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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 327

[Docket No. MARAD 2012-0005]

RIN 2133-AB79

Retrospective Review under E.O. 13563: Seamen's Claims; Admiralty Extension Act Claims; and Admiralty Claims

AGENCY: Maritime Administration, Department of Transportation

ACTION: Final Rule.

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Maritime Administration (MarAd) solicited public comment concerning clarification of its regulations pertaining to seamen's claims, administrative action taken against MarAd, and litigation pertaining to such matters. No comments were received as a result of the agency's solicitation. By this rulemaking, MarAd is updating and modernizing the existing regulations and adopting a procedural process to more effectively address claims arising under the Suits in Admiralty Act, the Admiralty Extension Act and the Clarification Act. The existing regulations implement the Clarification Act. The newly added regulations implement a process to resolve administrative claims arising under the Admiralty Extension Act, and both the Suits in Admiralty Act and the Public Vessels Act, respectively.

DATES: This rule is effective [Insert date 30 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: You may contact Jay Gordon, Assistant

Chief Counsel for Litigation and General Law, at (202) 366-5173. You may send mail to Mr. Gordon at Office of Chief Counsel, MAR-221, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001. You may send electronic mail to jay.gordon@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, January 21, 2011). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, “Regulatory Planning and Review,” (58 FR 51735, October 4, 1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President’s plan recognizes that these principles should not only guide the Federal government’s approach to new regulations, but to existing ones as well. To that end, Executive Order 13563 requires agencies to review existing significant rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome.

Accordingly, the Maritime Administration identified its administrative claims regulations governing seaman’s administrative actions and claim litigation for improvement consistent with the President’s order. 46 CFR Part 327 prescribes rules and regulations pertaining to the filing of admiralty claims and the administrative allowance or disallowance (actual or presumed) of such claims, in whole or in part. The existing Part 327 addresses only Seamen’s Claims. The proposed rule was published February 2, 2012 (77 FR 5217). This Final Rule divides Part 327 into three subparts, all of which are related to admiralty claims. Subpart A addresses Seamen’s

Claims governed by the Clarification Act, 50 U.S.C. 1291(a). Subpart B addresses claims filed under the Admiralty Extension Act, 46 U.S.C. 30101, a statutory provision which extends the admiralty and maritime jurisdiction of the United States to cases of injury or damage to a person or property caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land. Subpart C establishes a procedure for filing administrative claims for all admiralty claims not covered by Subparts A or B, or the Contracts Disputes Act (41 U.S.C. 601 *et. seq.*).

The filing of proper administrative claims under Subparts A and B must take place before filing suit against the United States. For example, under the Clarification Act, before suit can be filed against the United States, there must be a denial of an administrative claim filed by officers and members of crews injured aboard MarAd vessels. Before suit can be filed against the United States under the Admiralty Extension Act, there must be an administrative denial of a claim filed under that Act or 6 months must have passed after the claim is presented in writing to the agency. The new Subpart C establishes an optional procedure whereby anyone having an admiralty claim not covered by either Subparts A, B or under the Contracts Disputes Act can file an administrative claim with MarAd.

Subpart A of Part 327 has also been updated to include technical changes such as MarAd's new address at 1200 New Jersey Avenue and to include corrections to statutory references, some of which were made obsolete as the result of the codification of the Appendix to title 46 of the United States Code. In addition to these technical changes, MarAd modernizes the regulation by allowing the use of pictures and video recordings as evidence in administrative actions and litigation. The current regulations do not provide for the use of such evidence. The new regulation also requires that the seamen filing claims sign the claims and verify that they are

correct.

Subpart B sets out specific details concerning compliance with the administrative claim requirement of the Admiralty Extension Act, 46 U.S.C. 30301(c)(2), with respect to filing suit against the United States. Under this provision, no civil suit can be filed against the United States “until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.”

Subpart C provides a means whereby an administrative claim can be filed with respect to any other admiralty matters not addressed in Subparts A and C or in the Contracts Disputes Act (41 U.S.C. 601 *et seq.*). This will provide a means to address administratively admiralty claims made by other persons or legal entities such as longshoremen and harbor workers, contractors, invitees injured aboard vessels, and the owners of damaged vessels filing claims governed by the Suits in Admiralty Act (46 U.S.C. 30901 *et seq.*) and the Public Vessels Act (46 U.S.C.A. 31101 *et seq.*).

Rulemaking Analysis and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures.

Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MarAd must determine whether a regulatory action is “significant,” and therefore subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local,

or tribal government or communities.(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MarAd has determined that this final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This final rule will not result in an annual effect on the economy of \$100 million or more. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104-121. The rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MarAd did not consult with State and local officials because it was not necessary.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

MarAd does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria

contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MarAd to assess whether this rule would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MarAd certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MarAd has determined that the rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing “economically significant” rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this rule is not economically significant, and it would cause no environmental or health risk that disproportionately affects children.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies adopting Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. MarAd determined that there are no voluntary national consensus standards related to the filing of the seamen’s claims, administrative actions and Admiralty Extension Act claims addressed by this regulation.

International Trade Impact Assessment

This rule is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MarAd. The processing and treatment of any claim within the scope of this rulemaking by MarAd shall comply with all legal, regulatory and policy requirements regarding privacy.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rule provides regulatory clarification to seamen's claims, administrative action procedures and Admiralty Extension Claim procedures. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in

costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 327

Administrative practice and procedures, Claims, Seaman.

Accordingly, the Maritime Administration revises part 327 of 46 CFR, to read as follows:

PART 327—SEAMEN’S CLAIMS; ADMINISTRATIVE ACTION AND LITIGATION

Subpart A -- Clarification Act Claims: Seamen's Claims; Administrative Action and Litigation

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327.51 Statute of limitations not tolled by administrative consideration of claims.

327.52 Notice of claim acceptance or denial.

Authority: 46 U.S.C. Chapters 301–309.

Subpart A--Clarification Act Claims: Seamen's Claims; Administrative Action and Litigation.

§ 327.1 Purpose.

This part prescribes rules and regulations pertaining to the filing of claims designated in § 327.3 and the administrative allowance, or disallowance (actual and presumed), of such claims, in whole or in part, filed by officers and members of crews (hereafter referred to as “seamen”) employed on vessels as employees of the United States through the National Shipping Authority (NSA), Maritime Administration (MarAd), or successor.

§ 327.2 Statutory provisions.

These regulations are enacted to implement the administrative claims procedures set forth in 50 U.S.C. App. 1291(a).

§ 327.3 Required claims submission.

All claims specified in 50 U.S.C. App. 1291(a) shall be submitted for administrative consideration, as provided in §§ 327.4 and 327.5, prior to institution of court action thereon.

§ 327.4 Claim requirements.

(a) Form. The claim may be in any form and shall be

(1) In writing,

(2) Designated as a claim,

(3) Disclose that the object sought is the administrative allowance of the claim,

(4) Comply with the requirements of this part, and

(5) Filed as provided in § 327.5.

(6) The claim must be signed or attested to by the claimant. The statements made in the claim should be made to the best of the knowledge of the claimant and are subject to the provision of 18 U.S.C. 287 and 1001 and all other penalty provisions for making false, fictitious, or fraudulent claims, statements or entries, or falsifying, concealing, or covering up a material fact in any matter within the jurisdiction of any department or agency of the United States. Any lawsuits filed contrary to the provisions of section 5 of the Suits in Admiralty Act, as amended by Public Law 877, 81st Congress (64 Stat. 1112; 46 U.S.C. 30901 *et seq.*), shall not be in compliance with the requirements of this part.

(b) Contents. Each claim shall include the following information:

(1) With respect to the seaman:

(i) Name;

(ii) Mailing address;

(iii) Date of birth;

(iv) Legal residence address;

(v) Place of birth; and

(vi) Merchant mariner license or document number and social security number.

(2) With respect to the basis for the claim:

- (i) Name of vessel on which the seaman was serving when the incident occurred that is the basis for the claim;
- (ii) Place where the incident occurred;
- (iii) Time of incident--year, month and day, and the precise time of day, to the minute, where possible;
- (iv) Narrative of the facts and circumstances surrounding the incident, including a statement explaining why the United States is liable for this claim;
- (v) Pictures, video recordings and other physical evidence related to the case and
- (vi) The names, addresses, and telephone numbers, if available, of others who can supply factual information about the incident and its consequences.

(3) A sum certain dollar amount of claim, which includes a total for all amounts sought.

The claim shall explain the amounts sought for:

- (i) Past loss of earnings or earning capacity;
- (ii) Future loss of earnings or earning capacity;
- (iii) Medical expenses paid out of pocket;
- (iv) Pain and suffering; and
- (v) Any other loss arising out of the incident (describe).

(4) All medical and clinical records of physicians and hospitals related to a seaman's claim for injury, illness, or death shall be attached. If the claimant does not have a copy of each record, the claimant shall identify every physician and hospital having records relating to the seaman and shall provide written authorization for MarAd to obtain all such records. The claim shall also include the number of days the seaman worked as a merchant mariner and the earnings received for the current calendar year, as well as for

the two preceding calendar years.

(5) If the claim does not involve a seaman's death, the following information shall be submitted with the claim:

- (i) Date the seaman signed a reemployment register as a merchant mariner;
- (ii) Copy of the medical fit-for-duty certificate issued to the seaman;
- (iii) Date and details of next employment as a seaman; and
- (iv) Date and details of next employment as other than a seaman.

(6) If the claim is for other than personal injury, illness or death, the claim shall provide all supporting information concerning the nature and dollar amount of the loss.

§ 327.5 Filing claims.

(a) Claims may be filed by or on behalf of seamen or their surviving dependents or beneficiaries, or by their legal representatives. Claims shall be filed either by personal delivery or by registered mail.

(b) The claimant shall send the claim directly to the Chief, Division of Marine Insurance, Maritime Administration, Department of Transportation, 1200 New Jersey Ave., S.E. Washington, D.C. 20590. A copy of each claim shall be filed with the Ship Manager or General Agent of the vessel with respect to which such claim arose.

§ 327.6 Notice of allowance or disallowance.

MarAd shall give prompt notice in writing of the allowance or disallowance of each claim, in whole or in part, by mail to the last known address of, or by personal delivery to, the claimant or the claimant's legal representative. In the case of administrative disallowance, in whole or in part, such notice shall contain a brief statement of the reason for such disallowance.

§ 327.7 Administrative disallowance presumption.

If MarAd fails to give written notice of allowance or disallowance of a claim in accordance with § 327.6 within sixty (60) calendar days following the date of the receipt of such claim by the proper person designated in § 327.5, such claim shall be presumed to have been “administratively disallowed,” within the meaning in section 1(a) of 50 U.S.C. App. 1291(a).

§ 327.8 Court action.

(a) No seamen, having a claim specified in subsections (2) and (3) of section 1(a) of 50 U.S.C. App. 1291(a), their surviving dependents and beneficiaries, or their legal representatives shall institute a court action for the enforcement of such claim unless such claim shall have been prepared and filed in accordance with §§ 327.4 and 327.5 and shall have been administratively disallowed in accordance with § 327.6 or 327.7.

(b) This part prescribes rules and regulations pertaining to the filing of claims designated in § 327.3 and the administrative allowance, or disallowance (actual and presumed), of such claims, in whole or in part, filed by officers and members of crews (hereafter referred to as “seamen”) employed on vessels through the National Shipping Authority (NSA), Maritime Administration (MarAd), or successor organization.

Subpart B-- Admiralty Extension Act Claims; Administrative Action and Litigation

§ 327.20 Admiralty Jurisdiction Extension Claims: Required claims.

(a) Pursuant to 46 U.S.C. 30101(c) of the Admiralty Extension Act (AEA), administrative claims involving the extension of admiralty jurisdiction to cases of damage or injury on land caused by a Maritime Administration vessel on navigable waters must be presented in writing to the Maritime Administration in accordance with §§ 327.20 through 327.34 prior to institution of a court action thereon.

(b) A civil action against the United States for injury or damage done or consummated

on land by a vessel on navigable waters may not be brought until the earlier occurrence of either the denial of the claim by the Maritime Administration or the presumptive denial of the claim which arises 6 months after the claim has been presented in writing to the Maritime Administration. 46 U.S.C. 30101(c)(2). Note that the 6 month period of review will not begin until a valid claim is filed pursuant to § 327.25.

(c) Proceedings against the United States pursuant to the requirements of the AEA and these regulations is the exclusive remedy available against the United States of America, acting by and through the Maritime Administration, with respect to such injuries and damages.

§ 327.21 Definitions.

The following definitions apply to this subpart:

(a) Accrual date. The day on which the alleged wrongful act or omission results in injury or damage for which a claim is made.

(b) Claim. A written notification of an incident, signed by the claimant, describing the incident and explaining why the United States is liable. The claim shall be accompanied by a demand for the payment of a sum certain of money, with a statement as to how that sum certain was calculated and all documents supporting the amount claimed. Where damages for medical injuries are made, the doctor's statement relating the injuries to the accident should be attached as well as medical release forms for each treating physician, hospital, and medical care provider.

§ 327.22 Who may present claims.

(a) General rules. (1) A claim for property loss or damage may be presented by anyone having an interest in the property, including an insurer or other subrogee.

(2) A claim for personal injury may be presented by the person injured.

(3) A claim based on death may be presented by the executor or administrator of the

decedent's estate, or any other person legally entitled to assert such a claim under local law. The claimant's status must be stated in the claim.

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

(b) A joint claim must be presented in the names of and signed by, the joint claimants, and the settlement will be made payable to the joint claimants.

(c) A claim may be presented by a duly authorized agent, legal representative or survivor, if it is presented in the name of the claimant. If the claim is not signed by the claimant, the agent, legal representative, or survivor shall indicate their title or legal capacity and provide evidence of their authority to present the claim.

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

§ 327.23 Insurance and other subrogated claims.

(a) The claims of an insured (subrogor) and an insurer (subrogee) for damages arising out of the same incident constitute a single claim.

(b) An insured (subrogor) and an insurer (subrogee) may file a claim jointly or separately. If the insurer has fully reimbursed the insured, payment will only be made to the insurer. If separate claims are filed, the settlement will be made payable to each claimant to the extent of that claimant's undisputed interest. If joint claims are filed, the settlement will be sent to the insurer.

(c) Each claimant shall include with a claim, a written disclosure concerning insurance coverage including:

(1) The names and addresses of all insurers;

(2) The kind and amount of insurance;

(3) The policy number;

(4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

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

§ 327.24 Actions by claimant.

(a) Form of claim. The claim must meet the requirements of this section.

(b) Presentation. The claim must be presented in writing to the Office of Chief Counsel, Attn. Chief Counsel, Maritime Administration, Department of Transportation, 1200 New Jersey Ave, S.E., Washington, D.C. 20590-0001.

§ 327.25 Contents of a claim.

(a) A valid claim will contain the following:

(1) Identification of the Maritime Administration as the agency whose act or omission gave rise to the claim;

(2) The full name and mailing address of the claimant. If this mailing address is not claimant's residence, the claimant shall also include residence address;

(3) The date, time, and place of the incident giving rise to the claim;

- (4) The amount claimed, in a sum certain, supported by independent evidence of property damage or loss, personal injury, or death, as applicable together with supporting medical records and a HIPPA compliant medical waiver for each treating physician or hospital;
- (5) A detailed description of the incident giving rise to the claim and the factual basis upon which it is claimed the Maritime Administration is liable for the claim;
- (6) A description of any property damage or loss, including the identity of the owner, if other than the claimant, as applicable;
- (7) The nature and extent of the injury, as applicable;
- (8) The full name, title, if any, and address of any witness to the incident and a brief statement of the witness' knowledge of the incident;
- (9) A description of any insurance carried by the claimant or owner of the property and the status of any insurance claim arising from the incident; and
- (10) An agreement by the claimant to accept the total amount claimed in full satisfaction and final settlement of the claim, lien or subrogation claim on the claimed amount, or any assignment of the claim.

(b) A claimant or duly authorized agent or legal representative must sign in ink a claim and any amendment to that claim. The claim shall include a statement that the information provided is true and correct to the best of the claimant's knowledge, information, and belief. If the person's signature does not include the first name, middle initial, if any, and surname, that information must be included in the claim. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

§ 327.26 Evidence supporting a claim.

- (a) The claimant shall present any evidence in the claimant's possession that supports the

claim. This evidence shall include, if available, statements of witnesses, accident or casualty reports, photographs and drawings.

(b) Notwithstanding anything in the regulations in this subpart, the claimant shall provide such additional reasonable documents and evidence as requested by the Maritime Administration with respect to the claim. Failure to respond to reasonable requests for additional information and documentation can result in a determination that a valid claim has not been submitted.

§ 327.27 Proof of amount claimed for personal injury.

The following evidence must be presented when appropriate in claims:

- (a) Itemized medical, hospital, and burial bills.
- (b) A written report by the attending physician including:
 - (1) The nature and extent of the injury and the treatment;
 - (2) The necessity and reasonableness of the various medical expenses incurred;
 - (3) Duration of time injuries prevented or limited employment;
 - (4) Past, present, and future limitations on employment;
 - (5) Duration and extent of pain and suffering and of any disability or physical disfigurement;
 - (6) A current prognosis;
 - (7) Any anticipated medical expenses;
 - (8) Any past medical history of the claimant relevant to the particular injury alleged; and
 - (9) If required by the Maritime Administration, an examination by an independent medical facility or physician to provide independent medical evidence against which to evaluate the written report of the claimant's physician. The Maritime Administration determines the need for this examination, makes mutually convenient arrangements for

such an examination, and bears the costs thereof.

(c) All hospital records or other medical documents from either this injury or any relevant past injury.

(d) If the claimant is employed, a written statement by the claimant's employer certifying the claimant's:

(1) Age;

(2) Occupation;

(3) Hours of employment;

(4) Hourly rate of pay or weekly salary;

(5) Time lost from work as a result of the incident; and

(6) Claimant's actual period of employment, full-time or part-time, and any effect of the injury upon such employment to support claims for lost earnings.

(e) If the claimant is self-employed, written statements, or other evidence showing:

(1) The amount of earnings actually lost; and

(2) The Federal tax return if filed for the three previous years.

(f) If the claim arises out of injuries to a person providing services to the claimant, statement of the cost necessarily incurred to replace the services to which claimant is entitled under law.

§ 327. 28 Proof of amount claimed for loss of, or damage to, property.

The following evidence must be presented when appropriate:

(a) For each particular lost item, evidence of its value such as a bill of sale and a written appraisal, or two written appraisals, from separate disinterested dealers or brokers, market quotations, commercial catalogs, or other evidence of the price at which like property can be obtained in the community. The Maritime Administration may waive these requirements when

circumstances warrant. The reasonable cost of any appraisal may be included as an element of damage if not deductible from any bill submitted to claimant.

(b) For each particular damaged item which can be economically repaired, evidence of cost of repairs such as a receipted bill and one estimate, or two estimates, from separate disinterested repairmen. The Maritime Administration may waive these requirements when circumstances warrant. The reasonable cost of any estimate may be included as an element of damage if not deductible from any repair bill submitted to claimant.

(c) For any claim for property damage which may result in payment in excess of \$20,000.00, a survey or appraisal shall be performed as soon as practicable after the damage accrues, and, unless waived in writing, shall be performed jointly with a government representative.

(d) If the item is so severely damaged that it cannot be economically repaired or used, it shall be treated as a lost item.

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

- (1) The date the property was damaged;
- (2) The name and location of the repair facility;
- (3) The beginning and ending dates of repairs and an explanation of any delay between the date of damage and the beginning date;
- (4) A complete description of all repairs performed, segregating any work performed for the owner's account and not attributable to the incident involved, and the costs thereof;
- (5) The date and place the property was returned to service after completion of repairs, and an explanation, if applicable, of any delay;

(6) Whether or not a substitute for the damaged property was available. If a substitute was used by the claimant during the time of repair, an explanation of the necessity of using the substitute, how it was used, and for how long, and the costs involved. Any costs incurred that would have been similarly incurred by the claimant in using the damaged property must be identified;

(7) Whether or not during the course of undergoing repairs the property would have been used, and an explanation submitted showing the identity of the person who offered that use, the terms of the offer, time of prospective service, and rate of compensation; and

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

(f) For each item which is lost, actual or constructive, proof of ownership.

§ 327.29 Effect of other payments to claimant.

The total amount to which the claimant may be entitled is normally computed as follows:

(a) The total amount of the loss, damage, or personal injury suffered for which the United States is liable, less any payment the claimant has received from the following sources:

(1) The military member or civilian employee who caused the incident;

(2) The military member's or civilian employee's insurer; and

(3) Any joint tort-feasor or insurer.

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

§ 327.30 Statute of limitations for AEA and claim requirements.

A civil suit must be filed within two years of the Accrual Date. No civil suit may be brought until the earlier occurrence of either the denial of a claim or the presumptive denial of the claim after 6 months from the date the claim was properly presented in writing to the Maritime Administration.

§ 327.31 Statute of limitations not tolled by administrative consideration of claims.

The statute of limitations for filing a civil action under 46 U.S.C. 30101(b) is not tolled by MarAd's administrative consideration of a claim.

§ 327.32 Notice of claim acceptance or denial.

The Maritime Administration shall give prompt notice in writing of the acceptance or denial of each claim in whole or in part, by mail to the last known address of, or by personal delivery to, the claimant or the claimant's legal representative. In the case of denial, such notice shall contain a brief statement of the reason for such a denial.

§ 327.33 Claim denial presumption.

If the Maritime Administration fails to give written notice of acceptance or denial of a claim in accordance with § 327.30 within 6 months following the date of receipt of such a claim by the proper person designated in § 327.24(b), such claim shall be presumed to have been denied by the Maritime Administration.

§ 327.34 Court action.

No person, surviving dependent or beneficiary, or legal representative, having a claim specified under 46 U.S.C. 30101(a) against the Maritime Administration, shall institute a court action against the Maritime Administration unless an administrative claim has previously been properly presented and filed in accordance with § 327.22, § 327.23, and § 327.24, and such administrative claim has been subsequently denied in accordance with § 327.32 or § 327.33.

Subpart C-- Other Admiralty Claims

§ 327.40 Other Admiralty claims.

(a) Admiralty claims caused by United States owned and operated vessels on navigable waters or otherwise that are not covered under the Clarification Act (50 U.S.C. app. 1291(a)), the Admiralty Extension Act (46 U.S.C. 30101) or the Contracts Disputes Act (41 U.S.C. 601 *et. seq.*) may be filed with the Maritime Administration in accordance with §§ 327.40 through 327.52.

(b) A civil action against the United States for admiralty claims caused by United States owned and operated vessels on navigable waters or otherwise that are not covered under the Clarification Act (50 U.S.C. App. 1291(a)), the Admiralty Extension Act (46 U.S.C. 30101) or the Contracts Disputes Act (41 U.S.C. 601 *et. seq.*) may be brought without the filing of an administrative claim. This Part III sets forth the optional procedure for filing such claims with the Maritime Administration in advance of litigation. Once litigation is filed, the authority to handle such claims is vested with the Justice Department, not the agency.

(c) Proceeding against the United States pursuant to the requirements this Part III is not a requirement for filing suit against the United States of America, acting by and through the Maritime Administration, with respect to such admiralty claims.

§ 327.41 Definitions.

The following definitions apply to this subpart:

(a) Accrual date. The day on which the alleged wrongful act or omission results in injury or damage for which a claim is made.

(b) Claim. A written notification of an incident, signed by the claimant, describing the incident and explaining why the United States is liable. The claim shall be accompanied by a demand for the payment of a sum certain of money, with a statement as to how that sum certain was calculated and all documents supporting the amount claimed. Where damages for medical injuries are made, the doctor's statement relating the injuries to the accident should be attached as well as medical release forms for each treating physician, hospital, and medical care provider.

§ 327.42 Who may present claims.

(a) General rules. (1) A claim for property loss or damage may be presented by anyone having an interest in the property, including an insurer or other subrogee.

(2) A claim for personal injury may be presented by the person injured.

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

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

(5) A joint claim must be presented in the names of and signed by, the joint claimants, and the settlement must be made payable to the joint claimants.

(b) A claim may be presented by a duly authorized agent, legal representative or survivor, if it is presented in the name of the claimant. If the claim is not signed by the claimant, the agent, legal representative, or survivor shall indicate their title or legal capacity and provide evidence of

their authority to present the claim.

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

§ 327.43 Insurance and other subrogated claims.

(a) The claims of an insured (subrogor) and an insurer (subrogee) for damages arising out of the same incident constitute a single claim.

(b) An insured (subrogor) and an insurer (subrogee) may file a claim jointly or separately. If the insurer has fully reimbursed the insured, payment will only be made to the insurer. If separate claims are filed, the settlement will be made payable to each claimant to the extent of that claimant's undisputed interest. If joint claims are filed, the settlement will be sent to the insurer.

(c) Each claimant shall include with a claim, a written disclosure concerning insurance coverage including:

- (1) The names and addresses of all insurers;
- (2) The kind and amount of insurance;
- (3) The policy number; and
- (4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(d) Each subrogee shall substantiate an interest or right to file a claim by appropriate documentary evidence and shall support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence of liability of the United States or conclusive evidence of the

amount of damages. The Maritime Administration makes an independent determination on the issues of fact and law based upon the evidence of record.

§ 327.44 Actions by claimant.

(a) Form of claim. The claim should meet the requirements of § 327.44.

(b) Presentation. The claim must be presented in writing to the Office of Chief Counsel, Attn: Chief Counsel, Maritime Administration, Department of Transportation, 1200 New Jersey Ave., S.E., Washington, D.C. 20590-0001.

§ 327.45 Contents of a claim.

(a) A properly filed claim shall include the following, however, any of the following requirements may be waived by the Maritime Administration:

(1) Identification of the Maritime Administration as the agency whose act or omission gave rise to the claim;

(2) The full name and mailing address of the claimant. If this mailing address is not claimant's residence, the claimant shall also include residence address;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The amount claimed, in a sum certain, supported by independent evidence of property damage or loss, personal injury, or death, as applicable together with supporting medical records and a HIPPA compliant medical waiver for each treating physician, hospital, or medical provider;

(5) A detailed description of the incident giving rise to the claim and the factual basis upon which it is claimed the United States is liable for the claim;

(6) A description of any property damage or loss, including the identity of the owner, if other than the claimant, as applicable;

(7) The nature and extent of the injury, as applicable;

(8) The full name, title, if any, and address of any witness to the incident and a brief statement of the witness' knowledge of the incident;

(9) A description of any insurance carried by the claimant or owner of the property and the status of any insurance claim arising from the incident; and

(10) An agreement by the claimant to accept the total amount claimed in full satisfaction and final settlement of the claim, lien, or subrogation claim on the claimed amount, or any assignment of the claim.

(b) A claimant or duly authorized agent or legal representative must sign in ink a claim and any amendment to that claim. The claim shall include a statement that the information provided is true and correct to the best of the claimant's knowledge, information, and belief. If the person's signature does not include the first name, middle initial, if any, and surname, that information must be included in the claim. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

§ 327.46 Evidence supporting a claim.

(a) The claimant should present any evidence in the claimant's possession that supports the claim. This evidence shall include, if available, statements of witnesses, accident or casualty reports, photographs and drawings.

(b) Notwithstanding anything in the regulations in this subpart, the claimant shall provide such additional documents and evidence as requested by the Maritime Administration with respect to the claim. Failure to respond to reasonable requests for additional information and documentation can result in a determination that a proper claim has not been submitted.

§ 327.47 Proof of amount claimed for personal injury.

The following evidence must be presented when appropriate in claims:

- (a) Itemized medical, hospital, and burial bills.
- (b) A written report by the attending physician including:
 - (1) The nature and extent of the injury and the treatment;
 - (2) The necessity and reasonableness of the various medical expenses incurred;
 - (3) Duration of time injuries prevented or limited employment;
 - (4) Past, present, and future limitations on employment;
 - (5) Duration and extent of pain and suffering and of any disability or physical disfigurement;
 - (6) A current prognosis;
 - (7) Any anticipated medical expenses;
 - (8) Any past medical history of the claimant relevant to the particular injury alleged; and
 - (9) At the request of the Maritime Administration, an examination by an independent medical facility or physician may be required to provide independent medical evidence against which to evaluate the written report of the claimant's physician. The Maritime Administration determines the need for this examination, makes mutually convenient arrangements for such an examination, and bears the costs thereof.
- (c) All hospital records or other medical documents from either this injury or any relevant past injury.
- (d) If the claimant is employed, a written statement by the claimant's employer certifying the claimant's:
 - (1) Age;
 - (2) Occupation;

- (3) Hours of employment;
- (4) Hourly rate of pay or weekly salary;
- (5) Time lost from work as a result of the incident; and
- (6) Claimant's actual period of employment, full-time or part-time, and any effect of the injury upon such employment to support claims for lost earnings.

(e) If the claimant is self-employed, written statements, or other evidence showing:

- (1) The amount of earnings actually lost, and
- (2) The Federal tax return if filed for the three previous years.

(f) If the claim arises out of injuries to a person providing services to the claimant, statement of the cost necessarily incurred to replace the services to which claimant is entitled under law.

§ 327. 48 Proof of amount claimed for loss of, or damage to, property.

The following evidence should be presented when appropriate:

(a) For each particular lost item, evidence of its value such as a bill of sale and a written appraisal, or two written appraisals, from separate disinterested dealers or brokers, market quotations, commercial catalogs, or other evidence of the price at which like property can be obtained in the community. The Maritime Administration may waive these requirements when circumstances warrant. The reasonable cost of any appraisal may be included as an element of damage if not deductible from any bill submitted to claimant.

(b) For each particular damaged item which can be economically repaired, evidence of cost of repairs such as a receipted bill and one estimate, or two estimates, from separate disinterested repairmen. The Maritime Administration may waive these requirements when circumstances warrant. The reasonable cost of any estimate may be included as an element of

damage if not deductible from any repair bill submitted to claimant.

(c) For any claim which may result in payment in excess of \$20,000.00, a survey or appraisal shall be performed as soon as practicable after the damage accrues, and, unless waived in writing, shall be performed jointly with a government representative.

(d) If the item is so severely damaged that it cannot be economically repaired or used, it shall be treated as a lost item.

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

- (1) The date the property was damaged;
- (2) The name and location of the repair facility;
- (3) The beginning and ending dates of repairs and an explanation of any delay between the date of damage and the beginning date;
- (4) A complete description of all repairs performed, segregating any work performed for the owner's account and not attributable to the incident involved, and the costs thereof;
- (5) The date and place the property was returned to service after completion of repairs, and an explanation, if applicable, of any delay;
- (6) Whether or not a substitute for the damaged property was available. If a substitute was used by the claimant during the time of repair, an explanation of the necessity of using the substitute, how it was used, and for how long, and the costs involved. Any costs incurred that would have been similarly incurred by the claimant in using the damaged property must be identified;
- (7) Whether or not during the course of undergoing repairs the property would have been used, and an explanation submitted showing the identity of the person who offered that

use, the terms of the offer, time of prospective service, and rate of compensation; and

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

(f) For each item which is lost, actual or constructive, proof of ownership.

§ 327.49 Effect of other payments to claimant.

The total amount to which the claimant may be entitled is normally computed as follows:

(a) The total amount of the loss, damage, or personal injury suffered for which the United States is liable, less any payment the claimant has received from the following sources:

- (1) The military member or civilian employee who caused the incident;
- (2) The military member's or civilian employee's insurer; and
- (3) Any joint tort-feasor or insurer.

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

§ 327.50 Statute of limitations for other admiralty claims and claim requirements.

A civil suit must be filed within the statute of limitations of the specific admiralty claim.

The start date for such statute of limitations determinations shall be the Accrual Date.

§ 327.51 Statute of limitations not tolled by administrative consideration of claims.

The statute of limitations for filing a civil action under 46 U.S.C. 30101(b) is not tolled by the Maritime Administration's administrative consideration of a claim.

§ 327.52 Notice of claim acceptance or denial.

The Maritime Administration shall give prompt notice in writing of the acceptance or denial of each claim in whole or in part, by mail to the last known address of, or by personal delivery to, the claimant or the claimant's legal representative. In the case of denial, such notice shall contain a brief statement of the reason for such a denial.

By Order of the Maritime Administrator

Christine S. Gurland
Acting Secretary
Maritime Administration

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