''commercial and industrial enterprises''. The Committee further included the following statement about section 7871(e):

The bill clarifies that, with respect to bonds issued by Indian tribal governments, the term 'essential governmental function' does not include any governmental function that is not customarily performed (and financed with governmental tax-exempt bonds) by State and local governments with general taxing powers. For example, issuance of bonds to finance commercial or industrial facilities (e.g., private rental housing, cement factories, or mirror factories) which bonds technically may not be private activity bonds is not included within the scope of the essential governmental function exception.

Additionally, the committee wishes to stress that only those activities that are customarily financed with governmental bonds (e.g., schools, roads, governmental buildings, etc.) are intended to be within the scope of this exception, notwithstanding that isolated instances of a State or local government issuing bonds for another activity may occur.

H.R. Rep. No. 100–391, at 1139 (1987).

The 1987 Conference Committee adding the limited manufacturing facility provision of section 7871(c)(3)(A), noted that:

A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the 'essential governmental function' standard (i.e., the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments). For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

H.R. Rep. No. 100–495, at 1012 n.5 (1987) (Conf. Rep.).

The IRS has become aware of an increasing number of instances in which taxpayers have raised questions about the application of section 7871(e). Accordingly, the Treasury Department and the IRS have determined to seek public comment in advance of issuing proposed regulations in this area.

Explanation of Provisions

The Treasury Department and the IRS anticipate that the proposed regulations will provide that for purposes of section 7871(c) and section 7871(e), an activity will be considered an essential governmental function that is customarily performed by State and local governments if: (1) There are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds, (2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and (3) the activity is not a commercial or industrial activity. The proposed regulations will further provide that examples of activities customarily performed by State and local governments include, but are not limited to, public works projects such as roads, schools, and government buildings.

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

Drafting Information

The principal authors of this advance notice of proposed rulemaking are Aviva M. Roth and Timothy L. Jones, Office of the Chief Counsel (Tax-exempt and Government Entities), however, other personnel from the IRS and Treasury Department participated in its development.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–12884 Filed 8–8–06; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 537

RIN 0702–AA55

[Docket No. USA–2006–0023]

Claims on Behalf of the United States

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army proposes to amend its regulation to reflect a substantial revision of AR 27–20, an Army publication which governs the processing of claims worldwide. The purpose of this revision is to make AR 27–20 clearer and easier to use, after years of piecemeal amendments. This rewrite also ensures that AR 27–20 is in keeping with current statutes, legal opinions and Department of Justice guidance pertaining to claims processing. This updated rule will expedite payment of meritorious claims throughout the world. AR 27–20 includes rules for processing affirmative claims, i.e., recovery actions on behalf of the United States.

DATES: Comments submitted on or before October 10, 2006 will be considered.

ADDRESSES: You may submit comments, identified by ''32 CFR Part 537, Docket No. USA–2006–0023 and or RIN 0702–AA55'' in the subject line, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: George Westerbeke (301) 677–7009, x220.

SUPPLEMENTARY INFORMATION:

A. Background

This rule was previously published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this regulation fall into that category.

Rules for processing affirmative claims are found mostly in Chapter 14 of AR 27–20; however, rules for processing maritime affirmative claims are contained in Chapter 8. For purposes of this **Federal Register** publication and its corresponding codification in the Code of Federal Regulations, all rules for affirmative claims processing have been incorporated into 32 CFR part 537. AR 27–20 and its companion DA Pam 27–162 will be available on the Web site of the U.S. Army Publications Directorate, *http://www.apd.army.mil*, within a few months of the date of this **Federal Register** publication of 32 CFR part 537.

Users are encouraged to consult the online versions, whose structure and paragraph numbering are comparable.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Dale Woodling,

Commander, United States Army Claims Service.

List of Subjects in 32 CFR Part 537

Claims, Government employees, Health care, Military personnel.

For the reasons stated in the preamble the Department of the Army proposes to revise 32 CFR part 537 to read as follows:

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Sec.

537.1 Statutory authority for non-maritime claims.
537.2 Scope of non-maritime affirmative claims statutes.
537.3 Claims collectible.
537.4 Claims not collectible.
537.5 Applicable law.
537.6 Identification of recovery incidents.
537.7 Notice to USARCS.
537.8 Investigation.
537.9 Assertion.
537.10 Recovery procedures.
537.11 Litigation.
537.12 Settlement authority.
537.13 Enforcement of assertions.
537.14 Depositing of collections.
537.15 Statutory authority for maritime claims and claims involving civil works of a maritime nature.
537.16 Scope for maritime claims.
537.17 Scope for civil works claims of maritime nature.
537.18 Settlement authority for maritime claims.
537.19 Demands arising from maritime claims.
537.20 Certification to Congress.

Authority: 31 U.S.C. 3711–3720E; 42 U.S.C. 2651–2653; 10 U.S.C. 1095; 10 U.S.C. 4803–4804; 33 U.S.C. 408.

§ 537.1 Statutory authority for non-maritime claims.

(a) *The Federal Claims Collection Act.* The Federal Claims Collection Act (FCCA), is set forth at 31 U.S.C. 3711–3720E, as amended by the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 1982), Public Law 101–552, 104 Stat. 2746 (November 1990).

(b) *Federal Medical Care Recovery Act.* The Federal Medical Care Recovery Act (FMCRA) is set forth at 42 U.S.C. 2651–53, as amended by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–202, section 1075, 110 Stat. 2422.

(c) *Title 10 United States Code Section 1095.* 10 U.S.C. 1095, Public Law 101–510, section 713, 107 Stat. 1547, 1689 (1993), as amended by Public Law 103–160, 104 Stat. 1485 (November 1990).

Note to § 537.1: All of these statutes may be viewed on the USARCS Web site, *https://www.jagcnet.army.mil/85256F33005C2B92/(JAGCNETDocID)/HOME?OPENDOCUMENT. Select the link ''Claims Resources.''*

§ 537.2 Scope of non-maritime affirmative claims statutes.

(a) *Recovery for government property loss or damage.* The FCCA, originally passed in 1966, gives federal agencies the authority to collect a claim of the United States government for money or property arising out of the activities of the agency in question. However, the broad authority is limited for purposes of this regulation to claims for loss of or damage to property, as the FMCRA takes precedence for medical care recoveries.

(b) *Recovery for medical expenses and lost military pay.* (1) The FMCRA, passed in 1962, authorizes recovery from a third person of the expenses for medical care the United States furnishes to a person who is injured or suffers a disease when such care is authorized or required by law. Likewise the United States is authorized to recover the cost of pay for members of the uniformed services unable to perform duties. Recovery normally arises out of a third-party tort under local law as to which the United States has an independent cause of action.

(2) Under 10 U.S.C. 1095 the United States is also deemed a third-party beneficiary or subrogee under an alternative system of computations such as workers' compensation; hospital lien laws; contract rights under the terms of insurance policies including medical payment coverage; uninsured, underinsured and no-fault coverage; and no-fault laws.

(c) *Recovery of health insurance.* 10 U.S.C. 1095 permits recovery of health insurance for medical care furnished at military medical treatment facilities (MTFs), including supplemental policies. This third-party collection program has been delegated to the Surgeon General of the Army by the Judge Advocate General (TJAG).

(d) *Worldwide applicability.* The foregoing authorities are worldwide in application, except for intergovernmental claims waived by treaty, for example, North Atlantic Treaty Association Status of Forces

Agreement (NATO SOFA), Article VIII, paragraph 1.

§ 537.3 Claims collectible.

(a) *Claims for medical expenses.* Claims for the value of medical care furnished to active or retired members of the uniformed services, family members of either category, employees of the Department of the Army (DA) or Department of Defense (DOD), or other persons to whom care was furnished because authorized or required by law and resulting in injury, death or disease, including those:

(1) Arising out of a tort under local law,

(2) Arising out of an on-the-job injury compensable under workers' compensation law except for Federal Employees Compensation Act (FECA) recoveries,

(3) Based on the United States being a third-party beneficiary of the insurance contract of the injured party to include medical payment coverage, lost wages, as well as uninsured, underinsured, and no-fault coverage.

(b) *Claims for lost military pay.* Claims for the value of lost pay of active members of the uniformed services arising out of a tort under local law resulting in injury, death or disease.

(c) *Claims for property loss.* Claims arising out of a tort under local law for the value of lost or missing DA or DOD property, including non-appropriated fund instrumentality (NAFI) property, or for the cost of repairs of such property, including damage to assigned quarters, are not collectable under 10 U.S.C. 2775. (See § 537.4).

§ 537.4 Claims not collectible.

(a) Where the tortfeasor is a department, agency or instrumentality of the United States. (See § 536.27(g) of this chapter).

(b) Where the tortfeasor is a member of the uniformed services or an employee of the DA or DOD, acting within the scope of employment, who damages or loses property. See AR 735–5, chapter 13.

(c) Where the damage or loss of property falls under a contractor bill of lading and recovery is pursued by the contracting agency, e.g., Surface Deployment and Distribution Command (SDDC), formerly the Military Traffic Management Command (MTMC), for lost or destroyed shipments.

(d) Where damage to assigned quarters, or equipment or furnishings therein, is collectible from a member of the uniformed services under 10 U.S.C. 2775.

(e) Where the medical care is furnished by a Department of Veterans Affairs facility to other than active duty members of the uniformed services for service-connected disabilities.

§ 537.5 Applicable law.

(a) *Basis for recovery.* (1) Most recovery assertions are based on the negligence or wrongful acts or omissions of the person or entity that caused the loss. These actions or omissions must constitute a tort as determined by the law of place of occurrence, except in no-fault jurisdictions where the no-fault law permits recovery. Where the tort is not complete within the jurisdiction where it originally occurred, the law of the original jurisdiction is nevertheless applicable. For example, if a plane crashes in Virginia due to the negligence of a Federal Aviation Administration controller in Maryland, Maryland law determines the extent and nature of the tort. However, as to what law of damages is applicable, Maryland or Virginia depecage (choice of law) theory may apply. For example, if the flight originated in Indiana and the destination was Virginia, the conflict law of both Maryland and Virginia must be applied. See DA Pam 27–162, paragraph 2–35.

(2) Recovery assertions based on the United States being a third-party beneficiary or subrogee are not based on tort, but on the right to recover under local law, For example, the right of a third party to recover workers' compensation benefits is based on local law. However, the right of a third-party beneficiary to recover under an insurance contract may turn on whether an exclusionary clause is valid under the law of the jurisdiction where the contract was made.

(b) *Statute of limitations.* (1) Federal law determines when a recovery assertion must be made. Assertions for the value of medical expenses, lost military pay or property loss or damage based on a tort must be made not later than three years from the date of accrual, 28 U.S.C. 2415(b). The date of accrual is usually the date of the occurrence giving rise to the recovery, for example, the date of injury or death for medical expenses and lost military pay or the date of damage or loss for a government property assertion. There are exceptions. For example, the loss of property in rightful possession of another accrues when that person claims ownership or converts the property to his own use.

(2) Recovery assertions based on an implied-in-law contract against a no-fault or personal-injury-protection insured must be brought no later than six years from the date of accrual, 28 U.S.C. 2415(a), *United States* v. *Limbs*, 524 F.2d 799 (9th Cir. 1975). The date of accrual is usually the date of occurrence.

(3) Actions asserted on a third-party beneficiary basis against an insurer or workers compensation fund must comply with the state notice requirement, which varies from one to six years, or the insurer's notice requirement set forth in the policy. *United States* v. *Hartford Acci. & Indem. Co.*, 460 F.2d 17 (9th Cir. 1972), cert. den. 409 U.S. 979 (1972).

(4) The statute of limitations is tolled or does not start running until the responsible federal official is notified of the existence of a recoverable loss, *Jankowitz* v. *United States*, 533 F.2d 538 (D.C. Cir. 1976), *United States* v. *Golden Acres, Inc.*, 684 F. Supp. 96 (D. Del. 1986). The responsible federal official can be the area claims office (ACO), the claims processing office (CPO), a command claims service or USARCS, depending on who receives the notice under this regulation. However, because of the responsibility to notify the MTF or TRICARE fiscal intermediary, and by regulation the notice must be expeditious, delayed notification could start the statute of limitations running. Additionally, when an ACO or CPO discovers the existence of an assertion, the statute of limitations will begin to run regardless of when the MTF or the TRICARE intermediary sends a notice. The date of receipt of a notice must be entered into the affirmative claims management program/database (ACMP) and the notice must be date-stamped and initialed.

§ 537.6 Identification of recovery incidents.

(a) *Responsibilities.* Each command claims service and ACO will develop means to identify recovery incidents arising in its geographic area of responsibility. See §§ 536.10 and 536.11 of this chapter and paragraph 2–2 of DA Pam 27–162. This requires publication of a claims directive to all DOD and Army installations, units and activities in its area, emphasizing the importance of reporting serious incidents to recovery judge advocates (RJAs) or civilian recovery attorneys.

(b) *Screening procedures.* (1) Establish a point of contact in each unit and activity in the area of responsibility and screen their sources periodically, including motor pools, family housing, departments of public works, safety offices, provost marshals, and criminal investigation divisions. Review civilian news and police reports, military police blotters and reports, court proceedings, line of duty and AR 15–6 investigations

and similar sources to identify potential medical care recovery claims.

(2) The MTF commander will ensure that the claims office is notified of instances in which the MTF provides, or is billed by a civilian facility for, inpatient or outpatient care resulting from injuries (such as broken bones or burns arising from automobile accidents, gas explosions, falls, civilian malpractice, and similar incidents) that do not involve collections from a health benefits or Medicare supplemental insurer. Claims personnel will coordinate with MTF personnel to ensure that inpatient and outpatient records and emergency room and clinic logs are properly screened to identify potential cases. The RJA or recovery attorney will screen the MTF comptroller records database and division records as well as ambulance logs to identify potential medical care recovery cases. The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel.

(3) The MTF commander will also ensure that the MTF does not release billings or medical records, or respond to requests for assistance with workers' compensation forms, without coordinating with the RJA or recovery attorney.

(4) The TRICARE fiscal intermediary is required to identify and mail certain information promptly to the claims office designated as the state point of contact. The fiscal intermediary must mail the TRICARE Explanation of Benefits, showing the amount TRICARE paid on the claim along with what diagnostic codes were used, and DD Form 2527, Statement of Personal Injury. A sample Statement of Personal Injury (DD Form 2527) is posted on the USARCS Web site; for the address, see the Note to § 537.1.

(5) The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel, AR 40–400, paragraph 13–5.

(c) *When to open a recovery file.* (1) Upon identification of a potential recovery incident or upon receipt of a billing from a TRICARE Fiscal Intermediary or an MTF, a file will be opened and entered into the ACMP by the first ACO or CPO that learns of the event even if liability has not been established. Incidents under Navy, Air Force or Coast Guard jurisdiction will not be so entered but referred to the responsible service. Complete listings of claims/recovery offices worldwide are posted on the USARCS Web site; for the address, see the Note to § 537.1. At the site, select the link ''Claims Resources.'' At the next screen, click on ''Tables Listing Claims Offices Worldwide.'').

(2) Army responsibility for affirmative claims is as follows:

(i) Damage to or loss of real or personal property of the DOD or the Army even if located at installations or activities under the jurisdiction of other uniformed services.

(ii) Personal injury to persons whose primary care for an accident-related injury is furnished at an Army MTF, regardless of the uniformed services affiliation of the person or sponsor, but not to those treated at another uniformed service's MTF even if the person is an active duty Army member.

(iii) Personal injury to an active duty or retired Army member or a family member of either category treated under TRICARE.

(iv) A lead agency will be established whenever:

(A) Property damaged or lost belonging to more than one service is involved in the same incident.

(B) Personal injury victims are treated at MTFs of more than one service.

(C) Personal injury victims with affiliations to more than one service are treated under TRICARE.

(D) Lead agencies may be established locally for claims valued at $50,000 or less. For claims greater than $50,000 USARCS will be notified and will deal with the other service at headquarters level. (See § 536.32 of this chapter.)

§ 537.7 Notice to USARCS.

Upon receipt of notice of a claim involving either actual or potential amounts within USARCS' monetary jurisdiction, that is, where final action will be taken by USARCS or the Department of Justice, immediate notice will be given to USARCS. Forwarding a copy of the serious incident report, discussed in § 536.22(c) of this chapter, to USARCS, will meet this requirement. Thereafter, mirror file copies will be furnished to USARCS in accordance with AR 27–20, paragraph 2–12. This allows for continuous monitoring and discussion between the ACO and the USARCS area action officer (AAO).

§ 537.8 Investigation.

(a) *Claims over $50,000.* Hands-on investigation will be conducted by claims personnel as set forth in DA Pam 27–162, Chapter 2, Section IV, regardless of the amount of insurance coverage immediately available, with a view to discovery of other sources of recovery, for example, vehicle defects or improper maintenance, road design and absence of warning signs, products liability, medical malpractice in civilian treatment facilities. Where the employment of experts is indicated follow the procedures in § 536.39 of this chapter. No attorney representation agreement will be sent to the injured party's representative without USARCS approval.

(b) *Claims of $50,000 or less.* The amount of hands-on investigative effort is directly related to the amount of insurance coverage that the tortfeasor possesses and the amount of coverage that the injured party has. Where the injured party is represented, request information from his lawyer or insurer, in addition to the documents obtained in initial screening. The ACO should be able to form an independent opinion as to liability based on the investigation of the government and not solely on that of the injured party's attorney.

(c) *Claims of $5,000 or less.* Small claims procedures are applicable to the extent feasible. See § 536.33 of this chapter. Investigation, assertion and settlement by e-mail, phone or fax is encouraged. The investigation and action should be recorded. DA Form 1668, Small Claims Certificate, may be used as a model, modifying it as needed. A sample completed Small Claims Certificate is posted at USARCS Web site for the address, see the Note to § 537.1.

(d) *Relations with injured party.* (1) When the injured party becomes known and an interview can be conducted locally, all relevant facts will be obtained unless the injured party is represented by a lawyer. In this latter event, basic information as set forth on DD Form 2527, Statement of Personal Injury (a completed sample is posted at the USARCS Web site; for the address, see the Note to § 537.1) can be obtained without violating lawyer-client privilege. If the injured party is not immediately available, the information can be obtained by requesting assistance from another ACO, a unit claims officer, a reservist or Army National Guard (ANG) member, another federal agency, or another means.

(2) When the injured party is represented, a Health Insurance Portability and Accountability Act (HIPAA) medical release form (sample posted at the USARCS Web site; see § 537 (b)(4)) permitting USARCS to send out the medical records of the injured party for claims purposes, will be sent to the injured party's lawyer for completion and return.

(3) When the injured party or his or her lawyer refuses to furnish necessary information, it can usually be obtained by other means, for example, from an

accident report or investigation. A notice will be furnished to all parties that the government has been assigned the right to bring a claim for the value of medical care furnished, lost pay or value of property lost or destroyed, and that the United States has the right to bring an independent cause of action. In absence of timely and appropriate response, discuss with the AAO to determine what action should be taken.

§ 537.9 Assertion.

(a) *Asserting demands.* If a prima facie claim exists under state law, a written demand will be made against all the tortfeasors and insurers. This includes demands against the injured party's own insurance coverage, no-fault coverage and workers' compensation carrier. The earlier the demand the better. A demand will not be delayed until the exact amount of medical expenses or lost pay is determined. The demand letter will state that the amount will be furnished when known. A copy of the demand will be furnished to the injured party or, if represented, his lawyer. Two sample demand (or assertion) letters are posted at the USARCS Web site (for the address, see the Note to § 537.1). Demand letters are for initial contact with insurance companies. One of the posted samples is for a medical assertion for a soldier (that includes wages). The other is for a medical assertion for a civilian (that does not include wages). Remember the following points when asserting demands:

(1) The fact that the medical expenses have been assigned to the United States and as a result the United States has a cause of action in federal or state court. All parties will be notified that if the insurer pays the amount to another party, the United States has the right to collect from the insurer.

(2) Demands for third-party torts are under the authority of the FMCRA; demands where there is no tortfeasor are under the authority of 10 U.S.C. 1095; demands for property loss or damage are under the authority of the FCCA.

(b) *Documentation of damages.* MTFs are required by AR 40–400, Patient Administration, chapter 13 to furnish complete billing documents to RJAs.

(1) TRICARE bills are obtained from the fiscal intermediary servicing the ACO. The amounts are based on the amount TRICARE pays and not the amount the patient is billed by the provider. TRICARE bills must be screened to insure that the care is incident or accident related as the demand is limited to that amount.

(2) MTF bills, both outpatient and inpatient, are obtained from either the MTF co-located with the ACO or if another MTF is involved, from that MTF, regardless of uniformed service affiliation. Outpatient bills include not only the cost of the visit but also the cost of each procedure, such as x-rays or laboratory tests. Inpatient billing is not based on services rendered but on a diagnostic group. Charges for professional inpatient services will be itemized the same as outpatient care. Charges for prescription services will be included. Screening to ensure that only incident or accident related care is claimed is essential. The cost of ambulance services, ground or air, will be calculated with MTF assistance and demanded. Burial expenses are obtained from the local mortuary affairs office on DD Form 2063, but will be demanded only when the insurance coverage includes such expenses.

(3) Lost pay will be obtained from the leave or earnings statement or the active duty pay chart for the year or years in question and will include special and incentive pay unless the injured service member did not receive either due to the length of time off assigned duty. The time off duty will be based on the time service members are unable to perform duties for which they have been trained (their military occupational specialty). It will not be limited to inpatient time. Time in a medical holding or convalescent leave will be lost time.

(4) The amount recoverable for personal property losses is limited to its value at the time of loss. Depreciation charts may be used to determine the reduction from the value at purchase. Replacement value will not be used. Both real and personal property damage will be on the value of labor and cost of material including the use of heavy equipment. When the cost of repairs is greater than $50,000, 10% overhead will be added. This can be substantiated using case law and by seeking documentation from the repair facility.

(c) *Double collections prohibited.* When the cost of medical care is recoverable by the MTF from medical care insurance, both primary and supplemental under 10 U.S.C. 1095, an assertion under FMCRA will be made, including a demand for lost pay not recoverable out of health insurance. While the United States is entitled to recover costs of medical care from both the injured parties' medical insurance and from the third-party tortfeasor, USARCS policy is not to collect twice. RJAs will carefully coordinate with the MTF to insure that double collection does not occur. Demand for lost pay should be enforced as it is not recoverable from medical care insurance.

§ 537.10 Recovery procedures.

(a) Recovery personnel have three means of enforcing recovery following initial assertion.

(1) Referral to litigation pursuant to § 537.11;

(2) The head of an ACO should request Chief, Litigation Division, OTJAG to have the RJA appointed as a Special Assistant United States Attorney when the following criteria are met:

(i) Filing suit is a frequent necessity, e.g., insurance companies are refusing payment on small claims either by raising issues well settled or by regularly reducing the amount of medical care as not fair and reasonable;

(ii) The local U.S. Attorney's office is in favor of such appointment due to his previous experience with the RJA and the additional burden of affirmative claims litigation on his staff;

(iii) The RJA has at least two years experience and is likely to continue in the RJA assignment for at least one year; and

(iv) Commander USARCS concurs in the appointment and is willing to furnish support.

(3) The RJA may request that the attorney representing the injured party include the amount asserted by the United States as part of special damages. The injured party's attorney may not represent the United States nor may the United States pay attorney fees as this would be in violation of 5 U.S.C. 3106. Where indicated, this arrangement should be reduced to writing. Be mindful that the attorney's duty to the injured party is in conflict with the interests of the United States where the amount potentially recoverable is small in comparison to the amount asserted by the United States. In this event the RJA should pursue recovery independently.

(b) Careful monitoring of all assertions is required to insure timely follow-up resulting in collection or suit where indicated. Installation of a suspense system to avoid the expiration of the statute of limitations is essential. Recommendations to file suit should be forwarded by the RJA well prior to the expiration of the statute of limitations. Within six months prior to the running of the statute of limitations, USARCS must be notified of the status of the claim or potential claim. Follow-up demands should precede filing suit to create a written record of efforts to avoid suit. Personal contact with all parties is encouraged. When represented, contact the representative.

(c) Sources other than vehicle liability coverage should be exhausted in cases where the amount of the potential recovery exceeds $50,000 and the coverage is small. Coordination with

USARCS is required. USARCS can obtain expert witnesses for medical malpractice cases, products liability cases, or other cases in which another tortfeasor may be involved.

§ 537.11 Litigation.

(a) If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the government's interests are not adequately represented on a claim over $25,000.

(b) RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases.

(c) In order to directly initiate or intervene in litigation, an RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27–40, chapter 5), to the U.S. Attorney. While the RJA or recovery attorney, in conjunction with the Litigation Division Torts Branch, should attempt to have the U.S. Attorney's Office initiate litigation at least six months before the expiration of the statute of limitations (SOL), the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the government's interest in litigation without any special coordination.

§ 537.12 Settlement authority.

(a) *Assertions for $50,000 or less.* (1) *Approval authority.* An RJA or civilian recovery attorney, if delegated authority by his or her ACO or CPO, may compromise a collection on a claim asserted for $50,000 or less, unless recovery action is reserved by a command claims service.

(2) *Final action authority.* (i) An ACO, or CPO if delegated authority by its ACO, may terminate collection action on a claim asserted for $50,000 or less, unless action is reserved by a command claims service.

(ii) The foregoing authorities may waive a claim asserted for $50,000 or less where undue hardship exists.

(iii) Determination of amount. The amount of $50,000 is determined totaling the amounts for medical care, lost military wages, lost earnings or government property damage arising form the same claims incident.

(b) *Assertions over $50,000.* USARCS retains final authority over assertions over $50,000. By use of the mirror file system and through a dialogue between USARCS and the field during the course of the assertion, USARCS will decide whether it or the RJA or civilian recovery attorney will conduct the negotiations. To help it decide, the RJA or civilian recovery attorney will forward a memorandum for either medical or property recovery approval, in the format of the samples posted at the USARCS Web site (for the address see the Note to § 537.1). USARCS may waive the requirement to submit a memorandum.

(c) *Appeals.* (1) *Assertion for $50,000 or less.* Where the assertion is made by an RJA or civilian recovery attorney, the appeal will be determined by the SJA, the medical center judge advocate, or head of the ACO or CPO. Otherwise, the appeal will be determined by the Commander USARCS.

(2) *Assertion over $50,000.* Where the assertion is made by a Claims Judge Advocate or claims attorney, the appeal will be determined by the Commander USARCS.

(d) *Compromise or waiver.* Any assertion may be compromised, waived or terminated in whole or in part, if for example:

(1) The cost to collect does not justify the cost of enforcement.

(2) There is evidence of fraud or misrepresentation.

(3) The U.S. cannot locate the tortfeasor.

(4) Legal merit has not been substantiated.

(5) The statute of limitations has run and the debtor refuses to pay.

(6) Collection of all or part of the amount of funds demanded would create inequity. The following criteria apply:

(i) Detailed information on what funds are available for recovery.

(ii) Reasonable value of the injured party's claim for permanent injury, pain and suffering, decreased earning power, and any other special damages.

(iii) Military, Department of Veterans Affairs, Social Security disability, and any other government benefits accruing to the injured party.

(iv) Probability and amount of future medical expenses of the government and the injured party.

(v) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(vi) The financial condition of the debtor.

(vii) The degree and nature of contributory negligence on the part of the injured party in causing his injury or death. (viii) The percentage of attorney's fees that his attorney is willing to reduce.

(ix) The willingness of the tortfeasor to enter into an installment agreement.

(e) *Releases.* The RJA or recovery attorney may execute a release for affirmative claims in the pre-litigation stage acknowledging that the government has received payment in full of the amount asserted or the compromised amount agreed upon, or the final installment payment. The format of the release should be similar to the sample posted at the USARCS Web site (for the address see the Note to § 537.1). However, the RJA or recovery attorney may not execute either an indemnity agreement or a release which prejudices the government's right to recover on other claims arising out of the same incident without the approval of USARCS. In addition, the RJA or recovery attorney may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA or recovery attorney will not execute a release if the government's claim is waived or terminated.

§ 537.13 Enforcement of assertions.

Meritorious assertions that do not result in collections should be enforced as follows:

(a) Where the debtor is a business or corporation otherwise financially capable the RJA or equivalent should forward a recommendation to bring suit or intervene in an existing suit regardless of the amount of the debt. As authorized by 28 U.S.C. 3011, the demand amount in the complaint shall include an additional 10% of the original claimed amount, to cover the administrative costs of processing and handling the enforcement of the debt.

(b) Where the debtor is an individual rather than a business, an asset determination should be made both as to existing assets or prospective earnings. If the injured party's attorney has made an assets search which is reliable, review the search before requesting a new one. Such a search can be paid for out of existing collections.

(1) If the debtor has assets refer to USARCS for transfer to a debt collection contractor or an agency debt collection center as determined by USARCS.

(2) If the debtor has no assets, but prospective future earnings, RJA may seek a confession of judgment and maintain contact with the debtor for

future collection where authorized by state law and filing of suit is not required. If the amount is less then $5,000, enter into an installment payment arrangement.

§ 537.14 Depositing of collections

(a) *Depositing property damage recovery.* (1) *Machines, supplies, watercraft, aircraft, vehicles other than General Services Administration-owned.* Recovered money must be deposited into the General Treasury Account 21R3019. This account remains the same every fiscal year. It was established in accordance with 31 U.S.C. 3302(b) and by Comptroller General decision B–205508, 64 Comp. Gen. 431.

(2) *Real property.* Collection for damage to real property must be deposited into an escrow account on behalf of the installation or activity at which the loss occurred. This escrow account must be set up at the request of the command claims service, ACO or CPO with the local finance office or resource management office with responsibility for department of engineering and housing or department of public works funds. The escrow account must be set up and managed by the department of engineering and housing or the department of public works to (1) temporarily hold deposits, and (2) to ''roll over'' deposits each fiscal year in order to avoid reversion of these deposits to the General Treasury at the end of each fiscal year. If the escrow account is not set up and managed in this manner it is operating in violation of 10 U.S.C. 2782.

(3) *NAFI property.* The Risk Management Program (RIMP) often reimburses local NAFIs for property loss or damage to facilitate return of equipment to daily use. When money is recovered from tortfeasors and their insurance carriers contact the NAFI involved for instructions on the current procedures as to where the recovered money is to be forwarded and deposited.

(4) *Army Stock Fund or Defense Business Operations Fund property.* Monies recovered for damage to property belonging to one of these funds will be returned to that fund unless the fund has charged the cost of repair or replacement to an appropriated fund account. The Defense Business Operations Fund replaced the Army Industrial Fund.

(5) *Government housing in cases of abuse or neglect by soldiers or families.* Monies recovered for damage to government housing caused by a soldier's abuse or negligence (or by a soldier's family member or guest of the soldier) will be deposited into that installation's family housing operations and maintenance (O&M) account.

(6) *Government housing in cases of negligence by nonresidents.* Government housing caused by the negligence of a nonresident must be asserted against the nonresident directly or through his/her insurer. Settlement checks must be deposited into the real property escrow account in accordance with 10 U.S.C. 2782.

(b) *Depositing recovery of pay provided to a soldier while incapacitated.* Monies recovered for the costs of pay provided to a soldier injured by the tortious acts of another shall be credited to the local O&M account that supports the command, activity, or other unit to which the soldier was assigned at the time of the injury.

(c) *Depositing medical care recovery.* (1) *To a medical treatment facility account.* Continental U.S. (CONUS) and outside the continental U.S. (OCONUS) claims offices, and command claims services, will deposit money recovered from an automobile insurer for medical care provided, paid for by, in or through an MTF to the O&M account of the Army, Navy, or Air Force MTF that provided the care. CONUS and OCONUS claims offices, and command claims services, will deposit money recovered from any payor, under any provision of law, for medical care provided or paid for by, in or through an MTF into the MTF's O&M account.

(2) *Deposits when TRICARE paid directly for treatment.* The account in which to deposit affirmative claims recoveries when TRICARE has paid directly for the medical treatment is a Defense Health Program (DHP) account for reallocation to the services. This replaces the general treasury miscellaneous receipts account published in AR 37–100 (obsolete). Deposit to TRICARE using this new account for recoveries pending deposit, and recoveries for any claim settled on or after October 1, 2002. Retroactive claims depositing is not necessary.

(3) *Apportionment of medical care recovery between accounts.* Claims offices will often have to apportion recovered money among different accounts.

(i) *Apportioning money between accounts.* If care was provided by an MTF and paid for by or through the MTF and/or directly by TRICARE and/or a unit account for military lost wages if any, and the amount recovered is less than the amount asserted, deposit a prorated amount of money into each TRICARE account.

(ii) *Apportioning money between two or more medical treatment facility accounts.* If care was provided by two or more MTFs and the claims office recovers less than the amount asserted, the claims office should give each MTF a pro rata share of the money recovered. For example, if MTF one provided $2,000 worth of care and MTF two provided $1,000 worth of care, the claims office will deposit $800 of a $1,200 recovery to MTF one's account and the remaining $400 to MTF two's account. Similarly, if the claims office recovers an amount less than that asserted for medical care expenses and costs of pay provided, the claims office should give a pro rata share of the money recovered to both the MTF and the appropriation account that supports the injured soldier's unit.

(d) *Fiscal Integrity.* Field claims offices must reconcile the property damage and medical care recovery accounts with their servicing defense accounting office. Field claims offices must ensure that their deposits have been credited to the proper accounts and that these accounts have not been improperly charged. All accounts must be reconciled at the end of the fiscal year.

§ 537.15 Statutory authority for maritime claims and claims involving civil works of a maritime nature.

(a) The Army Maritime Claims Settlement Act. The sections pertinent to maritime affirmative claims are set out at 10 U.S.C. 4803–4804.

(b) The Rivers and Harbors Act. The section of the Act pertinent to affirmative claims involving civil works of a maritime nature is set out at 33 U.S.C. 408.

§ 537.16 Scope for maritime claims.

The Army Maritime Claims Settlement Act (10 U.S.C. 4803–4804) applies worldwide and includes claims that arise on high seas or within the territorial waters of a foreign country.

(a) 10 U.S.C. 4803 provides for agency settlement or compromise of claims for damage to:

(1) DA-accountable properties of a kind that are within the Federal maritime jurisdiction.

(2) Property under the DA's jurisdiction or DA property damaged by a vessel or floating object.

(b) 10 U.S.C. 4804 provides for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA. Claims for salvage services are based upon labor cost, per diem rates for the use of salvage vessels and other equipment, and repair or

replacement costs for materials and equipment damaged or lost during the salvage operation. The sum claimed is usually intended to compensate the United States for operational costs only, reserving, however, the government's right to assert a claim on a salvage bonus basis in accordance with commercial practice.

(c) The United States has three years from the date a maritime claim accrues under this section to file suit against the responsible party or parties.

§ 537.17 Scope for civil works claims of maritime nature.

Under the River and Harbors Act (33 U.S.C. 408), the United States has the right to recover fines, penalties, forfeitures and other special remedies in addition to compensation for damage to civil works structures such as a lock or dam. However, claims arising under 10 U.S.C. 4804 are limited to recovery of actual damage to Corps of Engineers (COE) civil works structures.

§ 537.18 Settlement authority for maritime claims.

(a) The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may compromise an affirmative claim brought by the United States in any amount. A claim settled or compromised in a net amount exceeding $500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, certified to Congress for final approval.

(b) TJAG, TAJAG, the Commander USARCS, the Chief Counsel COE, or Division or District Counsel Offices may settle or compromise and receive payment on a claim by the United States under this part if the amount to be received does not exceed $100,000. These authorities may also terminate collection of claims for the convenience of the government in accordance with the standards specified by the DOJ.

(c) An SJA or a chief of a command claims service and heads of ACOs may receive payment for the full amount of a claim not exceeding $100,000, or compromise any claim in which the amount to be recovered does not exceed $50,000 and the amount claimed does not exceed $100,000.

(d) Any money collected under this authority shall be deposited into the U.S. General Treasury, except that money collected on civil works claims in favor of the United States pursuant to 33 U.S.C. 408 ''shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred * * *'' (33 U.S.C. 412; 33 U.S.C. 571).

§ 537.19 Demands arising from maritime claims.

(a) It is essential that Army claims personnel demand payment, or notify the party involved of the Army's intention to make such demands, as soon as possible following receipt of information of damage to Army property where the party's legal liability to respond exists or might exist. Except as provided below pertaining to admiralty claims and claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. 408, copies of the initial demand or written notice of intention to issue a demand letter, as well as copies of subsequent correspondence, will be provided promptly to the Commander USARCS, who will monitor the progress of such claims.

(b) Subject to limitation of settlement authority, demands for admiralty claims and civil works damages in favor of the United States pursuant to 33 U.S.C. 408 may be asserted, regardless of amount, by the Chief Counsel COE, or his designees in COE Division or District Counsel offices.

(c) Where, in response to any demand, a respondent denies liability, fails to respond within a reasonable period, or offers a compromise settlement, the file will be promptly forwarded to the Commander USARCS, except in those cases in which a proposed compromise settlement is deemed acceptable and the claim is otherwise within the authority delegated in § 537.18 of this part. Files for admiralty claims and civil works claims in favor of the United States pursuant to 33 U.S.C. 408 will be promptly forwarded to the United States Department of Justice.

§ 537.20 Certification to Congress.

Admiralty claims, including claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. 408, proposed for settlement or compromise in a net amount exceeding $100,000 will be submitted through the Commander USARCS to the Secretary of the Army for approval and if in excess of $500,000 for certification to Congress for final approval.

[FR Doc. E6–12974 Filed 8–8–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0528; FRL–8206–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to Nonattainment New Source Review (NSR) Air Quality Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the West Virginia State Implementation Plan (SIP). The revision consists of amendments to West Virginia's existing Nonattainment New Source Review (NSR) preconstruction air quality permit program. This action is being taken under the Clean Air Act (CAA or the Act). In a separate action, EPA will address changes made by West Virginia to its prevention of significant deterioration (PSD) air quality permit program, also submitted on December 1, 2005.

DATES: Written comments must be received on or before September 8, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0528 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: campbell.dave@epa.gov.*

C. *Mail:* EPA–R03–OAR–2006–0528, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0528. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*