated if possible by statement from claimant's commanding officer or others having personal knowledge of the facts, stating facts (not mere conclusions) from which it can be determined that the property was abandoned or destroyed by order of superior authority or by reason of military emergency requiring such abandonment or destruction.

(14) If claim is asserted under paragraph (b) (14) of this section (enemy action), or under paragraph (b) (15) of this section (lost in the field during campaign), or under paragraph (b) (16) of this section (belligerent activities):

(i) Copy of orders, or other available evidence, to establish claimant's entry into the area or location involved.

(ii) Any additional evidence (including original receipts, if any, by whom ever issued) to establish (if under paragraph (b) (14) of this section) that the property was damaged, destroyed, or captured by the enemy or was destroyed to prevent its falling into the hands of the enemy, or (if under paragraph (b) (15) of this section) that the property was damaged, lost, destroyed, captured, or abandoned in the field incident to combat or to movement which was part of a

combat mission, or (if under paragraph (b) (16) of this section) that the property was damaged, lost, destroyed, captured, or abandoned by reason of hostile or belligerent activities in the course of warfare to which the United States was not a party, confiscation, guerilla activity, or organized brigandage, in a foreign country in which the claimant was present by reason of the performance of his duties for the Government of the United States.

(u) *Filing of claim.* All claims within the provisions of this section will be submitted to the commanding officer of the organization to which the claimant belongs or with which he is serving if practicable, otherwise to the commanding officer of any post, camp, station, or other military establishment, if practicable the one nearest to the point where investigation of the facts and circumstances can most conveniently be made. Claims may also be submitted to the commanding general of any army or air matériel area within the United States, its territories, and possessions, or to any office of the command claims service in any theater of operations or other command outside the continental limits of the United States. In any case where submission under the foregoing provisions is impracticable, claims may be submitted direct to The Judge Advocate General, Washington 25, D. C. Acceptance of a claim for filing will not be refused even though the claim appears not to be within the provisions of this section.

(v) *Approval and payment approving authorities.* (1) Claims submitted under the provisions of this section will be considered, ascertained, adjusted, determined, settled and, when substantiated as within the provisions of this section, will be approved or disapproved, by any officer or officers designated by The Judge Advocate General from his staff for that purpose, or (subject to such jurisdictional limits as to amount as may be from time to time fixed) by any foreign claims commission designated by him for that purpose. The Judge Advocate General has designated the Chief of the Claims Division, Office of the Judge Advocate General, to approve or disapprove such claims.

(2) *Notice to claimant.* Upon disapproval of a claim by the approving authority, the claimant will be notified in writing of the action taken and the reason therefor.

(3) *Effect of action.* The action of the approving authority in approving or disapproving a claim in whole or in part will be final and conclusive for all purposes.

(4) *Acceptance agreement.* No acceptance agreement by the claimant is necessary, and no such acceptance agreement will be required or included in the file, at any stage in the processing of the claim.

(5) *Payment.* Upon approval of a claim in whole or in part, the claim, with related file, will be transmitted by the approving authority to the appropriate disbursing officer for payment. (41 Stat. 1436; 31 U. S. C. 218-222, as amended by 59 Stat. 225)

§ 536.29 *Claims cognizable under the Federal Tort Claims Act for damage to or*

loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of military personnel or civilian employees of the Army while acting within the scope of their office or employment—(a) *Scope.* Subject to exclusions set forth in paragraph (c) of this section, the act and this section provide the exclusive authorization and procedure whereby the Secretary of the Army, or his designee, may consider, ascertain, adjust, determine and settle claims for \$1,000 or less, accruing on or after January 1, 1945, on account of damage to or loss of property, or on account of personal injury or death, caused in the United States or its territorial possessions by the negligent or wrongful act or omission of military personnel or civilian employees of the Army while acting within the scope of their employment.

(1) Nothing contained in the act or the regulations set forth in this section, abridges the existing legal authority of the Secretary of the Army to consider, ascertain, adjust, determine, settle, or pay any claim on account of damage to or loss of property or on account of personal injury or death, in cases where such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under the act and this section.

(2) The provisions of the act do not apply to:

(i) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(ii) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(iii) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(iv) Any claim for which a remedy is provided by the act of March 9, 1920 (46 U. S. C. 741-752, inclusive) or the act of March 3, 1925 (46 U. S. C. 781-790, inclusive), relating to claims or suits in admiralty against the United States.

(v) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended.

(vi) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(vii) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(viii) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse or process,

libel, slander, misrepresentation, deceit, or interference with contract rights.

(ix) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(x) Any claim arising out of the combatant activities of the military forces during the time of war.

(xi) Any claim arising in a foreign country.

(xii) Any claim arising from the activities of the Tennessee Valley Authority.

(b) *Claims in excess of \$1,000.* The Department of the Army does not have legal authorization to consider administratively claims in excess of \$1,000 which are otherwise cognizable under the act. The claimant's remedy, if any, in such cases is by suit in the United States District Court for the district wherein the claimant is resident or wherein the act or omission complained of occurred, including the United States District Courts for the Territories and possessions of the United States.

(c) *Acts or omissions—(1) Military personnel and civilian employees.* Military personnel and civilian employees whose acts or omissions may give rise to claims within the scope of the act and the regulations set forth in this section, include members of the military forces of the United States and persons acting on behalf of the Department of the Army in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation.

(2) *Scope of employment.* Acts or omissions of military personnel and civilian employees may give rise to claims payable under the provisions of the regulations set forth in this section, only if such acts or omissions occur while such military personnel or civilian employees are acting within the scope of their employment. Activities of military personnel and civilian employees in the course of which such acts or omissions may occur are ordinarily within the scope of employment if the performance thereof is directed, or if of a kind the performance of which is expressly or impliedly authorized, or if the purpose is, at least in part, to serve the Government.

(3) *Proximate cause.* Claims against the Department of the Army for \$1,000 or less, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of military personnel or civilian employees while acting within the scope of their employment, are payable according to this section only where the circumstances are such that the United States, if a private person, would be liable to the claimant under the law of negligence of the place where the act or omission occurred. Acts or omissions involving a lack of reasonable care will be the basis of claims payable under the local law of most jurisdictions. If the proximate cause of the accident or incident is the act or omission of persons other than military personnel or civilian employees, as defined in subparagraph (1) of this paragraph, the claim will not be payable, as a general rule, under local law. If the proximate cause of the accident or incident is the joint or concur-

rent tortious act or omission of military personnel or civilian employees and of one or more persons other than the claimant, his agent, or employee, the claim will be considered, and determined necessarily, under the local law pertaining to joint tort-feasors. Acts or omissions constituting a mere condition without the existence of which the accident or incident could not have occurred, and which are not the proximate cause thereof, will not constitute a proper basis for finding of liability under the applicable local law as a general rule. For example, the mere violation of certain statutory laws or ordinances providing standards of safety may be declared to be negligence (*per se*), but such violations will not constitute the basis of liability under local laws generally unless the unlawful acts or omissions are deemed a proximate cause of the accident or incident in that jurisdiction.

(d) *Contributory negligence.* The law of the place where the act or omission occurred will be followed in determining whether contributory negligence is present under the facts of the accident or incident, and also in ascertaining the effect of contributory negligence as a bar to the claim under consideration. Contributory negligence will constitute an absolute bar to a claim under applicable local law in practically all jurisdictions. The doctrine of comparative negligence is recognized in few places.

(e) *Claims of subrogees.* (1) Settlement of claims not exceeding \$1,000 will be made solely with the insured rather than with the insurer or with both the insured and insurer, in cases of damage, loss, destruction, injury, or death, covered by insurance. No inquiry will be made into the relative interests between insured and insurer. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount approved will be made in the name of and to the insured. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney, insurance policy provisions, or other satisfactory documentary evidence.

(2) The principles set forth in subparagraph (1) of this paragraph, with respect to subrogation arising from insurance contracts, are applicable to all cases of subrogation.

(3) Although a claim filed in the name of a subrogee may not be considered by the Department of the Army under this section pertaining to the settlement of claims for \$1,000 or less, the substantive rights of the subrogee will be determined when properly presented in accordance with the law of the place where the negligent or wrongful act or omission of the Government employee, while acting within the scope of his office or employment, occurred.

(f) *Statute of limitations.* (1) Claims for \$1,000 or less, against the United States, cognizable under the act and the regulations set forth in this section, must be presented in writing to the Department of the Army within 1 year after such claim accrued or within 1 year after August 2, 1946, the date of enactment of the act, whichever is later.

(2) A suit may be filed pursuant to the act if brought within 1 year after such claim accrued or within 1 year after the date of enactment of this act, whichever is later. In the event that a claim for a sum not exceeding \$1,000 is presented to the Department of the Army, the time to institute a suit under the act shall be extended for a period of 6 months from the date of mailing of notice to the claimant by the Department of the Army with respect to the final disposition of the claim, or for a period of 6 months from the date of withdrawal of the claim from the Department of the Army.

(g) *Acceptance of award.* (1) The acceptance by the claimant of any award, compromise, or settlement made pursuant to the act and this section shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the United States and against the employees of the Department of the Army whose act or omission gave rise to the claim.

(2) An acceptance agreement and general release will be required of and signed by the claimant, or claimants, as a condition precedent to payment under the act and this section in all cases except where the claim is for property damage only, and is approved in the amount claimed, and the report of claims officer shows affirmatively that no persons were injured or killed in the accident or incident giving rise to the claim for property damage.

(h) *Attorneys' fees.* (1) The Secretary of the Army or his designee, making an award pursuant to the act and this section, may, as a part of the award, determine and allow reasonable attorneys' fees, which, if the amount awarded is \$500 or more, shall not exceed 10 per centum of the sum approved, and shall be paid to the attorney representing the claimant, out of, but not in addition to, the amount of the award. The limitation of 10 per centum will not apply when the award is less than \$500.

(2) Attorneys' fees may be fixed under subparagraph (1) of this paragraph, only on written request of either the claimant or his attorney.

(i) *Injury or death of military personnel or civilian employees.* (1) Claims on account of personal injury or death of military personnel of the Department of the Army incurred in line of duty will not be considered administratively under the provisions of this section.

(2) Claims on account of personal injury or death of civilian employees of the Department of the Army, to whom the Federal Employees' Compensation Act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended, is applicable, will not be considered administratively under the provisions of this section.

(3) Claims for medical, hospital and burial expenses, on account of injury or death of military personnel or civilian employees of the Army, will be first considered under the provisions of §§ 577.1-577.9 of this chapter and AR 40-505 (Medical Attendance—General Provisions), §§ 577.40-577.46 and AR 40-510 (Dental Attendance), or §§ 536.50-536.53 and AR 30-1830 (Burial Expenses); claims of civilian employees not within the provisions of AR 40-505, 40-510, or

30-1830, may be within the jurisdiction of the United States Employees' Compensation Commission under the provisions of the act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended (§ 536.17 (b) and AR 25-25).

(j) *Approval or disapproval of claims.* Subject to appeal to the Secretary of the Army, claims under the provisions of this section may be approved or disapproved, in whole or in part, by the Chief, Claims and Litigation Group, Office of The Judge Advocate General, Washington 25, D. C.

(k) *Appeal.* (1) Upon disapproval of a claim in whole or in part by the approving authority, the claimant will be notified in writing of the action taken and the reason therefor; and he will in such notice be advised of his right to appeal, stating in such appeal the grounds relied on, to the Secretary of the Army, through the authority disapproving the claim, within 30 days after the receipt by the claimant of such notification. An appeal will be considered as having been taken seasonably if mailed or delivered within 30 days after the receipt by the claimant of such notification. No notice of the right to appeal is necessary if the full amount claimed is approved for payment.

(2) The action of the approving authority in approving or disapproving a claim in whole or in part will be final and conclusive for all administrative purposes unless the claimant appeals in writing to the Secretary of the Army as herein provided.

(l) *Conditions of payment.* Prior to payment by the Department of the Army of any claim within the provisions of the act and this section, each of the following conditions must be fulfilled:

(1) The amount of the damage, loss, or destruction, or the amount payable on account of personal injury or death, must be determined in accordance with the law of the place where the negligent act or omission occurred.

(2) The payment must not exceed \$1,000.

(3) Claims by subrogees will not be recognized except as an element of the subrogor's claim.

(4) The claim must be presented within 1 year after the occurrence of the accident or incident out of which the claim arises or within 1 year after August 2, 1946, the date of enactment of the act, whichever is later.

(5) Negligence or wrongful act of the claimant, constituting a proximate cause, bars a claim in most jurisdictions. However, the effect of contributory negligence on the part of the claimant as a bar to his claim must be determined in each instance in accordance with the law of the place where the act or omission occurred.

(6) The claim must be approved as provided in paragraph (j) of this section, or, on appeal, by the Secretary of the Army.

(7) The claimant must accept, in writing, in full satisfaction and final settlement;

(i) The amount approved for personal injury or wrongful death, even though equal to amount claimed.

(ii) The amount approved for property damage or loss if less than the amount claimed.

(iii) The amount approved for property damage or loss equal to amount claimed when personal injury or death resulted also from the accident or incident giving rise to the claim for property damage, even though no claim is filed on account of the personal injury or death.

(8) Claims payable under the provisions of Article of War 105 are not payable under the provisions of this section.

(9) Claims payable under the provisions of §§ 536.12 to 536.21 are not payable under the provisions of this section.

(10) Foreign claims payable under the provisions of § 536.26 are not payable under the provisions of this section.

(11) Personnel claims payable under the provisions of § 536.27 are not payable under the provisions of this section.

(12) Claims for personal injury or death of military personnel or civilian employees incident to their service are not payable under the provisions of this section.

(m) *Superseded provisions.* With respect to claims for \$1,000 or less, and otherwise cognizable under the act and this section, the Federal Tort Claims Act (60 Stat. 812) repeals all provisions of law, and this section supersedes other regulations, authorizing the Department of the Army to consider, ascertain, adjust, determine, settle, or pay such claims on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of any military personnel or civilian employee of the Department of the Army while acting within the scope of his office or employment. The act and this section provide the exclusive procedure whereby these claims for \$1,000 or less, predicated on negligence, may be processed. See paragraph (a) of this section. (Title IV, 60 Stat. 812.)

ENLISTED MEN ABSENT WITHOUT LEAVE, DESERTERS, AND ESCAPED MILITARY PRISONERS

AUTHORITY: §§ 536.30 to 536.34 and 536.40 issued under R. S. 161, 47 Stat. 1575, 54 Stat. 357, 57 Stat. 372; 5 U. S. C. 22, 10 U. S. C. 1431, 1460, 31 U. S. C. 223b.

DERIVATION: AR 615-300, Mar. 17, 1944; AR 35-2620, June 30, 1943; AR 55-500, July 3, 1943.

§ 536.30 *Apprehension of absentees and deserters—(a) Military personnel.* All military personnel are authorized to arrest absentees and deserters, whatever may be the grade of the person making the arrest or the person arrested.

(b) *Civil personnel.* Any civil officer or citizen may arrest, detain, and deliver an absentee or deserter when authorized by an officer of the Army. Such authority may be given by distributing Form 45 (Descriptive List of Absentee Wanted by United States Army), or in reply to an inquiry in accordance with paragraph (c) of this section.

(c) *Inquiry from civil officer or citizen.* Upon receipt of word by a post or organization commander from a civil officer or other citizen that such civilian intends to arrest, or has arrested, an alleged absentee or deserter from his

post or organization, the commander will ascertain such person's status and will promptly inform the inquirer and the soldier's organization commander (if other than his own) concerning it, by telephone, telegraph, or other expeditious means. If the person held is an absentee or deserter, the commander will request the person holding him either to deliver him to, or request a guard from the nearest military post, or hold him awaiting the arrival of the guard, and will inform such person of his right to payment for his services. (See § 536.32.)

(d) *Guards.* Upon receipt of information that a civil officer, or other civilian, is holding an absentee or deserter, the post commander will cause a guard to be sent with all reasonable speed and in any event not later than 24 hours after receipt of the notification. If it is impracticable for the commanding officer receiving the notification to provide a guard from his command, he will make arrangements with a commander capable of providing a guard, or will report the case to the commanding general of the army concerned.

(e) *Commanding generals of armies (ZI).* Commanding generals of armies (ZI) will take steps to secure the active cooperation of all State and local police forces, and such other officials and organizations as they may deem useful to insure that absentees and deserters are returned promptly to military control.

§ 536.31 *Definitions.*—(a) *Absent without leave.* The status of a person subject to military law who fails to repair at the fixed time to the properly appointed place of duty or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave.

(b) *Absentee.* One who is absent without leave.

(c) *Deserter.* A person who has deserted from a lawful enlistment, call, or draft, in or to the Army of the United States; whose trial is not barred by the thirty-ninth Article of War; who has not been acquitted or convicted of such desertion, or pardoned; who has not been discharged from the enlistment, call, or draft from which he deserted; and who has not been dishonorably discharged from a subsequent enlistment, call, or draft.

(d) *Involuntary absence.* Absence without leave or desertion by a person who has been entrapped, induced, or in any manner caused to absent himself or desert by act or procurement of superior military authority.

(e) *Military prisoner.* A garrison prisoner, whether detained, arraigned, or sentenced; or a general prisoner. (See §§ 512.1–512.3 of this chapter.)

(f) *Military post.* A military post, camp, or station at which facilities exist for the reception and custody of prisoners. It excludes troops in campaign, maneuvers or on the march, unless the commanding officer of such troops thinks proper to receive an absentee, deserter, or escaped military prisoner. It also excludes recruiting offices.

(g) *United States.* The continental United States exclusive of Alaska and the Canal Zone.

§ 536.32 *Payment for arrest and delivery of enlisted men absent without leave, deserters, and escaped military prisoners.*—(a) *Services for which payment will be made.*—(1) *Arrest.* Fifteen dollars will be paid to the civil officer or other person arresting:

(i) An enlisted man absent without leave when the arrest and detention is authorized by a military officer.

(ii) A deserter (other than a Philippine Scout), or

(iii) An escaped military prisoner (other than one who was a Philippine Scout immediately before becoming a prisoner), and turning him over to a guard sent for him. For the same services with respect to a deserter from the Philippine Scouts or an escaped military prisoner who immediately before becoming such was a Philippine Scout, \$10 will be paid.

(2) *Arrest and delivery.* Twenty-five dollars will be paid to the civil officer or other person arresting and delivering—

(i) An enlisted man absent without leave when the arrest and detention is authorized by a military officer.

(ii) A deserter (other than a Philippine Scout), or

(iii) An escaped military prisoner (other than one who was a Philippine Scout immediately before becoming a prisoner) at a military post. For the same services with respect to a deserter from the Philippine Scouts or an escaped military prisoner who immediately before becoming such was a Philippine Scout, \$15 will be paid.

(b) *To whom paid.* The payment mentioned in paragraph (a) (1) or (2) of this section, as the case may be, will be made to the person or persons actually making the arrest of an enlisted man absent without leave, a deserter, or an escaped military prisoner and the turnover or delivery of the person arrested. If two or more persons join in performing these services payment may be made to them jointly. Payment will be made whether the enlisted man absent without leave, deserter, or escaped military prisoner surrenders or is apprehended. Payment will not be made merely for information leading to an arrest, or for an arrest not followed by the return of the person arrested to military control.

(c) *By whom paid.* The payments mentioned in paragraph (a) of this section will be made by disbursing officers of the Finance Department, and will be in full satisfaction of all expenses of arresting, keeping, and delivering the enlisted man absent without leave, deserter, or escaped military prisoner.

§ 536.33 *Surrender on advice of attorney.* When a deserter or an escaped military prisoner surrenders himself to military authorities upon advice of his attorney, the attorney is not entitled to reward offered for apprehension of such deserter or escaped military prisoner, his claim for such reward being incompatible with his duty to his client. (See 27 Comp. Dec. 482.)

§ 536.34 *Detective agencies.* (a) The act of March 3, 1893 (27 Stat. 591; 5 U. S. C. 53; M. L. 1939, sec. 643), provides:

That hereafter no employee of the Pinkerton Detective Agency, or similar agency, shall be employed in any Government service or by any officer of the District of Columbia.

(b) A detective agency could not legally be employed to apprehend and deliver a deserter or an escaped military prisoner so as to obligate the Government to pay therefor, but information having come to the agency that a certain person was a deserter or an escaped military prisoner, the reimbursement of the actual expenses not exceeding \$25 incurred in delivering him from the place found into the hands of the Army officers at the nearest post is not considered an "employment" within the prohibition of the act of March 3, 1893. (See MS. Comp. Gen., AD 7112, October 21, 1922.)

§ 536.40 *Property of absentee.* (a) When a soldier absents himself without leave, his company commander will cause the public property, including clothing, for which the absentee is responsible, to be searched for and secured. His personal effects will be inventoried and retained with his organization until he returns to military control, or until he is dropped from the rolls as AWOL. In the latter case they will be disposed of as follows:

(1) Decorations, medals, discharges, and other military papers will be forwarded to The Adjutant General.

(2) Articles having material value will be disposed of by auction sale within the organization and the proceeds therefrom, together with any money left by the absentee, will be deposited with a disbursing officer, whose receipt will be taken and forwarded to The Adjutant General. The receipt will show the nature of the deposit, whether from the proceeds of sale, or money left by the absentee.

(3) Articles having no salable value will be destroyed.

(b) In no case will the effects of an absentee, or any proceeds of the sale thereof, be turned over to his relatives, nor any payment made therefrom on any account except with the approval of the Department of the Army.

MARINE CASUALTIES

§ 536.44 *Marine casualties; claims.*—(a) *Scope.*—(1) *General.* The regulations in this section are concerned with marine casualties, as hereinafter defined, involving vessels, cargoes, or water-front facilities, under the jurisdiction of the Transportation Corps.

(2) *Claims.* The provisions of this section apply to all claims otherwise within the scope thereof, not heretofore paid, arising out of marine casualties, as herein defined, occurring on or after May 27, 1941.

(b) *Definitions.* The expressions "Army vessel," "marine casualty," and "investigating officer," are used as follows:

(1) *Army vessel.* Any vessel owned by, or bareboat chartered, sub-bareboat chartered or allocated on a bareboat basis to the Army and under the jurisdiction of the Transportation Corps. Vessels operated by the U. S. Air Force, the Army Field Forces, or any of the administrative or technical staffs or serv-

ices of the army other than the Transportation Corps are not included.

(2) *Marine casualty.* (i) Any collision, grounding, fire, explosion, or other accident or incident involving an Army vessel resulting in loss of life, personal injury, or damage to or loss of vessel, cargo, or other property.

(ii) Any accident or incident resulting in damage to a pier, dock, wharf, quay, or other waterfront facility under the jurisdiction of the Transportation Corps.

(iii) Any accident or incident which may result in a salvage claim, or general average contribution in respect of either vessel or cargo.

(iv) Damage to or loss of cargo while being carried on an Army vessel.

(v) Damage to or loss of vessel or cargo caused by Army stevedores, or stevedores under contract with the Army, in the course of the loading or discharging of cargo on or from a vessel.

(3) *Investigating officer.* An officer designated pursuant to the provisions of Army regulations to investigate marine casualties.

(c) *Action by claimant.*—(1) *Claimant.* Claims must be presented by the owner of the property damaged or the person injured, or his duly authorized agent or legal representative. The word "owner," as so used, includes bailees, lessees, mortgagors, and conditional vendees but does not include mortgagees, conditional vendors, and others having title for purposes of security only. The claim, if filed by an agent or legal representative, should show the title or capacity of the person signing and be accompanied by evidence of the appointment of such agent, executor, administrator, guardian, trustee, or other fiduciary.

(2) *Form of claim.* Claims should be submitted by presenting in triplicate a sworn statement in writing stating the claimant's address and setting forth the amount of the claim and, so far as possible, the detailed facts and circumstances surrounding the occurrence, indicating the date and place, the property and persons involved, the nature and extent of the damage or injury, and the agency which was the cause or occasion thereof. Department of the Army forms will be used whenever practicable.

(3) *Evidence to be submitted by claimant.*—(i) *General.* The amount claimed for damage to or loss or destruction of property, or for personal injury or death, must be substantiated by competent evidence.

(ii) *Property damage.* In support of claims for damage to or destruction of property which has been or can be repaired or replaced, the claimant should submit an itemized signed statement or estimate of the cost of repairs or replacement; if not repairable, the value thereof before and after the casualty occurred should be stated. Whenever a claim includes an item for detention during repairs of damage to vessel, proof establishing such item should be submitted and should include; the date when the vessel was disabled; date on which she was laid up for repairs, and name and location of repair work; date when repairs were commenced and completed; whether while laid up for repairs any

other work was performed on the vessel and, if so, the amount and character thereof and the time required for performance; date on which the vessel was returned to service after completion of repairs and where put in service; whether there was opportunity to employ or hire vessel during time laid up for repairs; whether vessel was under charter and, if so, rate of charter hire; and the usual charter rate for the vessel and running expenses. All such statement or estimate should be in triplicate and, if possible, by disinterested competent witnesses, preferably reputable dealers of the type of property damaged or destroyed. Such statements and estimates should be certified as just and correct; if payment has been made, itemized receipts evidencing payment should be included.

(iii) *Personal injury.* In support of claims for personal injury or death, the claimant should submit in triplicate a written report by attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, and the period of hospitalization or incapacitation, and bills for medical, hospital, or burial expenses actually incurred.

(4) *Signature.* The claim and all other papers requiring the signature of the claimant should be signed by the claimant personally or by a duly authorized agent. The signature of such claimant or agent should be identical throughout.

(5) *Place of filing.* The claim should be submitted to the commanding officer of the Army installation under whose immediate control the vessel was operated, if known, otherwise to the commanding officer of any post, camp, station, or other military establishment, if practicable the one within which or nearest to which the casualty occurred.

(d) *Claims of subrogees.*—(1) *Included.* Settlement will be made solely with the insured, rather than with the insurer or with both the insured and insurer, in cases of damage, loss, destruction, injury, or death covered by insurance. No inquiry will be made into, nor determination made of, the relative interests as between insured and insurer. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount allowed will be made in the name of the insured. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney, insurance policy provision, or other documentary evidence. The foregoing provisions will be equally applicable in cases of subrogation based other than on insurance.

(2) *Not included.* Claims by subrogees in their own right are not within the scope of these regulations and will not be considered.

(3) *Claims presented prior to July 3, 1943.* The provisions of subparagraphs (1) and (2) of this paragraph will, however, be inapplicable to claims filed prior to July 3, 1943.

(e) *Conditions of payment.* Prior to payment of any claim within the provisions of this section, each of the following conditions must be fulfilled:

(1) Amount of the damage, loss, or destruction, or amount to be allowed on account of personal injury or death, must be determined.

(2) Award must not exceed \$1,000 (\$500 in time of peace).

(3) Claims must be within the scope of this section, as outlined in paragraph (b) (2) of this section.

(4) Claim must be presented in writing, ordinarily within 1 year after the occurrence of the casualty out of which the claim arises.

(5) Claim must be approved by officials designated in Army Regulations or, on appeal, by the Secretary of the Army.

(6) Claimant must accept, in full satisfaction and final settlement, the amount allowed if less than the full amount claimed.

(7) Claims payable under the provisions of AW 105 are not payable under the provisions of this section.

(8) Personal claims payable under the provisions of § 536.27 are not payable under the provisions of this section.

(9) Claims of military personnel or civilian employees incident to their service are not payable under the provisions of this section.

(f) *Claims in excess of \$1,000.* Claims in excess of \$1,000 (\$500 in time of peace) if otherwise within the scope of this section, may be reported by the Secretary of the Army to Congress for its consideration. Any claim which is asserted in an amount in excess of \$1,000 will be forwarded, with related files and recommendations, by or through the Chief of Transportation to The Judge Advocate General for appropriate action.

(g) *Regulations not applicable.* Marine casualties will not be investigated or processed or claims arising therefrom processed or disposed of, under the provisions of §§ 536.1-536.10, 536.12-536.23 or §§ 537.3-537.5. (R. S. 161, 47 Stat. 1575, 54 Stat. 357, 57 Stat. 372; 5 U. S. C. 22, 10 U. S. C. 1431, 1460, 31 U. S. C. 223b) [AR 615-300, Mar. 17, 1944; AR 35-2620, June 30, 1943; AR 55-500, July 3, 1943]

BURIAL EXPENSES

AUTHORITY: §§ 536.50 to 536.53, issued under 52 Stat. 398; 10 U. S. C. 916-916d. See also 49 Stat. 1507, 10 U. S. C. 455a-455d, 32 U. S. C. 164a-164c; 54 Stat. 743, 5 U. S. C. 103a, 103b; 56 Stat. 280, 10 U. S. C., Sup., 1711; 57 Stat. 372, 31 U. S. C., Sup., 223b; E. O. 8557, 3 CFR.

DERIVATION: AR 30-1830, Oct. 13, 1944.

§ 536.50 *For whom authorized.*—(a) *Regular Army and Army of the United States.*

- (1) Officers.¹
- (2) Army nurses.¹
- (3) Warrant officers.¹
- (4) Cadets, United States Military Academy.¹
- (5) Women's Army Auxiliary Corps personnel.¹
- (6) Enlisted men.¹
- (7) Contract surgeons.¹
- (8) Retired officers or enlisted men who die while on active duty by proper assignment.
- (9) Accepted applicants for enlistment.

¹ On the active list.

(10) Garrison prisoners, or general prisoners whose discharge has been suspended.

(11) Enlisted men who are discharged in a hospital in the United States and continue as inmates of the hospital to date of death.

(b) *The following components other than the Regular Army.* (1) Officers, warrant officers, and enlisted men of the National Guard:

(i) Who die while en route to or from or during their attendance at encampments, maneuvers, or other exercises, or at service schools, authorized under the provisions of sections 94, 97, and 99 of the National Defense Act.

(ii) Who die after the period of authorized attendance at encampments, maneuvers, or other exercises, or at service schools, while undergoing hospitalization for a disease or injury contracted or incurred in line of duty while en route to or from or during their attendance at encampments, maneuvers, or other exercises, or at service schools, authorized under the provisions of sections 94, 97, or 99 of the National Defense Act.

(iii) Who die as a result of personal injury (as distinguished from disease) in line of duty while participating in aerial flights in Government-owned aircraft, prescribed under the provisions of section 92 of the National Defense Act, or who die while undergoing hospitalization for such injury.

(2) Members of the Officers' Reserve Corps and of the Enlisted Reserve Corps on active duty under proper orders in time of peace:

(i) Who die while on active duty.

(ii) Who die after relief from active duty while undergoing hospitalization for disease or injury contracted or incurred in line of duty while on active duty.

(iii) Who die as a result of personal injury (as distinguished from disease) in line of duty while voluntarily participating when not on active duty in aerial flights in Government-owned aircraft by proper authority as an incident to their military training, or who die while undergoing hospitalization for such injury.

(3) Members of the National Guard of the United States on active duty under proper orders in time of peace:

(i) Who die while on active duty.

(ii) Who die after relief from active duty while undergoing hospitalization for disease or injury contracted or incurred in line of duty while on active duty.

(4) Members of the Reserve Officers' Training Corps and members of the Citizens' Military Training Camps:

(i) Who die while en route to or from or during their attendance at camps of instruction held under the provisions of sections 47a and 47d of the National Defense Act: *Provided*, That, in the case of death while en route to or from camp, no undue delay or circumstances are involved in the travel and that the travel is performed over the usually traveled routes.

(ii) Who die subsequent to arrival at their homes while undergoing hospitalization for disease or injury contracted or incurred in line of duty while en route to or from or during their attendance at

camps of instruction held under the provisions of sections 47a and 47d of the National Defense Act.

(c) *Civilian employees.* (1) Civilian employees of the Army who have been ordered by competent authority away from their homes in the United States to foreign countries, Hawaii, the Philippine Islands, Alaska, Puerto Rico, or the Canal Zone, and who die while on duty in such places or while performing authorized travel thereto or therefrom. (52 Stat. 399; 10 U. S. C. 916b)

(2) Civilian employees of the Army who die on Army transports or while accompanying troops in the field, or who, while on Army transports or while accompanying troops in the field, incur injury or contract disease resulting directly in death away from their homes. (52 Stat. 399; 10 U. S. C. 916b)

(3) Any civilian employee (temporary or permanent) of the United States Government who dies as a result of injuries received in the performance of his official duty. (39 Stat. 745, 44 Stat. 1087; 5 U. S. C. 761)

(4) Civilian employees of the Department of the Army who die while traveling on official business within the continental limits of the United States. (54 Stat. 743, 5 U. S. C. 103a, 103b; E. O. 8557, 3 CFR Cum. Supp.)

(5) Civilian employees of the Department of the Army other than those enumerated above, who die while traveling on official business outside the continental limits of the United States or while on assignment to a post outside the United States, including American citizens hired locally, whose homes in fact are in the continental United States. (54 Stat. 743, 5 U. S. C. 103a, 103b; E. O. 8557, 3 CFR Cum. Supp.)

(6) Where it is necessary for sanitary reasons to remove the remains of an employee from the grounds on which other employees are located and payment of funeral and burial expenses cannot be effected under the provisions of subparagraphs (1), (2), (3), (4), and (5) of this paragraph, or where local municipal authorities will not assume custody of the body, the reasonable expenses of a decent burial may be authorized as an incident to the work on which the decedent was engaged. (See 11 Comp. Dec. 789.)

(d) *Military prisoners.* Military prisoners who die at a military post.

§ 536.51 *Expenses allowable*—(a) *For personnel of the Army of the United States and Regular Army* (§ 536.50 (a)) and civilian employees of the Department of the Army described in § 536.50 (c) (1) and (2)—(1) *Burial expenses proper.* Expenses incident to initial preparation of remains, restricted to:

(i) Undertaker's services, including embalming and other preservative methods.

(ii) Cost of casket.

(iii) Cost of outside box, when required.

(iv) Hire of hearse.

(2) *Transportation.* The Government is responsible for providing transportation for the remains to the city or town or to an address not located in a city or town designated by the next of kin

in disposition instructions. Authorized transportation necessary to ship the remains to the common carrier terminal of the city or town designated by legal next of kin, or in the absence of instructions from such next of kin, to the common carrier terminal of the nearest national or post cemetery, will be provided in accordance with § 633.6 of this chapter. The term "common carrier terminal" as used herein is defined as the railroad station or ship's pier in the city or town having rail or water service that meets the military requirements of the Government. If the destination specified by the next of kin is a city or town without suitable rail or water service (hereinafter referred to as an inland town) or it is an address not located in a city or town, and transportation beyond a common carrier terminal is required, the provisions of subdivision (i) (b) of this subparagraph will govern. The provisions of this subparagraph as hereinafter stated apply equally to current deceased who die on or after October 10, 1947 and World War II deceased declared eligible under the provisions of Public Law 383, 79th Congress, as amended by Public Law 368, 80th Congress.

(i) No shipment of remains will be made direct to national or post cemeteries without prior clearance from the national cemetery superintendent or commanding officer of the post cemetery concerned. When remains are shipped to a national or post cemetery for interment, the commanding officer of the station from which the remains are shipped will advise by telegram the national cemetery superintendent or commanding officer of the post cemetery of the mode of shipment, date, and time of departure and scheduled time of arrival of the remains. Upon receipt of shipping advice, the national cemetery superintendent or commanding officer of the post cemetery will make all necessary arrangements incident to the receipt, handling, transportation (including transportation of escort from common carrier terminal and return thereto), and temporary storage, when necessary, of the remains. Government facilities and labor will be used if available. If necessary, the services of a contract funeral director will be used when available. The funeral director rendering any of the services called for will be required to submit a properly certified itemized invoice to the national cemetery superintendent or commanding officer of the post cemetery concerned who will place thereon the following certification and then forward it to the appropriate Army purchasing and contracting officer for processing and payment: "I certify that the services itemized on this invoice have been satisfactorily rendered." Separate invoices will be required for current deceased and World War II deceased. National cemetery superintendents and commanding officers of post cemeteries will annotate each invoice received with a statement that the services rendered were either for current or World War II deceased.

(ii) Shipment of remains to destinations specified by next of kin for funeral services with subsequent interment in a

national or post cemetery: Prior to shipment, next of kin will be requested to designate a funeral director to receive the remains upon arrival at the common carrier terminal at destination. When remains are shipped by common carrier to the city or town, or to an address not located in a city or town, specified by the next of kin for funeral services prior to interment in a national or post cemetery, next of kin is responsible for making all arrangements for receiving the remains upon arrival at the common carrier terminal at or nearest the destination specified. (See subdivisions (ii) (a) and (ii) (b) of this subparagraph.) Next of kin is responsible also for making all arrangements for interment with the national cemetery superintendent or commanding officer of the post cemetery, and for delivery of the remains at his own expense direct to the cemetery grave site at such time as may be designated by the superintendent or commanding officer. When Government hearse facilities are available at the cemetery and the remains arrive at a common carrier terminal serving the cemetery, such hearse facilities may be utilized to transport the remains from that terminal to the cemetery, at no expense to the next of kin. Transportation requests will not be furnished for the transportation of the remains or escort from an intermediate point to a national or post cemetery. Next of kin may receive a partial reimbursement for transportation costs when burial is made ultimately in a national or post cemetery (see subdivision (iv) of this subparagraph).

(a) When next of kin specifies a city or town served by suitable common carrier transportation: Common carrier transportation is furnished by the Government to the common carrier terminal serving the city or town of destination. Hearse hire to transport the remains upon arrival at the common carrier terminal is an obligation of the next of kin.

(b) When next of kin specifies an inland town or an address not located in a city or town: Common carrier transportation is furnished by the Government to the common carrier terminal nearest the specified destination. Normally, transportation of the remains and escort from the common carrier terminal nearest the specified destination, and return of escort thereto, is made by the receiving funeral director engaged by the next of kin. The receiving funeral director will be advised to submit a properly certified itemized invoice to the commanding officer of the shipping station, listing the cost of hearse hire to transport the remains and escort to destination specified, and to return escort to the common carrier terminal, should this be necessary. When the next of kin fails to engage a receiving funeral director, the commanding officer of the shipping station through his designated purchasing and contracting officer will contract in accordance with current Procurement Regulations with a funeral director located at or near the common carrier terminal nearest the specified destination, to receive the remains upon arrival and to transport the remains and escort to the inland destination speci-

fied, and to return escort to the common carrier terminal, should this be necessary. The funeral director will be advised to submit a properly certified itemized invoice for the services rendered. Invoices when received by the commanding officer will be annotated with a statement that the services rendered were either for current or World War II deceased, and forwarded to the local finance officer for payment.

(iii) Shipment of remains by common carrier to destination specified by next of kin for burial in a private cemetery: Prior to shipment, next of kin will be requested to designate a funeral director to receive the remains upon arrival at the common carrier terminal at destination. When remains are shipped by common carrier to the city or town or to an address not located in a city or town specified by the next of kin for interment in a private cemetery, next of kin is responsible for making all arrangements for receiving the remains upon arrival at the common carrier terminal at or nearest to the destination specified. Should next of kin, after having designated burial in a private cemetery, decide to have the remains interred in a national or post cemetery of his choice, next of kin is responsible for making all arrangements for interment with the cemetery superintendent or commanding officer of the post cemetery, and for delivery of the remains at his own expense direct to the cemetery grave site. (See subdivision (ii) of this subparagraph.)

(a) Next of kin specifies a city or town served by common carrier transportation. (See subdivision (ii) (a) of this subparagraph.)

(b) Next of kin specifies an inland town or an address not located in a city or town. (See subdivision (ii) (b) of this subparagraph.)

(iv) Reimbursement for transportation costs when remains are shipped to next of kin prior to interment in a national or post cemetery: When the actual transportation cost to the Government in delivering the remains to a destination designated by next of kin is less than what it would have cost the Government to deliver the remains direct to the national or post cemetery, the next of kin upon filing claim therefor, may be allowed the difference in cost if the amount expended by the next of kin for transportation to the national or post cemetery equals or exceeds such difference in cost; otherwise only an amount equal to that actually expended by the next of kin for such transportation may be allowed. No other allowance will be made.

(v) Claims for reimbursement must be submitted in the form of an unitemized certificate to the commanding officer of the shipping installation who will forward them to the local finance officer for processing and payment. This certificate must be signed by the person paying the transportation expenses from the home to the national or post cemetery, must show the total amount actually paid for such transportation, to include the cost of hearse hire from the common carrier terminal at or nearest the national or post cemetery to the cemetery grave site, must indicate name and location of national or

post cemetery where final interment was made, and must indicate whether decedent was current or World War II deceased.

(3) *Flag.* An interment flag is authorized to be furnished to drape the casket containing the remains of each officer or enlisted man who dies while on the active list. The flag may be retained by the legal next of kin after the funeral. No flag is authorized to be furnished for a civilian employee.

(4) *Clothing.* The clothing of the deceased will be used to clothe the remains, if available, and in a clean and good condition. If such clothing is not available, new clothing may be issued to enlisted men as set forth in Army Regulations. In the case of officers who are not entitled to issue clothing, and in any case of an enlisted man where neither his own clothing nor issue clothing is available, necessary clothing may be purchased chargeable to funds available for the disposition of remains. (See 21 Comp. Gen. 673)

(5) *Recovery of bodies.* Necessary expenses to recover bodies.

(6) *Interment expenses.* The provisions of this subparagraph as hereinafter stated apply equally to current deceased who die on or after October 10, 1947 and World War II deceased declared eligible under the provisions of Public Law 383, 79th Congress, as amended by Public Law 368, 80th Congress.

(i) Interment in a private cemetery: An amount not exceeding \$75 will be allowed toward interment expenses when final interment of remains is in a private cemetery. Upon request, the Government will reimburse such next of kin or other persons who pay interment expenses for such expenses up to but not exceeding the \$75 maximum; any expenses over and above this amount must be borne by the next of kin or other persons who incurred or paid the expenses. An unitemized certificate signed by the person paying the interment expenses, showing the total amount of interment expenses actually paid, should be submitted by such persons to the commanding officer who arranged for shipment of the remains. The certificate must also indicate name and location of cemetery where final interment was made. The commanding officer, upon receiving such certificate, will place thereon a statement that the decedent was either current or World War II deceased, and then forward the certificate to the local finance officer for payment.

(ii) Interment in a national or post cemetery:

(a) Reimbursement of interment expenses will not be made to next of kin or any other person when burial is in a national or post cemetery.

(b) In connection with interments in national and post cemeteries, superintendents and commanding officers thereof will make all necessary arrangements for grave lowering devices, artificial grass matting, or such other equipment as may be required for interment of remains. Government facilities will be used if available. The services of a contract funeral director will be used where available.

(c) The funeral director rendering any of the services called for will be required to submit a properly certified itemized invoice to the national cemetery superintendent or commanding officer of the post cemetery concerned, who will place thereon the following certification, and then forward it to the appropriate Army purchasing and contracting officer for processing and payment: "I certify that the services itemized on this invoice have been satisfactorily rendered." Separate invoices will be required for current deceased and World War II deceased. National cemetery superintendents and commanding officers of post cemeteries will annotate each invoice received with a statement that the services rendered were either for current or World War II deceased.

(d) The Government is responsible for providing appropriate religious services at the final interment in a national or post cemetery except when next of kin desires to arrange for and to substitute private religious services. Normally, appropriate religious services will be provided by utilizing the services of military chaplains on active duty, or National Guard, Reserve Corps, or Naval Reserve chaplains when available. When military, National Guard, or Reserve chaplains are not available, the services of civilian clergymen may be utilized. When the services of civilian clergymen cannot be obtained gratuitously, their services may be obtained on a contractual basis. In the latter case, compensation for such services is payable by the Government as a part of the expenses of and incident to interment. Civilian clergymen rendering services on a contractual basis will be required to submit an invoice to the national cemetery superintendent or commanding officer of the post cemetery concerned, who will process the invoice in the same manner as prescribed in subdivision (ii) (c) of this subparagraph.

(7) *Cremation.* Remains may be cremated upon written request of legal next of kin only, either at place of death, or after arrival at destination. In addition to the cost of cremation a reasonable amount for a suitable urn for the ashes is authorized.

(b) *For components other than the Regular Army (§ 536.50 (b)).* (1) Recovery of body.

(2) Preparation for burial.

(3) Clothing.

(4) Cremation, in lieu of interment, including a suitable urn, at a reasonable cost.

(5) Interment expenses not to exceed \$75. See paragraph (a) (6) of this section.

(6) Transportation of remains, including round-trip transportation and subsistence of an escort, to decedent's home or the place where he received orders for the period of training upon which engaged at the time of his death, or to such other place as his relatives may designate provided the distance to such other place is not greater than the distance to his home. When the destination specified is an inland town or an address not in a city or town, the provisions of paragraph (a) (2) (iii) (b) of

this section will apply, subject to the limitations imposed by the preceding sentence.

(c) *For civilian employees described in paragraph (c) (3) of § 536.50.* This subject is within the jurisdiction of the Employees' Compensation Commission.

(d) *For civilian employees described in paragraph (c) (4) of § 536.50.* (1) Preparation of remains, the cost not exceeding \$100, to include:

(i) Embalming.

(ii) Cremation.

(iii) Necessary clothing.

(iv) Casket.

(2) Transportation of the remains to the home or official station of the decedent or to such other place as may be designated as the appropriate place of interment: *Provided*, That in no case will the expenses payable be greater than the amount which would have been payable had the place of interment been the home or official station, whichever shall be more distant, to include—

(i) Costs of removal of the remains from the place where death occurred to an undertaking establishment.

(ii) Procurement of burial and shipping permits.

(iii) Furnishing an outside case for shipment (including, when necessary, the sealing of such shipping case). No allowance for outside case will be made if conveyance is by hearse.

(iv) Removal to a common carrier.

(v) Transporting body by common carrier. Instead of conveyance by common carrier, removal of the remains overland by hearse (including ferry charges, bridge tolls, and similar items) may be allowed: *Provided*, That the total charges for transportation shall not exceed the total costs of transportation had conveyance been made by common carrier.

(vi) One removal at the place of interment from the common carrier to an undertaking establishment or other place of immediate delivery.

(vii) Transportation expenses of an escort for the remains will not be allowed. However, this will not be construed to prohibit the use by an escort of one of the two tickets required to ship the remains as baggage by railroad.

(e) *For civilian employees described in paragraph (c) (5) of § 536.50.* (1) Preparation of remains, to include all the ordinary costs of:

(i) Embalming.

(ii) Cremation.

(iii) Necessary clothing.

(iv) Casket or container suitable for shipment to the place of interment.

(v) Any expenses necessarily incurred in complying with local laws and laws at the port of entry in the United States relative to the preparation of dead bodies for transportation and burial.

(2) Transportation of the remains to the home or official station of the decedent or to such other place as may be designated as the appropriate place of interment, provided that in no case will the expenses payable be greater than the amount which would have been payable had the place of interment been the home or official station, whichever shall be more distant, to include:

(i) Removal of the remains from place where death occurred to an undertaking establishment.

(ii) Removal from the undertaking establishment to a common carrier.

(iii) Transportation by common carrier to the place of interment. The remains may be transported by means other than by common carrier, provided that when conveyance by common carrier is available there will be allowed toward the expense of such other transportation an amount not in excess of the sum allowable had the remains been transported by common carrier.

(iv) One removal at the place of interment from the common carrier.

(v) Transportation expenses of an escort for the remains will not be allowed. However, this will not be construed to prohibit the use by an escort of one of the two tickets required to ship the remains as baggage by railroad.

(3) In addition to preparation and transportation of the remains of these civilian employees, the costs of transportation of dependents of the decedent and of the household effects and other personal property of the decedent and his dependents to his former home or to another place in the United States not more distant than the former home of the decedent are authorized. (See §§ 633.1-633.7 of this chapter for transportation of dependents and § 633.8 of this chapter for transportation of household effects and personal effects.)

(f) *For military prisoners.* For persons coming under § 536.50 (d) (military prisoners sentenced to discharge or dismissal, where the execution thereof has not been suspended), expenses are limited to the following:

(1) Preparation of remains.

(2) Interment at place of death; or interment expenses not to exceed \$75.

§ 536.52 *Burial services, how obtained—*(a) *Within continental limits of United States—*(1) *Under contract.* Burial services proper, as set forth in paragraph (a) (1) of § 536.51, will be obtained by negotiation in accordance with current Procurement Regulations, under contracts entered into with local undertakers in the vicinity of military installations. These contracts will be accomplished on Uniform Burial Service Contract forms in accordance with instructions promulgated by The Quartermaster General. Prior to becoming effective burial service contracts will require the approval of the commanding general of the service command in which the contracting officer is stationed. This information (that contracts will not be effective until approved) will be communicated to the contractor during negotiations. In delegating authority to a member of his staff to approve contracts for burial services, the commanding general of the service command, other qualifications being equal, should select, if available, a quartermaster officer who has had experience in this field. The specifications which form a part of the contract forms will be strictly adhered to and no deviations will be made without first obtaining approval from The Quartermaster General.

(2) *Where death occurs at decedent's regular post, camp, or station.* (i) If a burial service contract is in effect, the remains will be prepared under such contract and payment will be made by the finance officer designated in the contract to make payments thereunder.

(ii) If no burial service contract is in effect, the purchasing and contracting officer or other supply officer will negotiate with a reputable funeral director for the required embalming, preservation, casket, outside box, and hearse service, in accordance with the specifications in the Uniform Burial Service Contract form, and forward the invoices for same, properly certified, to the local finance officer for payment.

(3) *Where death occurs at place other than decedent's regular post, camp, or station, and military authorities nearest to place of death handle disposition of remains.* (i) If a burial service contract is in effect at place of death the remains will be prepared under such contract and payment will be made by the finance officer designated in the contract to make payments thereunder.

(ii) If no burial service contract is in effect at place of death, the military authorities nearest to the place of death should be notified to take charge, and such military authorities will obtain through negotiation the services of a reputable funeral director, make necessary arrangements for the required embalming, preservation, casket, outside box, and hearse service. The costs in such cases will vary, depending upon circumstances and cause of death, condition of remains, local facilities, etc. However, costs should be kept to the minimum obtainable under the standard set forth in the Uniform Burial Service Contract form to insure the arrival of the remains at destination in an acceptable state of preservation. Properly certified, itemized invoices in quadruplicate, and a copy of the telegram or other communication from the next of kin (or other person named as emergency addressee in the event there is no surviving next of kin) designating the name and address of the person who will incur interment expenses, will be transmitted by the military authorities negotiating for the services to The Quartermaster General for evaluation and payment.

(iii) The military authorities arranging for preparation will also arrange for necessary transportation to destination and will select an escort from available troops at their station (if remains are to be sent with an attendant). Transportation and escort will not be requested from the decedent's home station.

(4) *Where arrangements are made by relatives or others and no military authorities are handling case.* (i) If the relatives or other persons arranging for burial services do not pay the undertaker concerned, the undertaker should render an itemized invoice in quadruplicate to The Quartermaster General with the following certificate on each copy thereof:

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to United States production and labor stand-

ards, and all conditions of purchase applicable to the transaction have been complied with; and that State or local sales taxes are not included in the amounts billed.

This certificate must be signed by the undertaker.

(ii) If relatives or others arranging for burial services pay the undertaker, reimbursement may be made as set forth in subdivision (iii) of this subparagraph, only upon receipt by The Quartermaster General of written request for reimbursement from the person paying same, accompanied by an itemized receipted bill in quadruplicate.

(iii) In connection with subdivisions (i) and (ii) of this subparagraph, The Quartermaster General, upon receipt of itemized invoice, will determine the amount to be allowed based upon all factors entering into the case and forward the claim to the General Accounting Office for settlement.

(iv) In addition to expenses for preparation of remains as set forth above, there may be allowed expenses for transportation, flag (in the case of military personnel only), clothing, recovery of bodies, cremation, and interment expenses as set forth in § 536.51.

(5) *Next of kin not compelled to use services of contract funeral director.* In any case, regardless of whether the decedent's death occurred at his regular post, camp, or station, or away therefrom, or whether or not there was a burial contract in effect under which the remains may be prepared, the next of kin may make their own arrangements and it is not compulsory for them to utilize the services of the contract funeral director. However, reimbursement can be made as set forth below.

(b) *Reimbursement—(1) Statutory authority.* (i) In any case where funeral expenses authorized in § 536.51 are borne by individuals, reimbursement to such individuals may be made of the amount allowed by the Government for such services, but no reimbursement will be made of any expenses incurred prior to the enactment of the act of May 17, 1938, which would not have been a proper charge against the Government prior to the date of approval thereof.

(ii) When the expenses of the recovery, preparation, and disposition of remains of officers, warrant officers and enlisted men of the National Guard; members of the Officers' Reserve Corps and of the Enlisted Reserve Corps; members of the National Guard of the United States; members of the Reserve Officers' Training Corps and members of the Citizens' Military Training Camps, or any part thereof, are paid by individuals, such individuals may be reimbursed therefor at an amount not exceeding that allowed by the Government for such services.

(2) *Limitation.* Except in the case of the civilian employees enumerated in paragraph (c) (3), (4), and (5) of § 536.50, if at the time and place of death a properly approved contract was in force, the amount to be allowed for burial expenses proper will be limited to the sum that such contract would have allowed for a similar case. However, if no such contract was in effect at the time and place of death, determination as to

the amount to be allowed will be made by The Quartermaster General. It is not compulsory for relatives to utilize the services of the contract undertaker where a contract is in effect, but the Department of the Army may allow for reimbursement on the items covered by the contract only the amount the department would have paid thereunder for such items.

§ 536.53 *Shipment after temporary interment.* (a) When it is impracticable to ship the remains at the time of death, or if it is impossible to communicate with the emergency addressee before interment, the remains may be subsequently disinterred and shipped home at Government expense at the request of the emergency addressee.

(b) If the emergency addressee states that shipment home is not desired and the remains are interred at Government expense, subsequent disinterment or shipment of the remains will not be made at Government expense.

(c) When remains are interred at place of death during hostilities they subsequently may be disinterred and shipped home at Government expense.

MUSTERING-OUT PAYMENTS

AUTHORITY: §§ 536.75 to 536.77 issued under sec. 1, 58 Stat. 8; 38 U. S. C., Supp., 691a.
DERIVATION: AR 35-2490, Feb. 20, 1946.

§ 536.75 *Mustering-out payments—(a) To whom payable—(1) General.* Except as provided in paragraph (b) of this section, each member of the armed forces who shall have been engaged in active service in the present war, and who is discharged or relieved from active service under honorable conditions on or after December 7, 1941, shall be eligible to receive mustering-out payment.

(2) *Philippine scouts.* (i) After the date of enactment of this act, Philippine scouts enlisted under the provisions of section 14 of the act approved October 6, 1945 (59 Stat. 543; 10 U. S. C., Supp., 637) are entitled to mustering-out payment, except that for the purpose of computing such payments for service in the Philippine Scouts, service wholly performed in the Philippine Islands shall be compensated on the same basis as service wholly performed within the United States.

(ii) Payment made under the provisions of subdivision (i) of this subparagraph, shall be paid at the rate of one Philippine peso for each dollar authorized by the Mustering-out Payment Act of 1944.

(b) *To whom not payable.* No mustering-out payment shall be made to:

(1) Any member of the armed forces who, at the time of discharge or relief from active service, is receiving base pay at a higher rate than the base pay of the third period as prescribed in section 1 of the Pay Readjustment Act of 1942, as amended (56 Stat. 359, as amended; 37 U. S. C., Supp., 101-120).

(2) Any member of the armed forces who, at the time of discharge or relief from active service, is transferred or returned to the retired list with retirement pay or to a status in which he receives retirement pay.

(3) Any member of the armed forces for any active service performed prior

to the date of his discharge or relief from active service on his own initiative to accept employment or, in the case of any member so relieved from active service, for any active service performed prior to the date of his discharge while in such inactive status, unless he has served outside the continental limits of the United States or in Alaska.

(4) Any Air Force Reserve officer who is entitled to receive a lump-sum payment under section 2, of the act of June 16, 1938, as amended (sec. 2, 49 Stat. 1524, as amended; 10 U. S. C. and Sup., 300a).

(5) Any member of the armed forces whose total period of service has been as a student detailed for training under:

(i) The Armed Specialized Training Program.

(ii) The Air Force College Training Program.

(6) Any member of the armed forces for any active service performed prior to the date of his discharge from such forces for the purpose of entering the United States Military Academy, the United States Naval Academy, or the United States Coast Guard Academy.

(7) Any member of the armed forces whose sole service has been as a cadet at the United States Military Academy or in a preparatory school after nomination as a principal, alternate, or candidate for admission to the Academy;

(8) Any commissioned officer unless he is discharged or relieved from active service within 3 years after the termination of the present war as proclaimed by the President; and

(9) Any person entering upon active service, or enlisting, on or after July 1, 1947. See section 1 (b), act February 3, 1944 (58 Stat. 8; 38 U. S. C., Supp., 691a), as amended by section 6, act June 28, 1947 (Public Law 128—80th Cong.)

(c) *Rates and conditions.* (1) Mustering-out payment for persons eligible under paragraph (a) of this section shall be in sums as follows:

(i) \$300 for persons who, having performed active service for 60 days or more, have served outside the continental limits of the United States or in Alaska.

(ii) \$200 for persons who, having performed active service for 60 days or more, have served no part thereof outside the continental limits of the United States or in Alaska.

(iii) \$100 for persons who have performed active service for less than 60 days. (See sec. 2 (a), act Feb. 3, 1944 (58 Stat. 9; 38 U. S. C., Sup. 691b).)

(2) Each person eligible to receive mustering-out payment under subparagraph (1) (i) of this paragraph shall receive one-third of the stipulated amount at the time of final discharge or ultimate relief from active service, or, at the option of the person so eligible, at the time of discharge or release for the purpose of enlistment, reenlistment or appointment in the Regular Army; and the remaining amount of such payment shall be paid in two equal installments—1 month and 2 months, respectively, from the date of the original payment. Each person eligible to receive mustering-out payment under subparagraph (1) (ii) of this paragraph shall receive one-half of the stipulated amount

at the time of final discharge or ultimate relief from active service, or, at the option of the person so eligible, at the time of discharge or release for the purpose of enlistment, reenlistment, or appointment in the Regular Army; and the remaining amount of such payment shall be paid 1 month from the date of the original payment. Each person eligible to receive mustering-out payment under subparagraph (1) (iii) of this paragraph shall receive the stipulated amount at the time of such discharge or relief from active service, or, at the option of the person so eligible, at the time of discharge or release for the purpose of enlistment, reenlistment, or appointment in the Regular Army. A person entitled to receive the first installment of the mustering-out payment at the time of discharge for the purpose of enlistment, reenlistment, or appointment in the Regular Army shall, at his election, receive the whole of such payment in one lump sum, rather than installments. (See sec. 2 (b), act of Feb. 3, 1944 (58 Stat. 9, as amended; 38 U. S. C., Sup., 691b), as amended by sec. 7, act Oct. 6, 1945 (59 Stat. 540).)

(d) *Payments to personnel discharged or relieved from active service prior to February 3, 1944.* Any member of the armed forces entitled to mustering-out payment who shall have been discharged or relieved from active service under honorable conditions before the effective date of this act shall, if application therefor is made within 2 years after the date of enactment of this act, be paid such mustering-out payment by the Department of the Army beginning within 1 month after application has been received and approved by such department: *Provided*, that no member of the armed forces shall receive mustering-out payment under this act more than once, and such payment shall accrue and the amount thereof shall be computed as of the time of discharge for the purpose of effecting a permanent separation from the service or of ultimate relief from active service, or, at the option of such member, for the purpose of enlistment, reenlistment, or appointment in the Regular Army. (See sec. 3, act of Feb. 3, 1944 (58 Stat. 9, as amended; 38 U. S. C. Sup., 691c), as amended by sec. 7, act Oct. 6, 1945 (59 Stat. 540).)

(e) *Payments to survivors.* If any member of the armed forces, after his discharge or relief from active service, shall die before receiving any portion of or the full amount of his mustering-out payment, the balance of the amount due him shall be payable, on appropriate application therefor, to his surviving spouse, if any; and if he shall leave no surviving spouse, then in equal shares to his child or children, if any; and if he shall leave no surviving spouse or child or children, then in equal shares to his surviving parents, if any: *Provided*, That no payments under this act shall be made to any other person. (See sec. 4, act of Feb. 3, 1944 (58 Stat. 9; 38 U. S. C., Sup., 691d).)

(f) *Exemption from taxation and claims of creditors.* Mustering-out payments due or to become due under this act shall not be assignable and any payments made to or on account of a vet-

eran hereunder shall be exempt from taxation, shall be exempt from the claims of creditors, including any claim of the United States, and shall not be subject to attachment, levy, or seizure by or under any legal or equitable process whatever either before or after receipt by the payee. (See sec. 5 (a), act of Feb. 3, 1944 (58 Stat. 10; 38 U. S. C., Sup., 691e (a)).)

(g) *Issuance of regulations.* The Secretary of the Army shall make such regulations not inconsistent with this act as may be necessary effectively to carry out the provisions thereof, and the decisions of the Secretary of the Army shall be final and not subject to review by any court or other governmental official. (See sec. 5 (b), act of Feb. 3, 1944 (58 Stat. 10; 38 U. S. C., Sup., 691e (b)).)

(h) *Payments on behalf of survivors and mentally disabled veterans.* The Secretary of the Army or such subordinate officer as he may designate, is authorized to make direct payment to survivors over 17 years of age, and to select a proper person or persons to whom mustering-out payments may be made for the use and benefit of former active members of the armed forces, or survivors thereof, as defined in paragraph (e) of this section without the necessity of appointment by judicial proceedings of a legal representative of any such former member or such survivors when, in the opinion of the Secretary or his designees, the interests of the persons under 17 years of age so justify, or where the former active member or his survivor is suffering from a mental disability sufficient to make direct payment not in the best interests of such person or persons. Payments made under the provisions of this paragraph shall constitute a complete discharge of the obligation of the United States as provided in this act; and the selection of a proper person or persons, as provided herein, and the correctness of the amount due and paid to such person or persons shall have the same finality as that accorded decisions made pursuant to paragraph (g) of this section: *Provided*, That the provisions of this paragraph shall not apply where a legal guardian or committee has been judicially appointed, except as to any payments made hereunder prior to the receipt of notice of appointment. (See sec. 5 (c), act of Feb. 3, 1944 (58 Stat. 10, as amended; 38 U. S. C., Sup., 691e (c)).)

(i) *Statutory definitions.* (1) The term "member of the armed forces" means any member of the Army or Navy of the United States, the United States Marine Corps, the United States Coast Guard, or any of their respective components, and any member of the Women's Army Corps who was discharged under honorable conditions on account of disability.

(2) The term "spouse" means a lawful wife or husband.

(3) The term "child" includes:

(i) A legitimate child;

(ii) A child legally adopted; and

(iii) A stepchild, if, at the time of death of the member of the armed forces, such stepchild was a member of the deceased's household.

(4) The term "parent" includes father and mother, stepfather and stepmother, and father and mother through adoption. (See sec. 6, act of Feb. 3, 1944 (58 Stat. 10; 38 U. S. C., Sup., 691f).)

§ 536.76 *Payments on behalf of persons discharged on account of mental disability who are not competent to sign commercial papers*—(a) *by whom made.* Mustering-out payments on behalf of persons discharged on account of mental disability who are not mentally competent to sign commercial papers will be made only by Finance Office, U. S. Army, Washington 25, D. C.

(b) *To whom payable.* Mustering-out payments on behalf of personnel discharged on account of mental disability may be made only to the following:

(1) Legally appointed guardian or committee of the veteran when he is not mentally competent to sign commercial vouchers, or

(2) Discharged veteran, provided a guardian or committee has not been legally appointed and such an appointment is not contemplated, if a written, dated, and signed statement by a registered practicing physician is furnished to the effect that the veteran is, in the opinion of the examining physician, mentally competent to handle his own personal affairs. (The term "registered practicing physician" includes staff physicians at Government hospitals.)

(3) Where no legal guardian or committee has been appointed, and where payment cannot be made to the veteran under subparagraph (2) of this paragraph, payment is authorized to be made for the use and benefit of the mentally disabled veteran to a person selected under the provisions of § 536.75 (h).

(i) Where a veteran is hospitalized in a Veterans' Administration hospital, or is temporarily absent therefrom for convalescent purposes, the person selected to receive the payment for the use and benefit of the veteran will be the manager of such a hospital unless, in the opinion of the selecting officer, selection of some other person is warranted by the facts in a given case. If a hospital manager applies for payment on behalf of the mentally disabled veteran under his jurisdiction but, prior to the receipt of any one of the checks covering complete payment, the veteran is discharged from the facility, checks received after the veteran's departure from the facility will be returned to the Finance Office, U. S. Army, Washington 25, D. C., accompanied by so much of the following information as is pertinent to the case of the individual concerned:

(a) A statement concerning the mental condition of the veteran at the time of discharge from the hospital, i. e., whether considered mentally competent to handle his own personal affairs. Statements indicating that the veteran was mentally competent to handle his own personal affairs at time of discharge from the hospital will be executed by a physician in accordance with subparagraph (2) of this paragraph.

(b) The name and address of the person in whose custody the veteran was discharged from the hospital; or

(c) The address of the veteran if discharged from the hospital in his own custody.

(ii) Where a veteran has been discharged from the Army directly to the custody of a person other than the manager of a Veterans' Administration hospital, the person selected to receive payment for the use and benefit of the veteran will be a person who, in the opinion of the selecting officer, will act in the best interests of the veteran. Selection under the provisions of this subdivision will ordinarily be made in the following order of precedence; spouse; parent; adult child; and any other properly qualified person. This order of precedence may be varied, in the discretion of the selecting officer, where the facts in a given case warrant.

(c) *Evidence required for payment.* No mustering-out payments shall be made to the persons named in paragraph (b) of this section.

(1) The discharge certificate, certificate in lieu of a lost discharge certificate, or statement of service issued in the name of the person on whose account payment is to be made, or similar evidence in the case of commissioned personnel, and

(2) Where payment is to be made to the legally appointed guardian or committee of the veteran, a copy of the instrument of appointment certified as a copy by the clerk of the court from which issued, or

(3) Where payment is to be made to the discharged veteran, a physician's statement as prescribed in paragraph (b) (2) of this section or

(4) Where payment is to be made under the provisions of paragraph (b) (3) of this section, a written and signed statement executed by the person selected to receive the payment for the use and benefit of the veteran containing a statement that the proceeds of the payment will be used for the exclusive benefit of the veteran and such other recitals and supported by such additional evidence as the selecting officer may require.

(5) Additional and/or substitute evidence is authorized, and may be required in appropriate cases in the discretion of the Finance Office, U. S. Army, Washington 25, D. C.

(d) *Method of payment.* All mustering-out payments made under the provisions of this section will be by check. When payment is made to the legally appointed guardian or committee of the incompetent, the check issued in payment thereof will name the payee as follows: "Richard Roe, Guardian for John Doe, 12345678," or "Richard Roe, Committee for John Doe, 12345678," as appropriate. When payment is made to a person selected to receive the payment for the use and benefit of the veteran, the check issued will name the payee as follows: "Manager, Veterans' Administration Hospital, Washington 7, D. C., for use and benefit of John Doe, 12345678," or "Richard Roe, for use and benefit of John Doe, 12345678," as appropriate.

§ 536.77 *Payments to survivors*—(a) *General*—(1) *By whom made.* All mus-

tering-out payments to survivors will be made by the Finance Office, U. S. Army, Washington 25, D. C.

(2) *Necessity for application.* No mustering-out payment shall be made to any survivor without an appropriate written application therefor.

(3) *Definition of "balance of amount due."* The words, "balance of amount due," contained in § 536.75 (e) shall be construed to mean the full sum remaining unpaid to the veteran at the time of his death, and such sum shall be payable to a qualified survivor in a lump sum and not on an installment basis. For example if a veteran entitled to a mustering-out payment of \$300 shall die after receipt of the initial installment of \$100, the sum of \$200 shall be payable immediately to the qualified survivor.

(4) *Payments to personal representatives not authorized.* No mustering-out payment shall be made to the executor, administrator, or other person representing the veteran or any survivor, except as provided in subparagraph (6) of this paragraph.

(5) *Payments to survivors 17 years of age and over.* Direct mustering-out payments may be made to qualified survivors 17 years of age and over without the necessity of appointment by judicial proceedings of a legal representative of any such survivor except as provided in subparagraph (7) of this paragraph.

(6) *Payments to guardians and committees of survivors.* Where a survivor otherwise entitled to mustering-out payment is prevented from applying for and/or receiving such payment because of minority or mental incompetency, an application may be received from and payment made to the guardian or committee of such survivor. In such case, the check covering the payment will name the payee thereof as follows: "Richard Roe, Guardian for (name of survivor)," or "Richard Roe, Committee for (name of survivor)," as appropriate. All mustering-out payments to the guardians and committees of survivors will be made by the Finance Office, U. S. Army, Washington 25, D. C.

(7) *Payments to selected persons for the use and benefit of mentally incompetent or minor survivors.* Where no legal guardian or committee has been appointed, and where payment cannot be made to a survivor under subparagraph (5) of this paragraph, payment is authorized to be made for the use and benefit of mentally disabled survivors who are otherwise qualified, or survivors under 17 years of age who are otherwise qualified, to a person selected under the provisions of § 536.75 (h). Such payments will not be made without a written and signed statement executed by the person selected to receive the payment for the use and benefit of the survivor containing a statement that the proceeds of the payment will be used for the exclusive benefit of the survivor and such other recitals and supported by such additional evidence as the selecting officer may require. In such cases, the check covering the payment will name the payee thereof as follows: "Richard Roe, for the use and benefit of (name of survivor)."

(b) *Payments to a spouse.* Mustering-out payment shall be made to the spouse of a deceased veteran who is otherwise entitled thereto, only if such spouse:

(1) Shall have survived the veteran, and

(2) Has submitted an appropriate application therefor.

(c) *Payments to a child or children.* Mustering-out payment shall be made to the child (or children) of a deceased veteran who is otherwise entitled thereto, only if such child (or children):

(1) Shall have survived the veteran.

(2) Have submitted an appropriate application therefor, and

(3) The veteran shall not have been survived by a spouse.

Where payments to two or more children are to be made, separate checks will be drawn in favor of each child, or the guardian or committee of such child, if appropriate.

(d) *Payments to a parent or parents.*

(1) The word "parents" as used in § 536.75 (e) shall be construed to mean either the sole surviving parent or the surviving parents of the deceased veteran. Mustering-out payment shall be made to the parent (or parents) of a deceased veteran who is otherwise entitled thereto, only if such parent (or parents):

(i) Shall have survived the veteran.

(ii) Have submitted an appropriate application therefor.

(iii) The veteran shall not have been survived by a spouse, and

(iv) The veteran shall not have been survived by a child (or children). Natural parents of the veteran are not entitled to mustering-out payment where the veteran had been legally adopted prior to his death. Payments may be made to stepparents where natural parents are deceased, and to adoptive parents even though natural parents may be living, if otherwise entitled thereto. Persons who stood in loco parentis to the deceased veteran are not entitled to mustering-out payment. Where payments to two parents are to be made, separate checks will be drawn in favor of each parent, or the guardian or committee of such parent, if appropriate.

(2) Where both natural parents survive the veteran, and are otherwise entitled to mustering-out payment, each parent shall be entitled to one-half of the amount payable irrespective of his or her marital status.

(3) Where only one natural parent survives the veteran, and is otherwise entitled to mustering-out payment, that parent shall be entitled to the full amount payable irrespective of his or her marital status and irrespective of the survivorship of possible stepparents.

(4) Where both natural parents predecease the veteran, and stepparents survive the veteran, if the relationship of stepparent has not been terminated by divorce or remarriage, and if they are otherwise entitled to mustering-out payments, they shall be entitled to share equally in the amount payable, except that where only one stepparent survives the veteran, he or she shall be entitled to the full amount payable.

MILITARY PAYMENT CERTIFICATES

AUTHORITY: §§ 536.80 to 536.83 issued under sec. 3, 58 Stat. 921; 50 U. S. C. App. 1705-1707.

DERIVATION: WD Cir. 247, Sept. 6, 1947.

§ 536.80 *Military payment certificates—(a) Use.* In such areas as the Department of the Army designates, disbursing officers of the United States Army and their agents are authorized to disburse military payment certificates for pay and allowances of authorized personnel, and for all other authorized payments to individuals in and under the Military Establishment.

(1) *Areas.*

| | |
|--------------------------|-------------------------------------|
| Austria. | Japan and outlying Islands. |
| Belgium. | Korea, South of 38° North Latitude. |
| Denmark. | Luxemburg. |
| France. | Ryukus Islands. |
| Germany. | Switzerland. |
| Great Britain (England). | Yugoslavia (Trieste). |
| Holland. | |
| Italy. | |

(b) *Convertibility.* Disbursing officers of the United States Army and their agents are authorized to exchange dollar instruments for military payment certificates, or military payment certificates for dollar instruments, for persons authorized to be in possession of military payment certificates, in accordance with prescribed regulations.

(c) *Transactions between Army disbursing officers and disbursing officers of other agencies.* Disbursing officers of the United States Army and their agents are authorized to exchange dollar instruments for military payment certificates, or military payment certificates for dollar instruments, in transactions with disbursing officers of the United States Navy and their agents; and with such other disbursing officers of the United States Government and their agents as may be authorized specifically by theater commanders.

(d) *Applicability of regulations.* As of the date on which the Department of the Army introduces the use of military payment certificates in any area, transactions in the foreign currencies of such areas, and in any other currencies, will be subject to the regulations specified herein.

(e) *Acquisition of certain foreign currencies.* Disbursing officers of the United States Army and their agents, wherever stationed, will not acquire any foreign currencies except the Philippine peso (as specifically authorized) or as authorized in section II, WD Circular 136, 1947.

(f) *Sales of foreign currencies.* Disbursing officers of the United States Army or their agents, wherever stationed, are authorized to sell foreign currencies, including foreign currencies of areas in which military payment certificates are in use, and any other designated currencies, for military payment certificates and/or for United States dollar instruments, to military and naval personnel of the United States Government; and to employees of Government and non-Government agencies as specifically authorized by the theater commander.

§ 536.81 *Definitions—(a) United States authorized personnel.* Personnel

who fall within the purview of §§ 536.80 to 536.83, inclusive (hereinafter referred to as United States authorized personnel), and who may utilize military payment certificates and dollar instruments defined herein, subject to limitations prescribed in § 536.82 (b), are:

(1) Military and naval personnel of the United States Government.

(2) Civilians, who are citizens of the United States, employed directly, or indirectly through contractors, by the military and naval establishments.

(3) Civilians, who are citizens of the United States, employed directly by the United States Government, when authorized by the theater commander.

(4) Dependents of personnel included in subparagraphs (1), (2), and (3) of this paragraph but subject to the limitations set forth in § 536.82 (b).

(5) Civilians, other than those who are citizens of the country whose currency is legal tender in the area, directly employed by the military and naval establishments, when authorized by the theater commander.

(6) Civilians, other than those who are citizens of the country whose currency is legal tender in the area, who are employed by quasiofficial organizations in and/or under the military and naval establishments and working for the benefit of the members of the Armed Forces of the United States, when authorized by the theater commander. Examples are the Army Exchange Service and its exchanges; United Service Organizations; American Red Cross Clubs and facilities; unit clubs; enlisted men's and officers' clubs and messes; and the Central Welfare Fund of any given theater.

(7) Personnel attached to the headquarters of any United States military or naval unit, who, in the opinion of the theater commander, can best perform their mission by having access to United States Army facilities, when specifically authorized by the theater commander.

Enemy nationals are specifically excluded from those listed in paragraphs (a) (5), (6), and (7) of this section.

The theater commander will be responsible for the determination of those individuals to which the provisions of these regulations will apply within the limits of this paragraph.

(b) *Military payment certificate.* (1) the military payment certificate is defined as an instrument, denominated in United States dollars or fractions thereof which is the official medium of exchange in all military establishments in areas designated by the Department of the Army.

(1) Military payment certificates are issued in denominations of 5 cents, 10 cents, 25 cents, 50 cents, \$1, \$5, and \$10.

(c) *United States dollar instruments.* United States dollar instruments are defined as follows:

(1) United States dollar currency is the currency or coin accepted as legal tender in the United States.

(2) United States Treasury checks are the standard dollar checks drawn on the Treasurer of the United States by authorized disbursing officers of the United States.

(3) Travelers' checks and money orders issued by the American Express Company and travelers' checks issued by the Bank of America National Trust and Savings Association, the Mellon National Bank of Pittsburgh, and the National City Bank of New York, when such checks are countersigned in the presence of the disbursing officer, or his agent.

(4) United States Military Disbursing Officers' Payment Order.

(5) United States postal money orders and American Express Company money orders.

§ 536.82 *Use of military payment certificates—(a) Medium of exchange.* In areas where the Department of the Army has designated military payment certificates as the medium of exchange within the military establishment, military payment certificates are the only authorized medium of exchange in:

(1) All United States Army and Navy sales and services installations and activities.

(2) Theater, moving picture, and other entertainment facilities, operated by the military establishment.

(3) Officers' and enlisted men's messes and clubs, including American Red Cross installations.

(4) Contributions for all charitable purposes, including all authorized charitable appeals, church collections and chaplain's funds, wherever ultimate remittance to the United States through United States Army channels is involved.

(5) Payments to all travel agencies, radio, cable, telegraph, and telephone companies, and all other facilities of similar types, wherever ultimate remittance to the United States through United States Army channels is involved.

(6) Sale of stamps and other postal services at United States Army and Navy postal installations.

(7) All other official agencies, quasi-official and private agencies of or working in behalf of United States Armed Forces providing goods, services and facilities to members of United States Armed Forces.

(b) *Limitations.* (1) The military payment certificate is for use only in the United States military establishments by United States authorized personnel, in accordance with applicable rules and regulations.

(2) Possession and/or use of military payment certificates is prohibited unless acquired in accordance with prescribed regulations, and such additional restrictions as may be promulgated by the appropriate theater commander.

(3) Military payment certificates may be acquired, possessed, and used by authorized personnel incident to normal legitimate transactions within the military establishment, not in violation of articles of war, Department of the Army and theater directive.

(4) Under no circumstances will authorized personnel or disbursing officers accept military payment certificates from, transfer military payment certificates to, or exchange military payment certificates for persons other than authorized personnel, or accept or exchange military payment certificates after the date designated by the Secretary of the Army for their acceptance or exchange.

(5) The use or possession of United States currency is prohibited in foreign countries except where authorized.

(6) Military payment certificates will not be transmitted through the mails by individuals for payment of personal obligations. Individuals desiring to transmit funds will use any of the methods currently provided for such transmission.

§ 536.83 *Conversion and exchange—(a) Conversion of military payment certificates into dollar instruments or foreign currency.* Under the conditions set forth below, United States authorized personnel may exchange military payment certificates, in amounts legitimately in their possession, for the following dollar instruments or foreign currencies:

(1) *United States dollar currency or coin.* (i) Upon departure for the United States.

(ii) Upon departure for or arrival in areas where United States dollar currency has been determined by the Department of the Army to be used, consistent with local foreign exchange control regulations.

(2) *United States Treasury checks.* When traveling under competent orders to any area in which United States Army disbursing officers and class B agent officers and military attaché disbursing officers are not readily available.

(3) *United States postal money orders.* Issued in accordance with regulations of the United States Post Office Department, by United States Army postal officers or their agents.

(4) *United States Savings Bonds.*

(5) *Soldiers' deposits.*

(6) *Military payment orders.*

(7) *Authorized foreign currency.* Disbursing officers and their agents will convert military payment certificates and/or authorized United States dollar instruments into authorized foreign currency for the accommodation of United States authorized personnel designated in § 536.81. The rate of exchange to be used will be the rate of exchange at which the local currency was obtained.

(b) *Conversion of dollar instruments into military payment certificates.* Authorized personnel may exchange the following types of dollar instruments, only if acquired and held in accordance with existing regulations, into military payment certificates:

(1) United States postal and American Express Company money orders.

(2) United States Treasury checks.

(3) United States dollar travelers' checks as specified in § 536.81 (c) (3).

(4) United States dollar currency and/or coin.

(5) United States Military Disbursing Officers' Payment Orders.

(c) *Conversion of foreign currency into military payment certificates or dollar instruments, etc., not authorized.* Disbursing officers or their agents will not exchange or convert any foreign currency and/or coin except the Philippine peso for or into military payment certificates, dollar instruments, or any other instrument denominated in dollars, or exchange one foreign currency for another foreign currency, for the accommodation of United States authorized

personnel, except by specific authority of the Secretary of the Army.

(d) *Postal officers.* (1) United States Army postal officers or their agents will, in accordance with regulations of the United States Post Office Department and of the theater commander, issue or cash United States Postal money orders and sell stamps in exchange for military payment certificates.

(2) United States Army postal officers or their agents will effect no transactions in foreign currency and/or coin except the Philippine peso.

(e) *Other Army facilities.* (1) No foreign currency or coin except the Philippine peso will be accepted in any of the facilities listed in § 536.82 (a). Acceptance of United States currency and coin in such facilities will be limited exclusively to those areas in which individuals in and under the military establishment are paid in United States currency.

(2) Revenue passengers of the Air Transport Command may purchase meals at ATC "snack bars" and transient messes only with dollars, dollar instruments or military payment certificates, if authorized to possess the latter.

CONSIDERATION, ADJUSTMENT AND SETTLEMENT OF CLAIMS FOR RELIEF BY CONTRACTORS AGAINST DEPARTMENT OF THE ARMY

AUTHORITY: §§ 536.85 and 536.86 issued under 60 Stat. 902; 41 U. S. C. 106 note; E. O. 9786, Oct. 5, 1946.

DERIVATION: W. D. Memo 734-50-1, Feb. 7, 1947; W. D. Memo 734-50-2, June 9, 1947.

§ 536.85 *Claims for relief by contractors.* (a) There is hereby constituted in the Office of the Under Secretary of the Army a board to be known as "War Contract Hardship Claims Board" (referred to as the "board" in this section), to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. The board shall consist of five members, one of whom shall be designated as president of the board. There will also be a recorder. The Under Secretary of the Army shall recommend appointees for membership on the board and for recorder and shall nominate the president of the board. Appointments will be made by the Secretary of the Army. Upon request of the Under Secretary of the Army, The Judge Advocate General is authorized to assign to the board one or more judge advocates as trial attorneys or examiners, and if and when deemed necessary by the Under Secretary of the Army and upon his request, The Judge Advocate General also may assign an officer or civilian attorney as general counsel.

(b) The board created by paragraph (a) of this section is hereby designated the central authority within the Department of the Army to consider, adjust, and settle all claims of contractors under the act and the Executive order; to make or

approve the settlement of any such claim in each case in which the Department of the Army is the war agency considering the claim; to grant in whole or in part, or to withhold, for the Department of the Army approval of that part of any proposed settlement by any other agency considering the claim, which relates to contracts or subcontracts of the Department of the Army and to make any and all determinations and findings for the Department of the Army required by the act and the Executive order with respect to each claim. Except for any reconsideration which the board may in its discretion grant, any approval, finding, determination or settlement by the board shall be final, subject only to the provisions of section 6 of the act. The board shall have all powers necessary and incident to the proper performance of its duties as set forth in this section and shall adopt its own methods of procedure and rules and regulations for its conduct.

(c) Claims under the act and the Executive order filed with the Department of the Army will be examined, reviewed and verified by the technical service, which includes for the purpose of this regulation the U. S. Air Force, under whose contracts or subcontracts the loss is claimed. When a claim is made with respect to contracts or subcontracts of more than one technical service the claim shall be examined, reviewed and verified by the technical service under whose contracts and subcontracts the largest claim for loss is made. In the event a claim is filed with other than the chief of a technical service or the chief of the technical service with which the claim is filed determines that another technical service has a primary interest in the consideration thereof the claim will be forwarded immediately to the president of the board for appropriate assignment. The receiving office in transmitting the claim to the board will transmit also any information in its possession bearing upon the claim. In the event the chief of the technical service which is examining, reviewing and verifying a claim determines that the claim also is of interest to another war agency a copy of the claim will be transmitted to the board, with a statement of the reason for such transmission, for appropriate referral and coordination.

(d) Upon receipt of a claim the technical service will transmit a copy of the claim to the Chief of Finance and request that the claim be transmitted to the General Accounting Office for verification of the list of contracts and subcontracts set forth therein as required by section 301 of the Executive order. The Chief of Finance will transmit such request for verification to the General Accounting Office. Upon receipt of information from the General Accounting Office, the Chief of Finance will advise the technical service concerned with respect to the information obtained from the General Accounting Office.

(e) In addition to such verification by the General Accounting Office as is required by section 301 of the Executive order, all claims under the act will be examined, reviewed and verified by the appropriate technical service or services to the extent that the chief of the tech-

nical service in his discretion determines necessary for an adequate consideration of the claim under the act and the Executive order. The chief of the technical service is authorized to arrange directly with the Chief of Finance for any necessary audit of claims. Request for audit will not be made by the chief of the technical service unless preliminary examination by him indicates that the claim appears to fall within the scope of the act and Executive order. Upon completion of such review and consideration as the chief of the technical service may deem adequate for the purposes of the act and the Executive order the chief of the technical service will transmit the original of the claim together with his recommendation as to the disposition thereof and a statement of the basis of such recommendation to the board. He also will designate one or more members of his legal staff as trial attorneys or examiners for processing the claim through his office and before the board. The board will consider the claim and the recommendation and statement by the chief of the interested technical service and approve such adjustment and settlement of the claim as it determines appropriate under the act and the Executive order. The board may direct such further action by the technical service as it deems necessary to the final disposition of the claim.

(f) When the board approves the settlement of a claim, in whole or in part, it will notify the interested technical service of its decision and the technical service will request the Chief of Finance to advise the General Accounting Office of the proposed settlement as approved and request that it be notified of any claims against the claimant. The Chief of Finance will transmit such advice as to the proposed settlement and request for information as to claims to the General Accounting Office. Upon receipt of advice from the General Accounting Office with respect to information available in that office concerning indebtedness the Chief of Finance will notify the technical service of any such indebtedness reported by the General Accounting Office and of any other indebtedness shown by Department of the Army records. If any discrepancies appear between the records of the General Accounting Office and the Department of the Army records as to the verification of contracts and subcontracts, or any indebtedness of the claimant, the technical service will advise the Chief of Finance thereof, who will communicate with the General Accounting Office with respect thereto advising the technical service concerned as to the results thereof. In the case of denial of a claim the board will notify the claimant and the interested technical service of its decision immediately.

(g) Approved claims which involve indebtedness reported by the General Accounting Office, or any other indebtedness shown on the records of the Department of the Army, will be made the subject of an appropriate communication to the Chief of Finance prepared by the technical service concerned, together with a full report of all such indebtedness, which will be transmitted by the

Chief of Finance to the General Accounting Office for necessary set-off or other appropriate action. When Certificate of Settlement on such claims, issued by the General Accounting Office and requiring payment, is received in the Office of the Chief of Finance, it will be forwarded to the Finance Office, United States Army, Washington, D. C., for payment in the usual way. Approved claims which do not involve set-off by the General Accounting Office on account of indebtedness will be vouchered on Standard Form 1034 prepared by the technical service concerned and certified by a duly authorized certifying officer of such service, supporting same with the original of the approved award of the board and of the settlement agreement and release. Said voucher, supported as indicated above, will be forwarded through the Chief of Finance to the Finance Office, United States Army, Washington, D. C., for payment.

§ 536.86 *Rules of procedure of the War Contract Hardship Claims Board—*
(a) *General matters—*(1) *Correspondence.* All correspondence with the Board shall be addressed "War Contract Hardship Claims Board, Office of the Under Secretary of the Army, Washington 25, D. C."

(i) The President of the Board and any member thereof including the Recorder may communicate directly with the chiefs of technical services; the Chief of Staff, U. S. Air Force; any agency within the Department of the Army, and any person or agency outside the Military Establishment with respect to any information desired by the Board relative to matters pertaining to the business of the Board.

(ii) Communication with camps, posts, and stations of the Military Establishment shall be processed through regular military channels.

(2) *Technical service.* The term "technical service" as used in this section includes the U. S. Air Force.

(b) *Duties of recorder—*(1) *Register.* The Recorder of the Board will maintain a register in which the following information will be recorded with respect to each claim:

(i) Case number assigned to claim by Recorder.

(ii) Name of claimant.

(iii) Amount of claim.

(iv) Technical service primarily concerned.

(v) Date received from technical service.

(vi) Action of Board.

(vii) Final disposition of claim.

(2) *Custodial duties.* The Recorder is hereby constituted custodian of records and files of the Board.

(3) *Authentication.* The Recorder shall authenticate and dispatch all notices to the parties.

(4) *Docket.* The Recorder under the supervision of the Board shall maintain a Hearings Docket and shall notify the Board members, the technical service concerned, and the claimant of the date, time, and place of hearings. These notices will be dispatched not later than 20 days prior to date of hearing, and the

notice to the claimant shall be sent by registered mail.

(5) *Statistical record.* The Recorder shall compile statistical data with respect to each claim sufficient to make the quarterly report required of each department and war agency under section 5 of the Act and section 401 of Executive Order No. 9786, October 5, 1946.

(c) *Amendments and corrections.* The Board may in its discretion, upon request of the claimant and/or with his consent, allow the claim or any document contained therein to be amended or changed: *Provided, however,* That no amendment or change which materially changes the nature of the claim, or which in effect extends the filing date of the complete claim beyond February 7, 1947, shall be allowed.

(d) *Substitution.* Upon motion accompanied by pertinent documentary proof of the circumstances warranting a substitution of party claimant or changing the name of a party claimant, the Board may in its discretion make such substitution or correct its records to reflect the claimant's name.

(e) *Hearings—(1) General.* Before making final determination on a claim received by it, the Board may on the request of the claimant or on its own motion grant a hearing with respect to said claim. Notice of such hearing will be sent to the claimant and other interested parties in accordance with paragraph (b) of this section.

(2) *Quorum.* A quorum of the Board for any purpose shall consist of three members.

(3) *Majority rule.* The decision of a majority of the Board members present at a hearing or who consider a claim without a hearing shall constitute the decision of the Board.

(4) *Place.* Hearings will be held at the office of the Board, Pentagon Building, Washington, D. C., or at such other place as the Board may from time to time direct.

(5) *Absence of claimant.* The absence of the claimant or his counsel, after proper notice of hearing, shall not be a basis for delay of the hearing: *Provided, however,* That the Board may grant a reasonable postponement upon request of the claimant or the interested technical service.

(6) *Arguments and briefs.* The parties may be permitted to present witnesses in support of their claims as filed, to make oral arguments, and to submit written briefs in support of their contentions.

(f) *Decisions—(1) Contents.* With respect to each claim considered, the Board will render a decision and will incorporate therein a brief statement of the facts, and the determination of the Board with respect to allowance or denial of the claim, together with reasons therefor. If the claim is allowed in whole or part the decision will also contain a statement that the Board found that the approved claim is: (i) equitable under all the circumstances, and (ii) for losses incurred without fault or negligence on the part of the claimant.

(g) *Notification—(1) Approved claim.* When the Board approves a claim in whole or in part, it will notify the inter-

ested technical service and will request said service to proceed toward final settlement of the claim in accordance with § 536.85. Request will be made in said notification that a copy of the final settlement agreement be furnished the Recorder of the Board for statistical purposes. The actual notification of the claimant in this type of case will be the function of the technical service.

(2) *Disapproved claim.* When a claim is denied the Board will notify both the technical service and the claimant. Notification to the claimant shall be sent by registered mail. (60 Stat. 903; E. O. 9786, Oct. 5, 1946, 3 CFR, 1946 Supp.)

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Sec.

- 537.1 Reimbursement for public property lost, damaged, or destroyed.
- 537.2 Recovery of property unlawfully detained by civilians.
- 537.3 Definitions.
- 537.4 Scope.
- 537.5 Action by reviewing authorities.
- 537.6 Marine casualties; claims.

AUTHORITY: §§ 537.1 to 537.6 issued under R. S. 161, 3748, 40 Stat. 228, § 9, 41 Stat. 766; 5 U. S. C. 22, 10 U. S. C. 1316, 18 U. S. C. 611. *DERIVATION:* AR-35-5, June 6, 1930; AR 35-6640, May 21, 1947; AR 35-220, Sept. 15, 1947; AR 55-500, July 3, 1943.

§ 537.1 *Reimbursement for public property lost, damaged, or destroyed.* The Chief of Finance will take action to secure reimbursement for public property lost, damaged, or destroyed through the fault or neglect of any person concerned.

§ 537.2 *Recovery of property unlawfully detained by civilians—(a) Legal proceedings.* Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the property officer or other proper officer will make an immediate report direct to The Judge Advocate General (by telephone or telegraph when the use of such means of communication seems advisable) in order that legal proceedings may be instituted for the recovery of the property and, if the property has been stolen, for the arrest, trial, conviction, and punishment of the guilty person or persons. Each report will contain:

- (1) A complete description of the property involved, and its location.
- (2) The name and location of the person unlawfully in possession of such property; and
- (3) The facts and circumstances surrounding the unlawful possession of the property.

(b) *Summary action.* (1) Upon satisfactory information that such United States property unlawfully in the possession of any party or parties is likely to be removed beyond the jurisdiction, concealed, or otherwise disposed of before the necessary proceedings can be had in the proper civil tribunal for its recovery, the post or detachment commander will, as hereinafter provided, accomplish its immediate recovery. In the event the property consists of clothes, arms, military outfits or accouterments furnished

by the United States to any enlisted man, the Federal statutes (R. S. 3748; 10 U. S. C. 1316; M. L. 1939, sec. 2018) authorizes such property to be seized and taken from any person not an enlisted man or officer of the United States, by any officer, civil or military, of the United States. With respect to other Government property, the post or detachment commander will cause the property to be seized, provided such seizure can be accomplished without committing a breach of the peace or a trespass on private premises, tendering to the person, if any, in possession or custody of the property a receipt or certificate showing that such property has been seized as belonging to the United States, and the post or detachment commander will thereafter hold the property subject to any legal proceedings that may be instituted by other parties.

(2) Persons caught in the act of stealing public property will be summarily arrested by the troops and turned over to the civil authorities for trial.

§ 537.3 *Definitions.* The words "claim" and "defendant," and the expression "Government property" are used in the regulations in this part as follows:

(a) *Claim.* The right of the United States to demand from a defendant reimbursement for damage to or loss or destruction of Government property.

(b) *Defendant.* (1) Any individual, excluding military and naval personnel and civilian employees of the United States acting within the scope of their employment when only simple negligence is involved; and

(2) Any partnership, association, corporation, or governmental body other than an instrumentality of the United States.

(c) *Government property.* Real or personal property owned by the Government or otherwise in the custody or control of the Army. Where liability to the Government for the particular loss, damage, or destruction is fixed by contract, for example, property furnished to or otherwise acquired by a Department of the Army contractor subcontractor, such liability will be asserted under the contract and not pursuant to the provisions of these regulations.

§ 537.4 *Scope.* Included within the provisions of the regulations in §§ 537.3 to 537.5, are claims in excess of \$25, and claims in lesser amount when the assertion thereof is deemed in the interest of the Government for:

(a) Damage to or loss or destruction of Government property.

(b) Expense or loss to the Government, incurred in other cases, arising from negligence or wrongful act, where the Government's obligation is fixed by common law, Federal or State statute, convention, treaty, or agreement.

§ 537.5 *Action by reviewing authorities.* Upon receipt by the Army or air matériel commander, or by an office of the command claims service, each claims officer's report will, unless the report is accompanied by a statement that payment in full has been made, be reviewed and, after any corrective action deemed necessary with relation thereto, appro-

appropriate administrative action will be taken. Such action, unless the claims officer's report is accompanied by a statement that payment in full has been made or by a compromise offer which such reviewing authority deems it advisable to accept, will include a determination whether the defendant is legally liable to the United States and, if so, the amount of such liability. Upon a determination that the defendant is liable and of the amount of such liability, the Army or air matériel commander, or the chief of the command claims service, will, unless a demand in the same amount has already been made, cause a written demand to be made upon the defendant for payment of the claim. If such demand is complied with, the certified check or money order made payable to the Treasurer of the United States will be accepted and transmitted to the nearest disbursing officer. If the defendant fails to comply with the demand within a reasonable time, and the amount involved, the financial responsibility of the defendant, and other circumstances of the case appear to make advisable the institution of suit, or if the defendant has already made, or on such demand makes, a compromise offer accompanied by a certified check or money order made payable to the Treasurer of the United States, the Army or air matériel commander, or the chief of the command claims service (who will first, however, in cases involving the transmission of foreign funds, convert the tendered check or money order into a United States Treasury check), will forward the original and one copy of the file, including any compromise offer and certified check or money order made payable to the Treasurer of the United States, with his recommendation as to the advisability of acceptance of such compromise offer, if any, or, if none, as to the advisability of instituting suit, to The Judge Advocate General, Washington 25, D. C., for appropriate administrative action.

§ 537.6 *Marine casualties; claims—*
(a) *Definitions.* See §§ 536.44 (b) and 537.3.

(b) *Scope.* Included within the provisions of this section are claims in excess of \$100 for:

- (1) Damage to or loss or destruction of Government property.
- (2) Amount of pay and allowances paid or payable by the Government to military personnel for any period of incapacitation incident to injury to such personnel.
- (3) Cost of medical treatment, hospitalization, travel, or other expense or loss to the Government in the rehabilitation of military personnel incident to injury to such personnel.
- (4) Cost of funeral, burial, transportation, or other expense or loss to the Government incident to death of military personnel.

(c) *Action by reviewing authorities.* Upon receipt by the commanding general of an army, or a command claims service, or the Chief of Transportation, as the case may be, each investigating officer's report will, unless the report is accompanied by a statement that payment in full has been made, be reviewed

and, after any corrective action deemed necessary with relation thereto, appropriate administrative action will be taken. Such action, unless the investigating officer's report is accompanied by a statement that payment in full has been made or by a compromise offer which such reviewing authority deems it advisable to accept, will include a determination whether the defendant is legally liable to the United States and, if so, the amount of such liability. Upon a determination that the defendant is liable and of the amount of such liability, the commanding general of the army, or the chief of the command claims service, or the Chief of Transportation, will cause a written demand to be made upon the defendant for payment of the claim. If such demand is complied with, the certified check or postal money order will be accepted and transmitted to the appropriate fiscal officer. If the defendant fails to comply with the demand within a reasonable time, and the amount involved, the financial responsibility of the defendant and other circumstances of the case appear to make advisable the institution of suit, or if the defendant has already made, or on such demand makes, a compromise offer accompanied by a certified check or postal money order, the commanding general of the army or the chief of the command claims service, or the Chief of Transportation, will forward the original and one copy of the file, including any compromise offer and certified check or postal money order, with his recommendation as to the advisability of acceptance of such compromise offer, if any, or, if none, as to the advisability of instituting suit, to The Judge Advocate General for appropriate administrative action.

PART 538—ALLOTMENTS OF PAY

- | | |
|--------|---|
| Sec. | |
| 538.1 | Definitions. |
| 538.2 | Eligible allottees. |
| 538.3 | Eligible allottees and authorized purposes. |
| 538.4 | Power of attorney. |
| 538.5 | Pay which can be allotted. |
| 538.6 | Allotment offices. |
| 538.7 | Payment to allottees in foreign countries. |
| 538.8 | Commencing date; class E allotments. |
| 538.9 | Allotments to joint bank accounts. |
| 538.10 | Effect of certain changes in status on class E, D, and N allotments. |
| 538.11 | Missing, missing in action, beleaguered, besieged, interned in a neutral country, or captured by the enemy. |

AUTHORITY: §§ 538.1 to 538.11 issued under § 16, 30 Stat. 981, 40 Stat. 384, 52 Stat. 354; 10 U. S. C. 894.

DERIVATION: AR 35-5520, 4 June 1947.

§ 538.1 *Definitions—*(a). *Allotment* The word "allotment" as used herein, refers to a definite portion of the pay and allowances of a person in the military service, active or retired, or of a civilian employee of the Department of the Army assigned for duty in Alaska or outside the continental limits of the United States, which is authorized to be paid to an allottee in a manner prescribed by the Secretary of the Army.

(b) *Class E allotment.* An allotment made to an individual, a fiduciary, a

banking institution, or a commercial life insurer, or to other eligible allottees, set forth in § 538.3 is designated as a "class E" allotment.

(c) *Class D allotment.* An allotment made for the payment of premiums on United States Government life insurance is designated as a "class D" allotment.

(d) *Class N allotment.* An allotment made for the payment of premiums on National Service life insurance is designated as a "class N" allotment.

(e) *Class B allotment.* An allotment made for the purchase of United States Savings Bonds is designated as a "class B" allotment.

(f) *Allotter.* The "allotter" is the person from whose pay the allotment is made, either by himself, or by another on his account.

(g) *Allottee.* The "allottee" is the person or institution to whom the allotment is made payable.

(h) *Dependent.* The term "dependent" as used herein includes a lawful wife, unmarried child under 21 years of age, a dependent mother, father, or unmarried dependent stepchild or adopted child under 21 years of age, or such dependent as has been designated in official records, or an individual determined to be a dependent by the Secretary of the Army or by a subordinate designated by him.

§ 538.2 *Eligible allottees—*(a) *Military personnel.* Commissioned officers and others who certify their own pay vouchers, and enlisted persons, active or retired, and commissioned officers of other services or departments who may be detailed or assigned to the Department of the Army and who are carried on Department of the Army pay rolls, wherever serving, may make allotments of pay.

(b) *Civilian personnel.* Civilian employees of the Department of the Army except civilian marine personnel, who have national service life insurance or United States Government life insurance may make Class D and N allotments during such time as they may be permanently assigned for duty outside the continental United States or in Alaska. Civilian employees of the Department of the Army except civilian marine personnel may make Class E allotments during such time as they may be permanently assigned to duty outside the continental limits of the United States or in Alaska. They may also make Class B allotments when stationed where the Class A Pay Reservation Plan for the purchase of United States Savings Bonds is not in effect. The execution and discontinuance of allotments of pay for civilian marine personnel of the Transportation Corps will be effected under such regulations as may be prescribed by the Chief of Transportation. A civilian employee permanently stationed outside the continental limits of the United States or in Alaska is deemed to be one whose oversea assignment is not limited in tenure or which may be expected to exceed 6 months. No allotments will be authorized by civilian employees of the Department of the Army until arrival at the permanent oversea duty station.

§ 538.3 *Eligible allottees and authorized purposes*—(a) *Class E allotments.* The following are eligible for designation as allottees for class E allotments:

(1) An individual, for the support of the allotter's family, dependent relative, or divorced wife.

(2) A fiduciary (person or institution acting in a capacity of trust or confidence) for the support of the allotter's family, dependent relative, or divorced wife, or for contribution to a retirement fund.

(3) A banking institution in any country where payment in United States currency is not blocked, for the support of the allotter's family, dependent relatives, divorced wife, or for savings, including a checking account provided the allotter has made satisfactory arrangements with the bank for acceptance of the allotment.

(4) A commercial life insurer for the payment of premiums for insurance on the life of the allotter, or for repayment of loans or interest thereon. All payments to an insurer will be made to the home office of the institution issuing the insurance or to a branch office designated by the home office.

(5) Federal savings and loan associations, and State building and loan association.

(6) A lending institution holding a loan insured by the Federal Housing Administration of the Housing and Home Finance Agency; or the Federal Housing Administration.

(7) Army Emergency Relief.

(8) Air Force Aid Society.

Allotments made to allottees under subparagraphs (7) and (8) of this paragraph will be paid to the organization at the station where the loan was made.

(b) *Class D and N allotments.* The Veterans' Administration, Washington 25, D. C., will in all cases be designated as allottee for class D or N allotments.

§ 538.4 *Power of attorney.* A power of attorney will not be accepted to establish a new allotment or to change or discontinue an existing allotment.

§ 538.5 *Pay which can be allotted*—

(a) *Military personnel.* (1) A commissioned officer or other person who certifies his own pay voucher may, for class E, D, and N allotments, allot his base and longevity pay, monthly subsistence allowance based on a 30-day month, rental allowance, foreign service pay, and any additional pay for distinguished service awards, but no amount in excess of the total thereof.

(2) An enlisted person may, for class E, D, and N allotments, allot so much of his base, longevity, and foreign service pay, additional pay for distinguished service awards, and monetary allowance in lieu of quarters for dependents as will leave, after class F and other deductions have been made, a monthly balance of \$10, or such other amount as may be determined by his commanding officer to be necessary to meet his essential personal needs.

(3) For any military person, all items of pay and allowances may be allotted for Class B allotments at any time and

in any status, and, in the case of such person officially reported as missing, missing in action, interned in a neutral country, captured by an enemy, beleaguered, or besieged, all items of pay may be allotted for class E, D, and N allotments.

(b) *Civilian employees.* An eligible civilian employee may allot any amount not in excess of his basic salary, less retirement deductions, and Federal withholding tax. Per diem and other allowances may not be allotted.

§ 538.6 *Allotment offices*—(a) *Active duty personnel*—(1) *Class E allotments.* Class E allotments are processed by the Class E Allotment Division, Army Finance Center, OCF, Building 205, St. Louis 20, Missouri.

(2) *Class D and N allotments.* Class D and N allotments are processed by the Insurance and Deposits Division, Army Finance Center, OCF, Building 205, St. Louis 20, Missouri.

(b) *Retired personnel.* Effective May 1, 1948 for officers and effective June 1, 1948 for enlisted personnel, class E, D, and N allotments of such retired personnel wherever located will be processed by the Washington Finance Office, U. S. Army, Washington 25, D. C.

§ 538.7 *Payment to allottees in foreign countries.* (a) Except as provided in paragraph (b) of this section, payment of class E allotments will be made to allottees residing in foreign countries as follows:

(1) By check mailed from the Class E Allotment Division, Army Finance Center, OCF, to those countries where payment in United States currency is not blocked.

(2) In local currency by appropriate disbursing officers (or by military attaché where there is no disbursing officer) in the theater or country or residence of the allottee, where payment in United States currency is blocked by Treasury Department regulations. In this instance disbursing officers will receive from the Chief of Finance, properly certified vouchers on which payment will be made, together with appropriate instructions.

(3) In Military payment certificates by appropriate disbursing officers to dependents acquired through marriage to Germans for the support of such dependents.

(b) Military personnel on duty in Germany or Japan are not authorized to make class E allotments to their dependents when such dependents have departed from the United States to join such personnel at their oversea stations. Allotments will be discontinued during the month in which notification is received by such personnel that their dependents have actually departed.

§ 538.8 *Commencing date; Class E allotments.* Ordinarily, class E allotments will be made effective the first of the month following that in which the authorization form is executed and payment will be made accordingly, provided the authorization form is received by the Class E Allotment Division not later than the 10th day of the month in which

allotment is to become effective. Exceptions will be made for class E allotments covering monetary allowances in lieu of quarters and those covering commercial insurance premiums where because of circumstances beyond the control of the allotter an earlier effective date may be necessary. Class E allotments covering monetary allowances in lieu of quarters may be made effective the first of the month in which authorization form is executed but no earlier. Allotment checks are mailed so as to reach the allottee by the 15th of the month following the month in which allotment became effective; for example, an allotment effective February 1 will be paid by a check dated March 1 which will be mailed to reach the allottee not later than March 15. A class E allotment will not be made effective with the month in which an officer or enlisted person enters on duty except when an enlisted person is commissioned, or appointed a warrant officer, when a warrant officer is commissioned, or when a graduate, United States Military Academy, enters commissioned officer status.

§ 538.9 *Allotments to joint bank accounts.* Class E allotments to joint bank accounts are acceptable provided the allotter has made satisfactory arrangements with the bank for acceptance of the allotment. In such case, checks will be drawn to the order of the bank for the credit of only one of the two individuals in whose name the account has been established. Therefore, the authorization will bear the name of only one of the individuals to whose credit the allotment will be made. Care must be exercised that the full and correct name, branch, if any, and address of the banking institution where the account is maintained are given.

§ 538.10 *Effect of certain changes in status on class E, D, and N allotments*—(a) *Death of allotter.* Allotments are in the nature of powers of attorney, which are revoked by the death of the allotter. No further payment of an allotment will be made after receipt of advice of the allotter's death; even though it is known that deductions were made from the allotter's pay and not paid to the allottee. Such amounts become a part of the estate of the allotter. See 10 Comp. Dec. 208, 26 id. 855. Deaths of allottees occurring outside the continental limits of the United States or in Alaska will be reported to the allotment offices by the Adjutant General. Allotments of personnel who die in the United States will be discontinued as provided in AR 35-5560.¹

(b) *Death of allottee.* Upon receipt of information of the death of any person to whom an allotment is payable, the allotment division will discontinue the allotment and report the death to the allotter through his commanding officer giving the date of discontinuance. When an allotment check, even though in-

¹ Administrative regulations of the Department of the Army relative to notification to allotment office upon death, discharge, release from active duty, or retirement occurring in the United States.

dorsed, is not collected or negotiated prior to the death of the allottee, the amount thereof does not become a part of the allottee's estate or subject to any expense incurred by, or on behalf of, the allottee before or after death. See 26 Comp. Dec. 855. All such checks should be returned to the allotment officer. Unless the allotter has been separated from the service and has received final payment, the allotment office will, upon receipt of the returned check, give authority to credit the amount on the current pay roll or pay voucher.

(c) *Desertion and dishonorable discharge.* Allotments of pay do not give a vested right to the money allotted, and an allottee is not entitled to be paid the amount of an allotment made by a person who deserted or who was dishonorably discharged with forfeiture of all pay and allowances before payment of the allotment could be made. If the allottee failed to collect or negotiate the allotment checks prior to the dismissal or dishonorable discharge of the allotter from the service with forfeiture of all pay and allowances then due, payment of the allotment is not authorized. If, however, payment to the allottee was made between the date of commencement of the unauthorized absence and the date when the allotter was reported as AWOL, the amount so paid should be allowed as an offset in settling the allotter's accounts.

(d) *Honorable discharge or relief from active duty.* When an allotter is honorably discharged or relieved from active duty within the continental United States (excluding Alaska) his allotments will be discontinued as outlined in AR 35-5560.¹

(e) *Retirement.* When a member of the Regular Army is retired he may, if he desires, continue Class E allotments for commercial life insurance and also Class D and N allotments.

§ 538.11 *Missing, missing in action, beleaguered, besieged, interned in a neutral country, or captured by the enemy—*

(a) *Notification to dependents.* Whenever any person is officially reported to be missing, missing in action, beleaguered, besieged, interned in a neutral country, or captured by the enemy (but not when change occurs from one such status to another) the emergency addressee shall be promptly informed, by the office designated to do so, of the beneficial provisions of the act of March 7, 1942, (56 Stat. 145) as amended, of the regulations governing allotments from pay of such persons, of the information required in or to accompany allotment applications, and of the name and address of the allotment division to which applications should be directed. The emergency addressee will be requested to notify interested relatives and dependents of the benefits and to advise insurers, or other persons who may have knowledge of life insurance premiums that should be paid by allotment, to communicate information thereof to the allotment office.

¹ Administrative regulations of the Department of the Army relative to notification to allotment office upon death, discharge, release from active duty, or retirement occurring in the United States.

(b) *Accounts.* The pay and allowance accounts of persons absent in a missing status are maintained by the Finance Officer, U. S. Army, Army Finance Center, OCF, Building 205, St. Louis 20, Missouri. During the period of absence there are credited the pay and allowances due, and for the same period there are charged against such pay and allowances all allotments paid on account of the absent person and all prescribed deductions from pay for family allowances paid on his account. Allotment payments so charged shall be recredited in any case in which it is determined by the Secretary of the Army, or by such subordinate as he may designate, that such payments were induced by fraud or misrepresentation to which the absent person was not a party.

(c) *Effective date of allotments.* Such allotments will ordinarily be made effective for the month in which they are granted.

(d) *Termination of absence.* When the absence of any person in a missing status is terminated by death or finding of death, all allotment and allowance payments will be discontinued and the account closed for settlement. When any such status is terminated by a return to the controllable jurisdiction of the Department of the Army the person will be advised of the allotments and family allowances in effect which constitute a charge to his account and will be afforded an opportunity to execute such changes therein as he desires. In the absence of discontinuance or changes by him, the allotments and allowances continued or established during the period of his absence will continue in effect.

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 48-9042; Filed, Oct. 12, 1948; 8:49 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes
[T. D. 5660]

PART 310—TAXES ON OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER

RETURNS OF MANUFACTURERS OF AND WHOLESALE DEALERS IN OLEOMARGARINE

Regulations 9 (revised April 1936) (26 CFR, Part 310), but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4886, approved February 11, 1939 (Note, 26 CFR, Cum. Supp. Part 310), are amended as follows:

PARAGRAPH 1. Article 25 (§ 310.25) is amended as follows:

(A) By changing paragraphs (e) and (f) to read as follows:

§ 310.25 *Monthly returns.* * * *

(e) *Disposals during first month of fiscal year or month of commencing business.* Disposals to (1) wholesalers and (2) retailers and consumers made in the first month of each fiscal year, or

the month of commencing business, as the case may be, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Withdrawn Tax-Paid, Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business (whether or not within the same State), a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the month. The aggregate quantity of oleomargarine consigned during the month to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Withdrawn Tax-Paid, Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(f) *Disposals during other months.* Disposals to wholesalers, retailers, and consumers in each month other than the first month of the fiscal year, or the month of commencing business, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of oleomargarine disposed of during the month to all persons, including wholesalers, retailers, and consumers, listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (e) (1) of this section. Similarly, disposals to retailers and consumers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the same manner as prescribed in paragraph (e) (2) of this section.

(B) By striking out paragraph (h).

(C) By amending paragraph (i) by changing the first sentence to read as follows:

(i) *Chain store entries.* Subject to the provisions of paragraphs (e) and (f) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated.

(D) By amending paragraph (l) by striking out the first two sentences and

substituting the following sentence in lieu thereof:

(1) *Returned goods.* Under a heading, Returned Goods, there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the month from him.

(E) By amending paragraph (m) as follows:

(i) By changing "(e)" in the first sentence to "(e) (1)".

(ii) By changing "(f)" in the second sentence to "(e) (2)".

PAR. 2. Article 43 (§ 310.43) is amended as follows:

(A) By changing paragraph (d) to read as follows:

§ 310.43 *Monthly returns.* * * *

(d) *Receipts—(1) During first month of fiscal year or month of commencing business.* Under the heading, Oleomargarine Received From Manufacturers and Wholesale Dealers, page 1, Form 217, each entry shall show (i) the name and address of each consignor, and (ii) the total quantity received during the month from him. Regardless of the number of consignments received during the month from the same consignor, only a single entry showing the aggregate of all such consignments shall be made.

(2) *During other months.* Oleomargarine received from manufacturers and wholesale dealers in each month other than the first month of each fiscal year, or the month of commencing business, as the case may be, shall be reported on Form 217 as follows:

(i) *From consignors listed on returns for previous months of same fiscal year.* The total quantity of oleomargarine received from all manufacturers and wholesale dealers listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Received from consignors listed on returns for previous months of the same fiscal year."

(ii) *From other consignors.* Oleomargarine received from manufacturers and wholesale dealers not listed on a return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (d) (1) of this section.

(B) By changing paragraphs (g) and (h) to read as follows:

(g) *Disposals during first month of fiscal year or month of commencing business.* Disposals to (1) wholesalers and (2) retailers and consumers in the first month of each fiscal year, or the month of commencing business, shall be reported in full detail on supplemental sheets, Form 217a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Disposals to Wholesale Dealers, with the entries grouped in alphabetical order or (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several

individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business whether or not within the same State, a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the month. The aggregate quantity of oleomargarine consigned during the month to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Disposals to Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(h) *Disposals during other months.* Disposals to wholesalers, retailers, and consumers in each month other than the first month of the fiscal year, or the month of commencing business, shall be reported on supplemental sheets, Form 217a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of oleomargarine disposed of during the month to all persons, including wholesalers, retailers, and consumers, listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (g) (1) of this section. Similarly, disposals to retailers and consumers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the same manner as prescribed in paragraph (g) (2) of this section.

(D) By amending paragraph (k) by changing the first sentence thereof to read as follows:

(k) *Chain store entries.* Subject to the provisions of paragraphs (g) and (h) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated.

(E) By amending paragraph (l) by changing the caption and first sentence thereof to read as follows:

(l) *Goods returned or otherwise disposed of.* Under a heading, Returned to Shipper, there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the month from him.

(53 Stat. 467; 26 U. S. C. 3791)

Because the purpose of this Treasury decision is to relieve restriction, it is found that it is unnecessary to issue such Treasury decision with notice and public procedure thereon under section 4 (a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4 (c) of said act.

This Treasury decision shall be effective upon its filing for publication in the FEDERAL REGISTER.

[SEAL] GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved: October 7, 1948.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 48-9056; Filed, Oct. 12, 1948;
8:57 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 36—SERVICEMEN'S READJUSTMENT ACT OF 1944

ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING SPECIALLY ADAPTED HOUSING

1. New sections, §§ 36.4401, 36.4402, 36.4403, 36.4404, 36.4405, 36.4406, 36.4407, 36.4408, 36.4409, and 36.4410 are added to Part 36 to read as follows:

NOTE: Those requirements, conditions, or limitations expressly set forth in the act and not restated herein must be taken into consideration in conjunction with these regulations.

| Sec. | Definitions. |
|---------|--|
| 36.4401 | Definitions. |
| 36.4402 | Eligibility. |
| 36.4403 | Joint ownership of housing unit. |
| 36.4404 | Computation of cost of housing unit. |
| 36.4405 | Submission of proof to the Administrator. |
| 36.4406 | Disbursement of benefit authorized. |
| 36.4407 | Supplementary administrative action. |
| 36.4408 | Delegation of authority. |
| 36.4409 | Guaranteed or insured loans under Servicemen's Readjustment Act. |
| 36.4410 | Allocation of the funds of the grant. |

AUTHORITY: §§ 36.4401 to 36.4410 issued under Pub. Law 702, 80th Cong.

§ 36.4401 *Definitions.* Wherever used in the act or §§ 36.4401 through 36.4410, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated; namely:

(a) "Act": Public Law 702, 80th Congress, 2d Session.

(b) "Administrator": The Administrator of Veterans' Affairs or any employee of the Veterans' Administration authorized by him to act in his stead.

(c) "Movable facilities": Such exercising equipment and other aids as may be allowed or required by the approving medical officer.

(d) "Necessary land": Any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality.

(e) "Special fixtures": Construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the approving medical officer as necessary by nature of the qualifying disability.

(f) "Housing unit": A family dwelling or unit approved by the medical serv-

ice as medically feasible for occupation as a home by the individual beneficiary including the land, improvements, and all appurtenances, together with such movable facilities or special features as are authorized under the definitions of those terms in §§ 36.4401 through 36.4410.

(g) "Remodeling": Any alterations, repairs, or improvements necessary or desirable to the housing unit as defined in §§ 36.4401 through 36.4410.

§ 36.4402 *Eligibility.* No beneficiary shall be eligible for assistance under the act for the purpose of reimbursing him for the cost of an existing structure acquired by him prior to applying for assistance or for constructing or remodeling a dwelling unless it is determined pursuant to §§ 36.4401 through 36.4410, in respect of the beneficiary that:

(a) It is medically feasible for such beneficiary to reside in the existing or proposed housing unit and in the locality where such is or will be situated;

(b) The nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes;

(c) Such unit bears a proper relation to the veteran's present and anticipated income and expenses;

(d) The veteran has or will acquire an estate in the property not less than a fee simple estate, or a leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, and such title as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community.

§ 36.4403 *Joint ownership of housing unit.* The construction, or remodeling of a housing unit, or reimbursement to a veteran who has acquired a suitable unit at his own expense, shall be permissible notwithstanding that title to the home is or will be vested in an eligible veteran and his spouse. If an undivided interest is or will be owned by a person other than the spouse of the veteran the cost of the unit to the veteran shall be computed to be such part of the total cost of the unit as is proportionate to the undivided interest of the veteran in the entire property, and the percentages and amounts prescribed in the act shall be calculated only upon such cost to the veteran.

§ 36.4404 *Computation of cost of housing unit.* For the purpose of computing the amount of benefits payable to a veteran beneficiary there may be included in the total cost to the veteran the following:

(a) The cost of the necessary land and the grading, landscaping, and improvement thereof for use for residential purposes;

(b) The cost of the improvements erected thereon, and of the appurtenances thereto, including such heating, cooking, laundry and refrigeration equipment as may be suitable to equip a housing unit for residential use;

(c) The cost of remodeling a housing unit;

(d) The cost of movable facilities and special fixtures;

(e) Reasonable architects' and attorneys' fees for services rendered to the

veteran which are necessary to and are in connection with the transaction;

(f) Any charges for the customary necessary connections to or extensions of public facilities and improvements;

(g) Such other reasonable costs or expenses incurred in closing a loan or financing the acquisition of the housing and land, including unpaid taxes, ground rents, or assessments, which are normally required to be paid by a lienor or a purchaser.

§ 36.4405 *Submission of proof to the Administrator.* As a condition precedent to the grant the Administrator may require submission of such proof of costs and other matters as he may deem necessary.

§ 36.4406 *Disbursement of benefit authorized.* After approval of an application for a grant the Administrator shall decide upon a method of disbursement which in his opinion is appropriate and advisable in the interest of the veteran and the Government and disburse the benefit payable accordingly. Disbursements may be made to the veteran or to third parties who have contracted with the veteran.

§ 36.4407 *Supplementary administrative action.* Notwithstanding any requirement, condition, or limitation stated in or imposed by §§ 36.4401 through 36.4410 the Administrator, within the limitations and conditions prescribed in the act, may take such action as may be necessary or appropriate to relieve undue prejudice to a veteran or a third party contracting or dealing with such veteran which might otherwise result.

§ 36.4408 *Delegation of authority.* (a) Except as hereinafter provided, each employee of the Veterans' Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to assisting eligible veterans to acquire specially adapted housing.

(b) Designated positions:

Assistant Administrator for Finance.
Director, Loan Guaranty Service.
Assistant Director, Loan Guaranty Service.
Division Chief, Loan Guaranty Service.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.

(c) Nothing in this section shall be construed to authorize any employee designated in paragraph (b) of this section to determine basic eligibility or medical feasibility.

§ 36.4409 *Guaranteed or insured loans under Servicemen's Readjustment Act.* In any case where, in addition to the benefits of Public Law 702, 80th Congress, the veteran will utilize his entitlement to the loan guaranty or insurance benefits of title three of the Servicemen's Readjustment Act of 1944, as amended, the complete transaction must be in accord with applicable regulations promulgated thereunder excepting § 36.4306 thereof.

§ 36.4410 *Allocation of the funds of the grant.* Any amount payable as a grant under the act may be required by

the Administrator to be utilized as he deems advisable for payment of any of the following costs or debts which are obligations of the veteran before any part of grant may be paid to the veteran directly:

(a) Cost of necessary land,
(b) Cost of constructing or remodeling a housing unit,

(c) Delinquent taxes secured by a lien on the housing unit,

(d) Reduction or retirement of any indebtedness incurred in connection with the purchase, construction, or remodeling of a housing unit on which the grant is made.

[SEAL] O. W. CLARK,
Executive Assistant Administrator.

[F. R. Doc. 48-9022; Filed, Oct. 12, 1948; 8:50 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1700]

MISCELLANEOUS AMENDMENTS

Parts 1, 64, 65, 67, 72, 76 and 81, are amended as follows:

PART 61—CERTIFICATES AND SCRIP

Section 61.7 (b) is amended to read as follows:

§ 61.7 *Affidavit to accompany application.* * * *

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived, and that it is not within a distance of 80 rods along any navigable or other waters from any homestead or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the lands have been restored from reservation (R. S. 2306, 2307; 43 U. S. C. 274, 278).

PART 64—HOMESITES OR HEADQUARTERS

1. The first paragraph and paragraph (g) of § 64.4 are amended to read as follows:

§ 64.4 *Form and contents of applications.* Applications under the act of March 3, 1927, must be filed in duplicate in the district land office within which the land is situated, and the claim must be in reasonably compact form.

(g) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homestead or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48

Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where petition for restoration based on an equitable claim is filed with the application, or the land has been restored from reservation (44 Stat. 1364; 48 U. S. C. 461).

2. Section 64.7 (e) is amended to read as follows:

§ 64.7 *Form and contents of application.* * * *

(e) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from reservation (48 Stat. 809; 48 U. S. C. 461).

PART 65—HOMESTEADS

1. Section 65.6 (a) is amended to read as follows:

§ 65.6 *Showing to accompany application.* * * *

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration based on an equitable claim is filed with the application, or the land has been restored from the reservation (30 Stat. 409, as amended; 48 U. S. C. 371).

2. The second paragraph of § 65.20 is amended to read as follows:

§ 65.20 *Survey without expense to settler.* * * *

Petition for survey should be filed in duplicate in the proper district land office, describing the land settled upon by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not

extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

PART 67—INDIANS AND ESKIMOS

Section 67.8 is amended to read as follows:

§ 67.8 *Shore space.* An Indian allotment may not extend more than 160 rods along the shore of any navigable water unless the restriction as to length of claim has been waived and it may not extend within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homesite, Indian or Eskimo allotment, or school indemnity selection, unless the land has been restored from reservation, or a petition for restoration based on an equitable claim is filed with the application (34 Stat. 197; 48 U. S. C. 357).

PART 72—PARKS, RECREATIONAL AND CEMETERY SITES

Section 72.3 (f) is amended to read as follows:

§ 72.3 *Application to lease or purchase.* * * *

(f) The statement of the applicant, corroborated by the statement of two witnesses, that the land is vacant, unreserved, unoccupied, unimproved, or unclaimed by anyone other than the applicant; that the land does not abut more than 160 rods upon navigable waters or that the restriction has been waived, and that the land is not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation; and that the land is not included within an area which is reserved because of hot or medicinal spring thereon. If the facts are contrary as to any of the matters set forth in this paragraph, a

complete statement should be made thereof (54 Stat. 1192; 48 U. S. C. 363).

PART 76—SCHOOL LAND RESERVATION: GRANT FOR UNIVERSITY

1. Section 76.3 (b) is amended to read as follows:

§ 76.3 *Indemnity selections.* * * *

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived and that the land is not within a distance of 80 rods along any navigable or other water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that the land has been restored from reservation (R. S. 453, 2478, 43 U. S. C. 2, 1201).

2. Section 76.7 (b) is amended to read as follows:

§ 76.7 *Affidavit must accompany application.* * * *

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived; and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment or school indemnity selection, or that the land has been restored from reservation (R. S. 453, 2478; 43 U. S. C. 2, 1201).

PART 81—TRADE AND MANUFACTURING SITES

Section 81.6 (d) is amended to read as follows:

§ 81.6 *Facts to be shown in application.* * * *

(d) That at the date of the initiation of the claim, the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights, or from a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the land has been restored from reservation (R. S. 453, 2478; 43 U. S. C. 2, 1201).

MARION CLAWSON,
Director.

Approved: September 28, 1948.

C. GIRARD DAVIDSON,
Acting Secretary of the Interior.

[F. R. Doc. 48-9035; Filed, Oct. 12, 1948; 8:46 a. m.]

TITLE 46—SHIPPING

Chapter I—Coast Guard: Inspection and Navigation

Subchapter M—Construction or Material Alteration of Passenger Vessels of the United States of 100 Gross Tons and Over Propelled by Machinery

[CGFR 48-51]

**PART 144—CONSTRUCTION OR MATERIAL ALTERATION OF PASSENGER VESSELS OF THE UNITED STATES OF 100 GROSS TONS AND OVER PROPELLED BY MACHINERY
CONVERSION OF CERTAIN VESSELS TO PASSENGER VESSELS**

By virtue of the authority vested in me as Commandant, United States Coast Guard, by section 5, 49 Stat. 1384, sec. 2, 54 Stat. 1028, and sec. 5 (e), 55 Stat. 244, as amended, 46 U. S. C. 369, 463a, 50 U. S. C. 1275, and sec. 101 of Reorganization Plan No. 3 of 1946, 11 F. R. 7875, I find that an emergency exists and the following amendment to the regulations shall be made effective on the date of publication of this document in the FEDERAL REGISTER:

Section 144.29 (a) is amended by the addition of the following sentence:

§ 144.29 *Alternate materials.* (a) * * * Vessels to be converted for the transportation of personnel to and from salvage operations, offshore oil drilling operations, and similar operations, may be given special consideration.

(Sec. 5, 49 Stat. 1384, sec. 2, 54 Stat. 1028, and sec. 5 (e), 55 Stat. 244, as amended; 46 U. S. C. 369, 463a, 50 U. S. C. 1275)

This amendment to the regulations is published without prior general notice of its proposed issuance for the reason

that notice, public rule making procedure, and effective date requirements in connection therewith are hereby found to be impracticable and contrary to the public interest. This emergency is due to the shortage of suitable steel hull vessels and the shortage of steel preventing the conversion or construction of passenger vessels for service in offshore oil drilling or salvage operations. This added regulation allows vessels constructed of material other than steel to be used under certain conditions for the transportation of persons engaged in offshore oil drilling, salvage, and similar operations. Inasmuch as these operations are in the national interest, it will permit the continued operation of certain vessels as well as conversions of others for service in such operations.

Dated: October 8, 1948.

[SEAL] J. F. FARLEY,
Admiral, U. S. Coast Guard,
Commandant.

[F. R. Doc. 48-9055; Filed, Oct. 12, 1948; 8:51 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter II—Office of Defense Transportation

[Supp. Administrative Order ODT 1-5E]

DELEGATION OF AUTHORITY TO TRANSPORTATION OFFICER, AND TRANSPORTATION ASSISTANT, RAILWAY TRANSPORT DEPARTMENT

Pursuant to § 503.5, paragraph (b) of Administrative Order ODT 1, as amended (8 F. R. 6001; 9 F. R. 4615):

1. M. F. Pitcher, Transportation Officer, Railway Transport Department, Office of Defense Transportation, or in her absence, L. F. Cook, Transportation Assistant, Railway Transport Department, is each hereby authorized to execute and issue in her discretion, subject to such terms and conditions as she may prescribe, and in the name of the Director of the Office of Defense Transportation, the special permits contemplated by § 500.73 of General Order ODT 18A, Revised, as amended (11 F. R. 8229, 8829, 10616, 13320, 14172; 12 F. R. 1034, 2386; 13 F. R. 2971), and the special permits contemplated by General Order ODT 1, Revised, as amended (11 F. R. 8228, 9040, 10616), or as such orders may be hereafter amended, revised, or reissued.

2. The exercise of the powers and authority conferred by this order shall be subject to the general control and supervision of the Director of the Office of Defense Transportation and the Director, Railway Transport Department, Office of Defense Transportation.

This Supplementary Administrative Order ODT 1-5E shall become effective on October 8, 1948.

Supplementary Administrative Order ODT 1-5D (12 F. R. 5781), is hereby revoked as of the effective date of this Supplementary Administrative Order ODT 1-5E.

Issued at Washington, D. C., this 8th day of October 1948.

C. R. MEGEE,
Director, Railway Transport
Department, Office of Defense
Transportation.

[F. R. Doc. 48-9044; Filed, Oct. 12, 1948; 8:49 a. m.]

NOTICES

**DEPARTMENT OF THE INTERIOR
Bureau of Land Management**

[Misc. 45494]

UTAH

ORDER OPENING LANDS TO MINING LOCATION, ENTRY AND PATENTING

Under authority and pursuant to the provisions of the act of April 23, 1932 (47 Stat. 136, 43 U. S. C. sec. 154) and the regulations thereunder, and subject to (1) valid existing rights, and (2) the terms of the following-quoted stipulations, it is hereby ordered that the W $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 22, T. 9 S., R. 1 E., S. 1 M., Utah be, and the same is hereby opened to location, entry and patenting under the general mining laws, and the quoted stipulations to be executed and acknowledged in favor of the United States by the locators, for their heirs, successors and assigns, and recorded in the county records and in the United States Land Office at Salt Lake City, Utah before locations are made:

There is reserved to the United States, its successors and assigns, the prior right to use any of the lands herein described, to construct, operate, and maintain dams, dikes,

reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roads, and appurtenant irrigation structures, also the right to remove construction materials therefrom, without any payment made by the United States, its successors or assigns, for such rights, with the agreement on the part of the applicants that if the construction of any or all of such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures, across, over, or upon said lands or the removal of construction materials therefrom, should be made more expensive by reason of the existence of improvements or workings of the applicants thereon, such additional expense is to be estimated by the Secretary of the Interior, whose estimate is to be final and binding upon the parties hereto, and that within thirty days after demand is made upon the applicants for payment of any such sums, the applicants will make payment thereof to the United States or its successors constructing such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands or removing construction materials therefrom. The applicants further agree that the United States, its officers, agents, and employees and its successors and assigns shall not be held liable for any damage to the im-

provements or workings of the applicants resulting from the construction, operation, and maintenance of any of the works hereinabove enumerated. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the United States.

In carrying on mining, milling, and other operations on the above-described lands, applicants and their heirs, executors, administrators, successors and assigns, shall:

(a) Notify the United States in writing of any plan of the applicants to tunnel or otherwise conduct mining or other operations within 100 feet of the canal, works, structures, and property of the United States. Notice shall be given to the Regional Director, Bureau of Reclamation, Salt Lake City, Utah, or to a person designated by him, at least 30 days before mining operations reach such point;

(b) Comply with all requirements imposed by the United States to safeguard the canal, works, structures, and property of the United States, and do all things necessary to prevent damage thereto. In the event damage should occur, the applicants shall pay to the United States within 30 days after demand therefor, a sum conclusively determined by the Secretary of the Interior to be sufficient to defray the cost of repairing, replacing, or otherwise restoring damaged property;

(c) Upon demand, furnish a bond in an amount and form satisfactory to the Secretary of the Interior to protect the United

States against loss arising out of, or in connection with, the use of the above-described lands by the applicants.

Any location or entry made and any patent issued for the above-described land will be subject to and contain a reference to the above-quoted stipulations and to the volume and page where they are recorded in the county records.

This order shall not become effective to change the status of the land until 10:00 a. m. on December 8, 1948, at which time the land shall, subject to valid existing rights and the provisions of existing withdrawals and of this order, become subject to disposition under the United States mining laws only, as above provided.

C. GIRARD DAVIDSON,
Acting Secretary of the Interior.

OCTOBER 6, 1948.

[F. R. Doc. 48-9034; Filed, Oct. 12, 1948;
8:46 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 7162, 7991, 7996, 8090, 8102]

LOUISIANA BROADCASTING CO. ET AL.

ORDER SCHEDULING ORAL ARGUMENT

In re applications of Roy Hofheinz and W. N. Hooper, d/b as Louisiana Broadcasting Company, New Orleans, Louisiana, Docket No. 7162, File No. BP-4260; Bayou Broadcasting Company, Inc., Baton Rouge, Louisiana, Docket No. 7991, File No. BP-5453; James W. Bradner, Jr., tr/as the Galveston Broadcasting Company (KGBC), Galveston, Texas, Docket No. 8090, File No. BP-5663; for construction permits. Matter of petition of Josh Higgins Broadcasting Company (KXEL) for continuation of exclusive nighttime assignment on 1540 kc to Station KXEL, Waterloo, Iowa, Docket No. 7996. Matter of petition of Bayou Broadcasting Company, Inc., Baton Rouge, La., for leave to amend, Docket No. 8102.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 30th day of September 1948:

The Commission having under consideration the exceptions filed in the above proceeding and the petition for severance and grant filed by The Galveston Broadcasting Company (KGBC), Galveston, Texas; and

It appearing, that the issues raised in the foregoing petition for severance and grant can best be disposed of after affording petitioner an oral argument before the Commission, en banc, on said issues, and that the petition should be designated for oral argument together with the exceptions filed in the above proceeding:

It is ordered, That oral argument on the exceptions filed in the above-entitled proceeding be, and it is hereby, scheduled for October 26, 1948, at 10:00 a. m., before the Commission en banc; and

It is further ordered, That the petition for severance and grant filed in this proceeding by The Galveston Broadcast-

ing Company (KGBC), Galveston, Texas, be, and it is hereby, scheduled for oral argument on October 26, 1948, together with the exceptions in this proceeding, and that the parties be, and they are hereby, afforded an opportunity to address themselves not only to the Proposed Decision and the exceptions filed but to the issues raised in the foregoing petition for severance and grant.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9047; Filed, Oct. 12, 1948;
8:50 a. m.]

[Docket Nos. 7965, 8104]

SEASIDE BROADCASTING CO. AND PIONEER
BROADCASTERS, INC.

ORDER CONTINUING HEARING

In re application of Seaside Broadcasting Company, Atlantic City, New Jersey, Docket No. 7965, File No. BP-5384; Pioneer Broadcasters, Inc., Pleasantville, New Jersey, Docket No. 8104, File No. BP-5694; for construction permits.

The Commission having under consideration a petition filed September 28, 1948, by Seaside Broadcasting Company, Atlantic City, New Jersey, requesting a continuance in the further hearing presently scheduled for October 11, 1948, at Atlantic City upon the above-entitled applications for construction permits;

It is ordered, This 1st day of October, 1948, that the petition be, and it is hereby, granted; and that the hearing upon the above-entitled applications be, and it is hereby, continued to 10:00 a. m., Monday, November 8, 1948, at Atlantic City, New Jersey.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9045; Filed, Oct. 12, 1948;
8:49 a. m.]

[Docket No. 9158]

EWING BROADCASTING CO. AND ANDALUSIA
BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In the matter of P. K. Ewing, Jr., F. C. Ewing and Myrtle M. Ewing, d/b as Ewing Broadcasting Company, Jackson, Mississippi, Andalusia Broadcasting Company, Andalusia, Alabama; assignment of license of Standard Broadcast Station WJXN, Jackson, Mississippi. Docket No. 9158; File No. BAL-735.

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 4th day of October 1948;

The Commission having under consideration the above-entitled applica-

tion for assignment of license of radio station WJXN, Jackson, Mississippi, from P. K. Ewing, Jr., F. C. Ewing and Myrtle M. Ewing, d/b as Ewing Broadcasting Company to Andalusia Broadcasting Company; and not being satisfied that it is in possession of full information as is required by the Communications Act of 1934, as amended, and acting pursuant to section 310 (b) of said Act;

It is ordered, That the above-entitled application be, and it is hereby, designated for hearing at a time and place to be set by subsequent order of the Commission on the following issues:

(1) To determine whether the proposed assignee is legally, financially and otherwise qualified to own or control and to operate station WJXN, Jackson, Mississippi.

(2) To determine the full contract arrangements or agreement of sale either made or to be made by the proposed assignee with the present licensee including the price and manner of payment and the properties to be received therefor.

(3) To secure full information as to the plans of the proposed assignee for staffing the station, its plans with respect to the stations programming and all other plans and arrangements for the operation of the station.

(4) To determine whether the license granted to P. K. Ewing, Jr., F. C. Ewing and Myrtle M. Ewing, d/b as Ewing Broadcasting Company, for station WJXN, or the rights and responsibilities incident thereto, have been transferred, assigned or disposed of, directly or indirectly, without the consent of the Commission, and in contravention of the Communication Act of 1934, as amended, and more particularly section 310 (b) thereof.

(5) To determine whether all contracts, obligations, undertakings and agreements which have been entered into by the applicant, Ewing Broadcasting Company, with respect to the ownership, operation, financing, and control of that company, have been reported to the Commission as required by its rules and regulations.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9046; Filed, Oct. 12, 1948;
8:49 a. m.]

[Docket Nos. 7325, 7886, 8291-8293]

HAMPDEN-HAMPSHIRE CORP., ET AL.

NOTICE OF ORAL ARGUMENT

The Commission, on September 30, 1948, directed that oral argument be held before the Commission en banc on the following listed matters, in Room 6121 of the offices of the Commission, on Tuesday, October 26, 1948 at 11:00 o'clock a. m. immediately following oral argument in the Baton Rouge-New Orleans-Galveston proceeding:

ARGUMENT No. 2
(11:00 o'clock a. m.)

| Docket No. | WHYN... | Hampden-Hampshire Corp., Holyoke, Mass. | CP to change freq., incr. power, etc. | 500 kc. 1 kw., unlimited. |
|--|----------|---|---------------------------------------|---------------------------|
| 7325 B1-P-4347 7886 B1-P-5217 | New..... | Pyncheon Broadcasting Corp., Springfield, Mass. | CP for new station.. | 560 kc. 5 lw., unlimited. |

ARGUMENT No. 3

| Docket No. | Keystone Broadcasting Corp., Harrisburg, Pa..... | Applications for FM facilities. |
|---|--|---------------------------------|
| 8291 B2-PH-183 8292 B2-PH-184 8293 B2-PH-522 | York Broadcasting Co., York, Pa..... | |
| | Reading Broadcasting Co., Reading, Pa..... | |

Dated: September 30, 1948.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9048; Filed, Oct. 12, 1948; 8:50 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6118]

BRAZOS RIVER CONSERVATION AND RECLAMATION DISTRICT AND BRAZOS RIVER TRANSMISSION ELECTRIC COOPERATIVE, INC.

ORDER REOPENING PROCEEDINGS AND FIXING DATE FOR FURTHER HEARING

OCTOBER 6, 1948.

In the matters of Brazos River Conservation and Reclamation District and Brazos River Transmission Electric Cooperative, Inc., Complaint, v. Brazos River Conservation and Reclamation District, Defendant, Project No. 1490, Docket No. E-6118.

Upon consideration of staff counsel's petition to reopen proceedings filed September 22, 1948;

It appears to the Commission that:

The public interest requires the reopening of the above-entitled proceedings.

The Commission orders that:

(A) The above-entitled proceedings be and they hereby are reopened for the purpose of enabling the staff of the Commission to present further evidence and to permit the submission of evidence in rebuttal thereto.

(B) A further hearing be held on October 14, 1948, at 10:00 a. m. (e. s. t.), in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C.

Date of issuance: October 6, 1948.

By the Commission:

[SEAL]

LEON M. FUQUAY,
Secretary.

[F. R. Doc. 48-9041; Filed, Oct. 12, 1948; 8:47 a. m.]

NATIONAL LABOR RELATIONS BOARD

WISCONSIN EMPLOYMENT RELATIONS BOARD

AGREEMENT RELATING TO WORKING ARRANGEMENTS IN REFERENCE TO ELECTIONS

It is hereby understood and agreed between the Wisconsin Employment Rela-

tions Board, the National Labor Relations Board and the General Counsel of the National Labor Relations Board, that the following working arrangements between the parties will be observed in reference to elections conducted pursuant to section 9 (e) of the National Labor Relations Act, as amended, and section 111.06 (1c) of the Wisconsin Statutes:

In each case where there is concurrently pending a Petition for Bargaining Relative to Union Security before the National Labor Relations Board, pursuant to section 9 (e), and a Petition for a Referendum before the Wisconsin Employment Relations Board, pursuant to section 111.06 (1c) of the Wisconsin Statutes, the following procedures shall be followed:

The parties may enter into a Stipulation for Referendum, subject to the approval of the Wisconsin Employment Relations Board, a copy of which is attached hereto and made a part hereof.

In order to obviate the necessity of holding two elections within the same bargaining unit, the Wisconsin Employment Relations Board, the National Labor Relations Board, and the General Counsel of the National Labor Relations Board, hereby agree to the arrangements set forth in the Stipulation for Referendum attached hereto and made a part hereof.

It is mutually agreed between the Wisconsin Employment Relations Board, the National Labor Relations Board and the General Counsel of the National Labor Relations Board, that the observer for the Wisconsin Employment Relations Board will have no official duties, responsibilities, or authority in connection with the election, except that of observer as specified in paragraph 4 of the Stipulation for Referendum and, further, except in connection with his duties and responsibilities to the Wisconsin Employment Relations Board. He will be subject to the control and supervision of the agent of the National Labor Relations Board at all times.

It is further agreed by the Wisconsin Employment Relations Board that such Board will not certify the results of any referendum conducted pursuant to this

agreement until at least ten (10) days after the date of such election, and in no case will certify until after the Regional Office of the National Labor Relations Board, or the Board, has resolved any question concerning the conduct of the election, or challenged ballots which might be determinative of the results of the election.

It is understood, however, that the Wisconsin Employment Relations Board is not bound to adopt as final the determination of the Regional Director or the National Labor Relations Board on disposition of challenged ballots or objections to the election, based on the commission by either party to the election of any unfair labor practice.

The above agreement is subject to termination by any of the parties at any time.

Dated at Milwaukee, Wisconsin, this 17th day of September 1948.

[SEAL] WISCONSIN EMPLOYMENT RELATIONS BOARD,
L. E. GOODING,
Chairman.
NATIONAL LABOR RELATIONS BOARD,
PAUL M. HERZOG,
Chairman
R. N. DENHAM,
General Counsel.

STIPULATION FOR REFERENDUM

Whereas, the (Name of union with affiliation) has requested the Wisconsin Employment Relations Board to conduct a referendum pursuant to section 111.06 of the Wisconsin Statutes, among the employes of (Name of Employer), and whereas such union has also requested the National Labor Relations Board to conduct an election pursuant to section 9 (e) of the National Labor Relations Act, as amended;

Now, therefore, it is agreed by and between the (Name of Company and address), hereinafter referred to as the company, and the (Name of Union with affiliation), hereinafter called the union, for the purpose of avoiding the necessity of conducting a hearing to determine the questions raised by the request for such referendum, and for the further purpose of avoiding the necessity of conducting two separate elections that:

1. A referendum by secret ballot shall be held pursuant to Section 111.06 of the Wisconsin Statutes to determine whether or not the required number of eligible employes in the collective bargaining unit described in paragraph two favor an "All-Union Agreement" between the company and the union as their representative.

2. The unit for the purposes of collective bargaining shall be the same as that set forth in the agreement heretofore executed by the union and the company consenting to the conduct of a union authorization election by the National Labor Relations Board.

3. All employes of the company on..... who are included in the unit described in the paragraph above and whose names are included in the eligibility list for the union authorization election to be conducted by the National Labor Relations Board, shall be eligible to vote in such referendum.

4. That the Wisconsin Employment Relations Board in the conduct of such referendum will adopt as its ballot the ballot of the National Board, will have present at the election by such board a representative who will observe the counting of the votes, check the names of the voters, prepare a tally sheet to conform with that of the National Board as to the results disclosed by the election, and that the results of said referendum may

be certified by the Wisconsin Employment Relations Board in the same manner and with the same effect as if the Wisconsin Employment Relations Board had conducted a separate referendum.

Dated at _____, Wisconsin,
this _____ day of _____, 194_____

Company:

By _____
Street _____
City _____ Tel. _____

Union:

By _____
Street _____
City _____ Tel. _____

[F. R. Doc. 48-9038; Filed, Oct. 12, 1948;
8:47 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-873]

NORTHERN STATES POWER CO.

FINDINGS AND ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 1st day of October A. D. 1948.

The New York Curb Exchange has made application to the Commission pursuant to section 12 (f) (3) of the Securities Exchange Act of 1934 and Rule X-12F-1 for permission to extend unlisted trading privileges to the Common Stock, Without Par Value, of Northern States Power Company, a Minnesota Corporation, 15 South Fifth Street, Minneapolis, Minnesota.

A public hearing has been held after appropriate notice.

The Commission, being duly advised, finds:

(1) That the \$3.60 Cumulative Preferred Stock, No Par Value, the First Mortgage Bonds, 2 $\frac{3}{4}$ % Series due October 1, 1975, and the First Mortgage Bonds, 2 $\frac{3}{4}$ % Series due February 1, 1974, of Northern States Power Company are registered and listed on the New York Stock Exchange; that there is available from registration statements and periodic reports filed pursuant to rules and regulations under the Securities Exchange Act of 1934, information substantially equivalent to that which would be available if the common stock of Northern States Power Company were registered on a national securities exchange; that the issuer, its officers and directors and every beneficial owner of more than 10 per centum of the common stock of this company will be subject to duties substantially equivalent to the duties which would arise under the Securities Exchange Act of 1934 if the common stock of Northern States Power Company were duly registered and listed on a national securities exchange;

(2) A plan of simplification of a holding company system has been approved by the Commission in the matter of Northern States Power Company (Delaware) and Northern States Power Company (Minnesota) Holding Company Act of 1935, Release Nos. 7950 and 7978. This plan has been confirmed and ordered in force by the District Court of the United States for the District of

Minnesota in its opinion dated August 30, 1948 and its order dated September 18, 1948. On October 4, 1948, the shareholders of Northern States Power Company, a Minnesota corporation, will meet to take action on the plan of simplification of this holding company system that has been approved by the Commission and by the Court. This plan involves reclassification of the previously outstanding common stock of Northern States Power Company, a Minnesota corporation, which under the plan will be distributed to holders of the preferred and common stocks of Northern States Power Company, a Delaware corporation. When this plan becomes effective by filing with the Office of the Secretary of State of the State of Minnesota certificates showing the action that has been taken by the shareholders, the date of which filing is not yet ascertained, the new common stock of Northern States Power Company, a Minnesota corporation, will be issued, and will be awaiting distribution to the preferred and common stockholders of Northern States Power Company, a Delaware corporation, who will be entitled to this distribution under the terms of the plan;

(3) That the geographical area deemed to constitute the vicinity of the New York Curb Exchange for the purpose of this application is the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania and Ohio; that out of a total of 9,527,623 shares of common stock of Northern States Power Company, a Minnesota corporation, that will be issued when the plan becomes effective, there will be 2,716,194 shares owned by 4,787 shareholders in the vicinity of the New York Curb Exchange, according to an estimate based on the number of preferred and common shareholders of Northern States Power Company, a Delaware corporation, in the vicinity of the New York Curb Exchange on December 31, 1945, entitled to receive the new shares of common stock of the Minnesota corporation; the only evidence that is available in respect to the volume of trading that may take place in the new security in the vicinity of the New York Curb Exchange when it is issued is the fact that during the year 1947 103,300 shares of Class A Common Stock of Northern States Power Company, a Delaware corporation, were traded on the New York Curb Exchange and each holder of one of these shares will become entitled under the plan of simplification to receive in exchange 5 $\frac{1}{4}$ shares of the new common stock of the Minnesota corporation;

(4) That sufficient public distribution of, and sufficient public trading activity in this security will exist in the vicinity of the applicant exchange when the security is issued to render the extension of unlisted trading privileges thereto appropriate in the public interest and for the protection of investors; and

(5) That the extension of unlisted trading privileges on the applicant exchange to this security will be otherwise appropriate in the public interest and for the protection of investors.

Accordingly it is ordered, Pursuant to section 12 (f) (3) of the Securities Ex-

change Act of 1934, that the application of the New York Curb Exchange for permission to extend unlisted trading privileges to the Common Stock, Without Par Value, of Northern States Power Company, a Minnesota corporation be, and the same is, hereby granted, effective as of the date of issuance of this security.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-9037; Filed, Oct. 12, 1948;
8:46 a. m.]

[File No. 70-1942]

BROCKTON EDISON CO. AND EASTERN
UTILITIES ASSOCIATES

MEMORANDUM OPINION AND ORDER
FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 6th day of October A. D. 1948.

On September 3, 1948, Brockton Edison Company ("Brockton"), a public utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, and said EUA, filed an application-declaration pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6 (b) and 12 thereof, and Rules U-42 (b) (2), U-44, and U-50 promulgated thereunder.

The application-declaration stated that Brockton proposed to issue and sell, pursuant to the competitive bidding requirements of Rule U-50, \$4,000,000 principal amount of First Mortgage and Collateral Trust Bonds, _____% Series due 1978, the interest rate (which would be a multiple of $\frac{1}{8}$ th of 1%) and the price (which would be not less than 100% or more than 102 $\frac{3}{4}$ % of the principal amount thereof, together with accrued interest from September 1, 1948, to the date of payment and delivery) to be determined by such competitive bidding. The net proceeds from such issue and sale were to be used to retire \$2,625,000 principal amount of promissory notes of Brockton presently outstanding and to obtain funds for that company's construction purposes. Said bonds were to be secured by an Indenture of First Mortgage and Deed of Trust to State Street Trust Company, as Trustee, mortgaging and pledging all the assets of Brockton, (with certain specified exceptions), including its investment in the securities of Montaup Electric Company, a subsidiary company of Brockton and EUA. The application-declaration stated that such issue and sale are subject to the jurisdiction of the Department of Public Utilities of the Commonwealth of Massachusetts, the State Commission of the State in which Brockton is organized and doing business, which State Commission has expressly authorized the proposed issue and sale of said bonds.

On September 10, 1948, this Commission issued a notice of filing with respect to said application-declaration stating therein that any interested person might, not later than September 22, 1948, re-

quest, in writing, that a hearing be held on the above-entitled matter, stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law raised by said application-declaration proposed to be controverted.

On September 22, 1948, within the time period specified in said notice of filing, Roger W. Babson, the owner of 32,850 shares of convertible stock of EUA, filed a protest against the proposed bond issue and a request for a hearing and oral argument.

On September 30, 1948, the Commission heard oral argument on said request and said application-declaration and after consideration of the matter issued the following ruling:

The Commission, having heard oral argument and having considered the matter, is of the opinion that no hearing is necessary on any of the issues raised except that involving the question whether Brockton's holdings of common stock of Montaup should be pledged as part of the security for the proposed bond issue. With respect to that issue the Commission has determined that a hearing should be held unless the applicants-declarants decide to withdraw the proposal to pledge the Montaup stock. It has accordingly directed that the applicants-declarants be given an opportunity, if they so desire, to withdraw said provision, and that if such withdrawal is forthcoming within 5 days the Commission will proceed to dispose of the application-declaration on the merits without any further hearing. If the applicants-declarants decide not to take such action, appropriate notice will be given convening a hearing for the purpose of taking testimony on the issue raised by the inclusion of the Montaup stock as security for the proposed bond issue.

Said ruling was communicated to Brockton and to EUA and on October 5, 1948, Brockton advised the Commission that it did not propose to withdraw the provision with respect to the pledge of Brockton's holdings in the common stock of Montaup Electric Company.

It appearing to the Commission that it is appropriate in the public interest and in the interests of investors and consumers that a hearing be held solely with respect to the limited matters set forth below, and that the application-declaration should not be granted or permitted to become effective except pursuant to further order of the Commission: *It is ordered*, That:

1. A hearing on the application-declaration with respect solely to the limited matters set forth below, shall be held pursuant to the applicable provisions of the act and the rules and regulations promulgated thereunder, on October 20, 1948, at 10:00 a. m., e. s. t., at the office of the Commission, 425 Second Street NW., Washington, D. C. On such date the hearing room clerk in Room 101 will designate the room in which such hearing shall be heard. Any person desiring to be heard in connection with this proceeding or proposing to intervene herein shall file with the Secretary of the Commission on or before October 19, 1948, a written request relative thereto as provided by Rule XVII of the Commission's rules of practice;

2. The evidence to be adduced at the hearing shall be limited solely to the issue whether, in the light of the requirements of section 11 of the act, it is appropriate in the public interest and for

the protection of investors and consumers that Brockton's holdings of common stock of Montaup Electric Company should be pledged as partial security for the proposed bond issue;

(3) Allen MacCullen, or any other officer or officers of this Commission designated by it for that purpose, shall preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice;

4. Notice of this hearing shall be given to Brockton, EUA, and Roger W. Babson, or to their respective counsel of record herein, by registered mail, and to all other persons by publication of this order in the FEDERAL REGISTER and by a general release of this Commission distributed to the parties and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935;

5. The protest and request for a hearing filed by Roger W. Babson be and hereby is denied except to the extent hereinabove set forth.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-9036; Filed, Oct. 12, 1948; 8:46 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12053]

OTTO LUEDEKING AND WESTERN BANK AND TRUST CO.

In re: Trust under agreement dated November 1, 1924 between Otto Luedeking, settlor and The Western Bank and Trust Company, trustee. F-28-12875-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Wilhelm Luedeking, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof, in and to and arising out of or under that certain trust agreement dated November 1, 1924, by and between Otto Luedeking, settlor and The Western Bank and Trust Company, trustee, presently being administered by The Western Bank and Trust Company, trustee, 12th and Vine Streets, Cincinnati 1, Ohio,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the

aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 16, 1948.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 48-9024; Filed, Oct. 11, 1948; 8:50 a. m.]

[Vesting Order 12057]

AUGUST RISTAU

In re: Bank account owned by heirs of August Ristau, deceased. Files F-28-26206-B-1; F-28-26206-C-1; F-28-26206-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Oscar Albert, Anna Roloff, and Paul Albert, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the property described as follows:

a. The one-twelfth share of Oscar Albert of that certain debt or other obligation of the Farmers National Bank of Geneseo, Illinois, arising out of a checking account entitled H. C. Bergen, Agent for the heirs of August Ristau, deceased, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same, and

b. The one-twelfth share of Anna Roloff of that certain debt or other obligation of the Farmers National Bank of Geneseo, Illinois, arising out of a checking account entitled H. C. Bergen, Agent for the heirs of August Ristau, deceased, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same, and

c. The one-twelfth share of Paul Albert, of that certain debt or other obligation of the Farmers National Bank of Geneseo, Illinois, arising out of a checking account entitled H. C. Bergen, Agent for the heirs of August Ristau, deceased,

maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owning to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 16, 1948.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 48-9049; Filed, Oct. 12, 1948;
8:50 a. m.]

[Vesting Order 12109]

HUGO HIRSCHBUEHL

In re: Bank account owned by Hugo Hirschbuehl. F-28-18122-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Hugo Hirschbuehl, whose last known address is Sigmaringendorf (Hohenz.), Blochingen (Wurtemberg), Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Hugo Hirschbuehl, by Marshall and Ilsley Bank, 721 N. Water Street, Milwaukee, Wisconsin, arising out of a savings account, account number 136586, entitled Hugo Hirschbuehl, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 30, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-9050; Filed, Oct. 12, 1948;
8:50 a. m.]

[Vesting Order 12110]

RUDOLF HOPFL

In re: Debt owing to Rudolf Hopfl. F-28-22650-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Rudolf Hopfl, whose last known address is Leegebruch b/Velten-Mark, Osthavelland, Wiesenweg 7, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Rudolf Hopfl, by Paul H. Heimbach, 31 Manchester Road, Tuckahoe 7, N. Y. in the amount of \$386.46, as of February 28, 1946, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been

made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 30, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-9051; Filed, Oct. 12, 1948;
8:50 a. m.]

[Vesting Order 12113]

CARLOS MAYER

In re: Bank account owned by Carlos Mayer. F-28-27407-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Carlos Mayer, whose last known address is c/o Ullmann and Englemann, Furth (Bavaria) Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Carlos Mayer, by The National City Bank of New York, 55 Wall Street, New York, New York, arising out of an unrepresented draft account, entitled Carlos Mayer, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall

have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 30, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-9052; Filed, Oct. 12, 1948;
8:50 a. m.]

[Vesting Order 12114]

RENE MÖLLER

In re: Bank account owned by Rene Möller. F-28-26367-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Rene Möller, whose last known address is Loolestieg 12, Hamburg 20, Germany, is a resident of Germany and a national of a designated enemy country (Germany):

2. That the property described as follows: That certain debt or other obligation owing to Rene Möller, by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, arising out of a checking account, entitled Rene Möller, maintained at the Cristobal, Canal Zone, branch office of the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany):

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not

within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 30, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-9053; Filed, Oct. 12, 1948;
8:50 a. m.]

[Vesting Order 12116]

MESSRS. AUGUST ASCHER SOHN

In re: Bank account owned by Messrs. August Ascher Sohn. F-28-2042-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Messrs. August Ascher Sohn, the last known address of which is Neuerwall 72, Hamburg, 36, Germany, is a corporation, partnership, association or other business organization, organized under the laws of Germany, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Hamburg,

Germany and is a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Messrs. August Ascher Sohn, by The Royal Bank of Canada, 68 William Street, New York 5, New York, arising out of an account, entitled Messrs. August Ascher Sohn, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany). All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 30, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

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8:51 a. m.]

