

Law Judge for oral evidentiary hearing. Such hearing shall be conducted in accordance with the procedures set out in 46 CFR part 201. The Administration may resolve issues of intervention in such order or refer such issues to the Administrative Law Judge. The burden of establishing that there is a disputed issue of material fact is upon the party seeking the oral evidentiary hearing.

(b) *Hearing on Submission of Written Evidence and Argument:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, but which is not anticipated to involve the submission of extensive evidence, the Administration may fulfill the hearing requirement in sections 605(c) and 805(a) of the Act by rendering a decision solely on the merits of papers submitted, provided that a full and true disclosure of the facts is made and such procedure is fair to all parties. The Administration may, in its discretion, direct the submission of briefs on legal issues together with evidence in written form, and/or the holding of oral argument before the Administration prior to issuing its final decision on the proceeding.

(c) *Show Cause Proceeding:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding does not or is not likely to involve a disputed issue of material fact or that if such facts exist they can be resolved on the basis of available information subject to official notice, and if the case is not anticipated to involve the submission of extensive evidence, the Administration may determine to handle the matter by show-cause proceeding. In that event, it will issue a decision setting out its tentative conclusions on all of the matters of fact and law at issue in the proceeding. A Notice summarizing such decision shall be published in the FEDERAL REGISTER in accordance with 46 CFR 201.72. Interested persons may file comments, including support or rebuttal for any matter officially noticed, within 30 days of the date of service of the tentative decision and responses to such

comments shall be filed within ten days thereafter unless a shorter or longer period is provided by the Administration for such comments and answers.

#### **§ 203.6 Oral evidentiary hearing before one or more members.**

If an oral evidentiary hearing is to be conducted, the Maritime Administration, or the Maritime Subsidy Board or one or more of its members, may conduct such hearing. A member who is not present at the hearing may participate in the consideration and the decision of the case where the oral evidentiary hearing, if held, has been stenographically recorded in full and transcribed for the member's review.

### **PART 204—CLAIMS AGAINST THE MARITIME ADMINISTRATION UNDER THE FEDERAL TORT CLAIMS ACT**

- Sec.
- 204.1 Scope and procedure for filing claims.
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  - 204.3 Claims not payable.
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AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a)(2), (3), and (16).

SOURCE: 50 FR 25711, June 21, 1985, unless otherwise noted.

#### **§ 204.1 Scope and procedure for filing claims.**

This part prescribes the requirements and procedure for administrative settlement of claims against the United States, involving the Maritime Administration, under the Federal Tort Claims Act, based on death, personal injury, or damage to or loss of property. The controlling regulations are promulgated by the Department of Justice at 28 CFR Part 14—Administrative Claims Under Federal Tort Claims Act. These regulations supplement those of the Department of Justice and provide specific guidance regarding claims processing in the Maritime Administration.

## § 204.2

### § 204.2 Claims payable.

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

### § 204.3 Claims not payable.

A claim is not payable under the regulations in this part 204, if such tort claim is excluded from the scope of the Federal Tort Claims Act, as amended, pursuant to 28 U.S.C. 2680.

### § 204.4 Time limitations on claims.

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

(b) The two year statute of limitations is not tolled until the Office of the Chief Counsel of the Maritime Administration receives from a claimant, or the claimant's duly authorized agent or legal representative, an executed Standard Form 95, "Claims for Damage, Injury, or Death," or written notification of an incident, together with a claim for money damages in a sum certain, for death, personal injury, or damage to or loss of real or personal property. When a claim is received in any office, mail unit, or other Maritime Administration activity other than the Office of the Chief Counsel, such office, unit or activity shall transmit it to the Office of the Chief Counsel without delay.

[50 FR 25711, June 21, 1985, as amended at 64 FR 54782, Oct. 8, 1999]

### § 204.5 Notification to claimant of action on claim.

(a) If a claim is approved (either for the amount claimed or less than such full amount), the claimant, prior to the disbursement of an award, shall sign a document releasing the United States, its agents and employees from all further claims relating to the incident giving rise to the approved claim.

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(b) If the claim is finally denied, the official vested with such authority shall inform the claimant by certified or registered mail of the final denial of the claim. Notification of final denial shall include a statement that a claimant who does not accept or is dissatisfied with the action may institute suit against the United States not later than six months after the date of mailing of the notice of final denial.

(c) A claimant may regard the failure of the Maritime Administration to make a final disposition of a claim within six months after the date of receipt of the claim by the Maritime Administration as a final denial for the purpose of filing suit.

### § 204.6 Payment of claims.

(a) Once the amount to be paid has been agreed upon, the agency shall attempt to forward a check for such amount to the claimant within thirty days.

(b) If a claimant is represented by an attorney, both the claimant and the claimant's attorney shall be designated as payees on any check delivered to the claimant's attorney.

### § 204.7 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of \$100,000, the Chief Counsel of the Maritime Administration is authorized to approve the award, compromise, or settlement of any tort claim and to authorize payment of the claim.

(b) The Chief Counsel is authorized to deny any claim and to settle and authorize payment of any tort claim involving the Maritime Administration in an amount not exceeding \$100,000.

[64 FR 54783, Oct. 8, 1999]

### § 204.8 Where to file claims.

Claimants must file claims with the Chief Counsel (MAR-220), Maritime Administration, Department of Transportation, Room 7232, SW, Washington, DC 20590 at the Nassif Building, 7th and D Streets.

[64 FR 54783, Oct. 8, 1999]

**§ 204.9 Indemnity or contribution.**

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

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

**§ 204.10 Attorney's fees.**

Attorney's fees for any claim settled under this part are limited to not more than twenty percent of the amount paid in settlement.

**PART 205—AUDIT APPEALS; POLICY AND PROCEDURE**

- Sec.
- 205.1 Purpose.
- 205.2 Policy.
- 205.3 Procedure.
- 205.4 Finality of decisions.
- 205.5 Contracts containing disputes article.

AUTHORITY: Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

SOURCE: 66 FR 23861, May 10, 2001, unless otherwise noted.

**§ 205.1 Purpose.**

This part establishes the policy and procedure for parties to use when seeking redress and appeals of audit decisions involving contracts with the Maritime Subsidy Board or the Maritime Administration (MARAD, we, our, or us). A party to a contract (you or your) may appeal MARAD's findings, inter-

pretations, or decisions of annual or special audits.

**§ 205.2 Policy.**

If you disagree with audit findings and fail to settle any differences with the appropriate Office Director, you may ask the appropriate office Associate Administrator to review the audit findings. If you disagree with the Associate Administrator, you may appeal to the Maritime Administrator (Administrator).

**§ 205.3 Procedure.**

(a) You have 90 days from the date you receive the initial audit findings to file a written request for review of the audit findings with the appropriate Associate Administrator. Your written request must state the legal or factual bases for your disagreement. The appropriate Associate Administrator will issue a written determination.

(b) You have 30 days following the Associate Administrator's final audit determination to submit your appeal in writing to the Administrator. Your written appeal must set forth the legal and factual bases for your appeal. The Administrator may, at his or her discretion, extend the time limitation in the case of extenuating circumstances.

(c) We will notify you, in writing, if you must submit additional facts for our consideration of the appeal. We will notify you, in writing, once the Administrator has made a decision regarding your appeal.

**§ 205.4 Finality of decisions.**

The Administrator's decision will be the final administrative action on all audit appeals.

**§ 205.5 Contracts containing disputes article.**

When a contract contains a disputes article, the disputes article will govern the bases for negotiating disputes regarding audit findings, interpretations, or decisions made by MARAD and any appeals.