

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 13, 2001.

William W. Rice,

Acting Regional Administrator, Region 7.

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DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

45 CFR CH. V

Commission's Structures, Functions, Rules of Procedure, and Responsibilities

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Final rule.

SUMMARY: This rule revises and republishes the regulations of the Foreign Claims Settlement Commission of the United States (Commission), which describe the Commission's structure, functions, rules of procedure, and responsibilities under its authorizing statutes.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT:

David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, U.S. Department of Justice, Washington, DC 20579, (202) 616-6975.

SUPPLEMENTARY INFORMATION: The regulations of the Foreign Claims Settlement Commission of the United States are being revised and republished in order to improve their readability, update some of the information in them, and remove portions that are redundant or outdated.

Administrative Procedure Act

This rule relates to matters of agency management and personnel and, therefore, is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Chairman of the Commission, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Commission. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because

the Commission was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section (3)(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects 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. Therefore, in accordance with Executive Order 13132, Federalism, the Commission has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Commission Chief Counsel David E. Bradley at the address and telephone number listed above.

List of Subjects in 45 CFR Ch. V (Parts 500-509)

Administrative practice and procedure, Conflict of interests, Foreign claims, Freedom of information, Lawyers, Organization and functions (Government agencies), Prisoners of war, Privacy, Sunshine Act, Vietnam, War claims.

Accordingly, by virtue of the authority vested in me as Chairman of the Commission under 22 U.S.C. 1622e, Chapter V, consisting of parts 500-509, of Title 45 of the Code of Federal Regulations is revised to read as follows:

Subchapter A—Rules of Practice

PART 500—APPEARANCE AND PRACTICE

Sec.

- 500.1 Appearance and representation.
- 500.2 Notice of entry or withdrawal of counsel in claims.
- 500.3 Fees.
- 500.4 Suspension of attorneys.
- 500.5 Standards of Conduct.
- 500.6 Disqualification of former employees.

Authority: Sec. 2, Pub. L. 896, 80th Cong., 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 455, 81st Cong., 64 Stat. 12, as amended (22 U.S.C. 1622); 18 U.S.C. 207.

§ 500.1 Appearance and representation.

(a) An individual may appear in his or her own behalf, or may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia.

(b) A member of a partnership may represent the partnership.

(c) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(d) An officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(e) In cases falling within the purview of subchapter B of this chapter, persons designated by veterans', service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants will be deemed duly authorized to practice before the Commission if the designating organization has received a letter of accreditation from the Commission. Petitions for accreditation must be in writing, executed by duly authorized officer or officers, and addressed to the Foreign Claims Settlement Commission of the United States, Washington, DC 20579. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up memberships, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for representation if the claimant has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(f) A claimant may not be represented before the Commission except as authorized in paragraphs (a) through (e) of this section.

§ 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by a claimant in the claimant's own behalf, or upon request for a substitution of attorneys, will be required to file an authorization signed by the claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, he or she will be required to demonstrate that the client (claimant) has been duly notified.

(c) When a claimant advises the Commission that counsel no longer represents that claimant, a copy of the Commission's acknowledgment will be forwarded to that counsel.

§ 500.3 Fees.

(a) The amount of attorney's fees that may be charged in connection with claims falling within the purview of title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. § 1621-1627), is governed by the provisions of 22 U.S.C. 1623(f).

(b) The amount of attorney's fees that may be charged in connection with

claims falling within the purview of subchapter B of this chapter is governed by the provisions of section 10 of the War Claims Act of 1948, as amended (50 U.S.C. App. 2009).

§ 500.4 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or section 4(f) of the International Claims Settlement Act of 1949, as amended.

(b) Contemptuous or contumacious conduct at any hearing will be ground for exclusion from that hearing and for summary suspension without a hearing for the duration of the hearing.

§ 500.5 Standards of Conduct.

The conduct of the members, officers and employees of the Commission, including its special Government employees, is governed by the *Standards of Ethical Conduct for Employees of the Executive Branch* set forth in 5 CFR part 2635 and the *Supplemental Standards of Conduct for Employees of the Department of Justice* set forth in 5 CFR part 3801.

§ 500.6 Disqualification of former employees.

The provisions of 18 U.S.C. 207 shall govern the post-employment appearance of former Commission members, officers, and employees, including special Government employees, in the capacity of agent, attorney or representative on behalf of claimants before the Commission.

PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.

- 501.1 Extent of authority.
- 501.2 Subpoenas.
- 501.3 Service of process.
- 501.4 Witnesses.
- 501.5 Depositions.
- 501.6 Documentary evidence.
- 501.7 Time.

Authority: Sec. 2, Pub. L. 896, 80th Cong., 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 455, 81st Cong., 64 Stat. 12, as amended (22 U.S.C. 1622).

§ 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The issuance of

subpoenas, the administration of oaths and affirmations, the taking of affidavits, the conduct of investigations, and the examination of witnesses by the Commission and its members, officers and employees is governed by the provisions of 22 U.S.C. 1623(c) and 50 U.S.C. App. 2001(c).

(b) *Certification.* The Commission or any member thereof may, for the purpose of a hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on the member or employee's own volition or upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for issuance of subpoenas for production of documents shall specify the books, records, correspondence, or other documents sought. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, that person must, within 15 days after the date of service of the subpoena, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file the answer not later than 15 days after the filing of the motion. The Commission will rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon will become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within

the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein that person resides or transacts business, as provided in 22 U.S.C. 1623(c).

§ 501.3 Service of process.

(a) *By whom served.* The Commission will serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by registered or certified mail, by overnight express delivery service, by first class mail, by telegraph, or by publication.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer or a director of the corporation to be served, or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of the person, partnership, or corporation.

(3) Proof of service. The return receipt for the order, other process or supporting papers, or the verification by the person serving, setting forth the manner of service, will be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon the party's attorney or agent will be deemed service upon the party.

(d) *Service by registered mail or certified mail.* Service by registered mail or certified mail will be regarded as complete on the date the return post office receipt for the orders, notices and other papers is received by the Commission.

(e) *Service by overnight express delivery service or by first class mail.* Service by overnight express delivery service or first class mail will be regarded as complete upon deposit, respectively, in the delivery service's package receptacle or in the United States mail properly stamped and addressed.

(f) *Service by telegraph.* Service by telegraph will be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is completed when due notice has been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service is the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the Commission will be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon the actual receipt, the filing will be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

§ 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses must appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party will be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage will be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify will be entitled, upon payment of prescribed costs, to receive a copy of the recording of the testimony or a transcript of the recording. Every person required to submit documents or other evidence will be entitled to retain a copy thereof.

§ 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition must be in writing setting forth the reason why the deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If the deposition is being offered in connection with a hearing or examination, the application for deposition must be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination, only where it is shown for good cause that the facts as set forth in the application to take the deposition were not within the knowledge of the

person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative will, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. The officer may or may not be the one specified in the application. The order will be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* The deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in the Commission's order, the officer taking the deposition will permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony will be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence will be deemed waived unless made in accordance with paragraph (d) of this section. The officer will not have power to rule upon any objections but will note them upon the deposition. The testimony must be subscribed by the witness in the presence of the officer who will attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness and that the officer is not counsel or attorney to any of the interested parties. The officer will immediately seal and deliver an original and two copies of the transcript, together with the officer's certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, DC 20579 or, if applicable, to the designated Commission field office.

(d) *Admissibility in evidence.* The deposition will be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring will be deemed waived unless a motion to

suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds:

(1) That the witness has died since the deposition was taken; or

(2) That the witness is at a distance greater than 100 miles radius of Washington, DC, the designated field office or the designated place of the hearing; or

(3) That the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties may be present or represented, and no person, other than the witness, the person's representative or attorney, a stenographic reporter and the presiding officer, may be present at the examination of the witness, which fact will be certified by the officer, who will read the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness's own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this part, and the officer taking the deposition, will be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees will be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas for production of documents must specify the books, records, correspondence or other documents sought. The production of documentary evidence will not be required at any place other than the witness's place of business. The production of such documents will not be required at any place if, prior to the return date specified in the subpoena, the person either has furnished the issuer of the subpoena with a properly certified copy of the documents or has entered into a

stipulation as to the information contained in the documents.

§ 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays will be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter, or by a notice given thereunder or by order of the Commission, an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion:

(1) With or without motion, notice, or previous order or

(2) Upon motion, permit the act to be done after the expiration of the specified period.

PART 502—PUBLIC INFORMATION-FREEDOM OF INFORMATION ACT

Sec.

502.1 Organization and authority—Foreign Claims Settlement Commission.

502.2 Material to be published in the **Federal Register** pursuant to the Freedom of Information Act.

502.3 Effect of nonpublication.

502.4 Incorporation by reference.

502.5 Records generally available.

502.6 Current index.

502.7 Additional documents and records generally available for inspection and copying.

502.8 Documents on-line.

502.9 Effect of noncompliance.

502.10 Availability of records.

502.11 Actions on requests.

502.12 Appeals.

502.13 Exemptions.

502.14 Fees for services.

Authority: 5 U.S.C. 552.

§ 502.1 Organization and authority—Foreign Claims Settlement Commission.

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that department as of

October 1, 1980, under the terms of Public Law 96-209, approved March 14, 1980 (94 Stat. 96, 22 U.S.C. 1622a). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621-1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001-2017p).

(b) The Commission has jurisdiction to determine the validity and amount of claims of United States nationals against foreign governments for compensation for losses and injuries sustained by those nationals, pursuant to programs authorized under either of the cited Acts. Funds for payment of claims are derived from international settlement agreements or through liquidation of foreign assets in the United States by the Department of Justice or Treasury, or from public funds when provided by the Congress.

(c) The Chair and the two part-time members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided in 22 U.S.C. 1622c(c).

(d) All functions of the Commission are vested in the Chair with respect to the internal management of the affairs of the Commission, including but not limited to:

(1) The appointment of Commission employees;

(2) The direction of Commission employees and the supervision of their official duties;

(3) The distribution of business among employees and organizational units within the Commission;

(4) The preparation of budget estimates; and

(5) The use and expenditures of Commission funds appropriated for expenses of administration.

(e) Requests for records must be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC 20579.

(f) The offices of the Commission are located at 600 E Street NW (Bicentennial Building), Room 6002, Washington, DC.

§ 502.2 Material to be published in the Federal Register pursuant to the Freedom of Information Act.

The Commission will separately state and concurrently publish the following materials in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

§ 502.3 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person will in any manner be required to resort to, or be adversely affected by, any matter required to be published in the **Federal Register** and not so published.

§ 502.4 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class of persons affected thereby will be deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 502.5 Records generally available.

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto, except when exempted from public disclosure by statute;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the **Federal Register**; and

(c) A current index, which will be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 502.6 Current index.

The Commission will maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required by 5 U.S.C. 552(a)(2).

§ 502.7 Additional documents and records generally available for inspection and copying.

The following types of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed in the various claims programs administered by the Commission.

§ 502.8 Documents on-line.

Commission documents available in electronic format may be accessed via the Commission's World Wide Web site, the address of which is <http://www.usdoj.gov/fcsc>.

§ 502.9 Effect of non-compliance.

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this part, or unless that private party has actual and timely notice of the terms thereof.

§ 502.10 Availability of records.

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA."

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the twenty-day time limit described in

§ 502.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement Commission, 600 E Street NW, Room 6002, Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

§ 502.11 Actions on requests.

(a) The Administrative Officer or any employee acting in that official's capacity will determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any a request whether to comply with the request. Upon receipt of a request for a Commission record which is available, the Administrative Officer or other employee will notify the requester as to the time the record is available, and will promptly make the record available after advising the requester of the applicable fees under § 502.13. The person making the request will be notified immediately after any adverse determination, the reasons for making the adverse determination and the right of the person to appeal.

(b) Any denial of a request for a record will be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. That statement will contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how

the exemption applies to the record withheld.

(2) If a record requested does not exist, or has been legally disposed of, the requester will be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) of this section may be extended by written notice to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No extension notice will specify a date that would result in an extension for more than twenty working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 502.12 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (b) of § 502.11, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10 of this chapter, that a requested record will not be disclosed, may apply to the Office of Information and Privacy, U.S. Department of Justice, Washington, DC 20530, for reconsideration of the request. The person making such a request will also be notified of the provisions for judicial review provided in 5 U.S.C. 552(a)(4).

(b) Each application for reconsideration must be made in writing within sixty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. The application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA." If these requirements are not met, the twenty day limit described in § 502.10 will not begin to run until the

application has been identified as an application under the Freedom of Information Act and has been received by the Office of Information and Privacy of the Department of Justice.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered.

(d) The decision not to disclose a record under this part is considered to be a withholding for the purposes of 5 U.S.C. 552(a)(3).

§ 502.13 Exemptions.

In the event any document or record requested hereunder should contain material which is exempt from disclosure under this section, any reasonably segregable portion of the record will, notwithstanding that fact, and to the extent feasible, be provided to any person requesting it, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of the document would not violate the public interest or the right of any person to whom the information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not

be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 502.14 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records:* \$0.15 per page.

(b) *Search and review fees:*

(1) Searches for records by clerical personnel—\$3.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—\$6.00 per quarter hour spent searching for any record or reviewing a record to determine whether it may be

disclosed, including time spent in copying any record.

(c) *Certification and validation fee:* \$1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees:*

(1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. *Commercial use* is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if the person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education,

which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d) (1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate the record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date those fees were billed, interest on the fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in 31 U.S.C. 3717.

(h) *Advance payments.*

(1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than \$250.00, the requester may be required to pay the fees in advance in order to obtain completion of the processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay those fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of the pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 502.11 and 502.12 of this part will begin to run only after the

requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.*

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of those fees. No charges shall be assessed if the fees amount to \$8.00 or less.

PART 503—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

Subpart A—Privacy Act Regulations

Sec.

- 503.1 Definitions—Privacy Act.
- 503.2 General policies—Privacy Act.
- 503.3 Conditions of disclosure.
- 503.4 Accounting of certain disclosures.
- 503.5 Access to records or information.
- 503.6 Determination of requests for access to records.
- 503.7 Amendment of a record.
- 503.8 Appeals from denial of requests for amendment to records.
- 503.9 Fees.
- 503.10 Exemptions.
- 503.11 Reports.
- 503.12 Notices.

Subpart B—Government in the Sunshine Regulations

Sec.

- 503.20 Definitions.
- 503.21 Notice of public observation.
- 503.22 Scope of application.
- 503.23 Open meetings.
- 503.24 Grounds for closing a meeting.
- 503.25 Announcement of meetings.
- 503.26 Procedures for closing of meetings.
- 503.27 Reconsideration of opening or closing, or rescheduling a meeting.
- 503.28 Record of closed meetings, or closed portion of a meeting.
- 503.29 Requests for information.

Subpart A—Privacy Act Regulations

Authority: 5 U.S.C. 552a(f).

§ 503.1 Definitions—Privacy Act.

For the purpose of this part:

Agency includes any executive department, military department, government corporation, government

controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency. The Foreign Claims Settlement Commission ("Commission") is an agency within the meaning of the term.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use or disseminate.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Routine use means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 13 U.S.C. 8.

System of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 503.2 General policies—Privacy Act.

The Commission will protect the privacy of an individual identified in any information or record systems which it maintains. Accordingly, its officials and employees, except as otherwise provided by law or regulation, will:

(a) Permit an individual to determine what records pertaining to that individual are collected, maintained, used or disseminated by the Commission.

(b) Permit an individual to prevent a record pertaining to that individual obtained by the Commission for a particular purpose from being used or made available for another purpose without the individual's consent.

(c) Permit an individual to gain access to information pertaining to that individual in Commission records, to have a copy made of all or any portion

thereof, and to correct or amend those records.

(d) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that the Commission's action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of the information.

(e) Permit exemptions from record requirements provided under the Privacy Act only where an important public policy use for the exemption has been determined in accordance with specific statutory authority.

§ 503.3 Conditions of disclosure.

The Commission will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless the disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13, United States Code;

(e) To a recipient who has provided the Commission with adequate advance assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation to determine whether the record has that value;

(g) To another agency or to an instrumentality of any government jurisdiction within or under control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Commission, specifying the particular record and the law enforcement activity for which it is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon disclosure, notification is transmitted to the last known address of the individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of the joint committee;

(j) To the Comptroller General, or any of that official's authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 503.4 Accounting of certain disclosures.

(a) Except for disclosures under § 503.3(a) and (b) of this part, the Administrative Officer will keep an accurate accounting of each disclosure of a record to any person or to another agency made under § 503.3(c), (d), (e), (f), (g), (h), (i), (j), and (k) of this part.

(b) Except for a disclosure made to another agency or to an instrumentality of any governmental jurisdiction under § 503.3(g) of this part, the Administrative Officer will make the accounting as required under paragraph (a) of this section available to any individual upon written request made in accordance with § 503.5.

(c) The Administrative Officer will inform any person or other agency about any correction or notation of dispute made in accordance with § 503.7 of this part of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) An accounting of disclosures of records within this section will consist of the date, nature, the purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(e) This accounting shall be retained for 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 503.5 Access to records or information.

(a) Upon request in person or by mail, any individual will be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to that individual.

(b) Any individual requesting access to a record or information in person must appear in person at the offices of the Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC, between the hours of 9 a.m. and 5:30 p.m., Monday through Friday, and

(1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.;

(2) Provide identification sufficient to verify the individual's identity, *e.g.*, driver's license, identification or Medicare card; and

(3) Any individual requesting access to records or information pertaining to himself or herself may be accompanied by a person of the individual's own choosing while reviewing the records or information. If an individual elects to be so accompanied, advance notification of the election will be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted.

(c) Any individual making a request for access to records or information pertaining to himself or herself by mail must address the request to the Administrative Officer (Privacy Officer), Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579, and must provide information acceptable to the Administrative Officer to verify the individual's identity.

(d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within that period, an acknowledgment will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

§ 503.6 Determination of requests for access to records.

(a) Upon request made in accordance with § 503.5, the Administrative Officer will:

(1) Determine whether or not the request will be granted;

(2) Make that determination and provide notification within a reasonable period of time after receipt of the request.

(b) If access to a record is denied because information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, the Administrative Officer will notify the individual of that determination and the reason therefor.

(c) If access to the record is granted, the individual making the request must notify the Administrative Officer whether the record requested is to be copied and mailed to the individual.

(d) If a record is to be made available for personal inspection, the individual must arrange with the Administrative Officer a mutually agreeable time and place for inspection of the record.

§ 503.7 Amendment of a record.

(a) Any individual may request amendment of a record pertaining to himself or herself according to the procedure in paragraph (b) of this section, except in the case of records described under paragraph (d) of this section.

(b) After inspection by an individual of a record pertaining to himself or herself, the individual may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. The request must specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) Not later than ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer will:

(1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(2) Inform the individual, by certified mail return receipt requested, of the refusal to amend the record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under Sec. 503.8 of this part.

(d) The provisions for amending records do not apply to evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

§ 503.8 Appeals from denial of requests for amendment to records.

(a) An individual whose request for amendment of a record pertaining to the individual is denied may request a review of that determination. The request must be addressed to the Chair of the Commission, and must specify the reasons for which the refusal to amend is challenged.

(b) If on appeal the refusal to amend the record is upheld, the Commission will permit the individual to file a statement setting forth the reasons for disagreement with the determination. The statement must also be submitted within 30 days of receipt of the denial. The statement will be included in the system of records in which the disputed record is maintained and will be marked so as to indicate:

(1) That a statement of disagreement has been filed, and
(2) Where in the system of records the statement may be found.

§ 503.9 Fees.

Fees to be charged, if any, to any individual for making copies of that individual's record excluding the cost of any search for and review of the record will be as follows:

(a) Photocopy reproductions: each copy \$0.15.

(b) Where the Commission undertakes to perform for a requester, or any other person, services which are clearly not required to be performed under the Privacy Act, either voluntarily or because those services are required by some other law, the question of charging fees for those services will be determined by the official or designee authorized to release the information, under the Federal user charge statute, 31 U.S.C. 583a, any other applicable law, and the provisions of § 502.13 of part 502 of this chapter.

§ 503.10 Exemptions.

No system of records maintained by the Foreign Claims Settlement Commission is exempt from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) and (k). However, the Chair of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), and 5 U.S.C. 553(c) and (e) to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

§ 503.11 Reports.

(a) The Administrative Officer or designee will provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Commission system of records, as required by 5 U.S.C. 552a(o).

(b) If at any time a system of records maintained by the Commission is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a(j) and (k), the number of records contained in such system will be separately listed and reported to the Office of Management and Budget.

§ 503.12 Notices.

The Commission will publish in the **Federal Register** at least annually a notice of the existence and character of the systems of records which it maintains. Such notice will include:

(a) The name and location of each system;

(b) The categories of individuals on whom the records are maintained in each system;

(c) The categories of records maintained in each system;

(d) Each routine use of the records contained in each system including the categories of users and the purpose of each use;

(e) The policies and practices of the Commission regarding storage, retrievability, access controls, retention, and disposal of the records;

(f) The title and business address of the agency official who is responsible for each system of records;

(g) Commission procedures whereby an individual can be notified if a system of records contains a record pertaining to that individual;

(h) Commission procedures whereby an individual can be notified how to gain access to any record pertaining to that individual contained in a system of records, and how to contest its content, and

(i) The categories of sources of records in each system.

Subpart B—Government in the Sunshine Regulations

Authority: 5 U.S.C. 552b.

§ 503.20 Definitions.

For purposes of this part: *Closed meeting* and *closed portion of a meeting* mean, respectively, a meeting or that part of a meeting designated as provided in § 503.27 as closed to the public by reason of one or more of the closure provisions listed in § 503.24.

Commission means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate.

Meeting means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business.

Member means any one of the three members of the Commission.

Open meeting means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting.

Public observation means the right of any member of the public to attend and observe, but not participate or interfere in any way, in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Commission.

§ 503.21 Notice of public observation.

(a) A member of the public is not required to give advance notice of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, those individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise that right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 503.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention.

§ 503.22 Scope of application.

The provisions of this part 503, §§ 503.20 through 503.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

§ 503.23 Open meetings.

Every meeting of the Commission will be open to public observation except as provided in § 503.24.

§ 503.24 Grounds for closing a meeting.

(a) Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(1) Disclose matters that are:
(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and
(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute:

(i) Requires that the matters be withheld from the public in such a

manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make the disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554, or otherwise involve a determination on the record after opportunity for a hearing.

(b) If the Commission determines that the public interest would require that a meeting to be open, it may nevertheless so hold.

§ 503.25 Announcement of meetings.

(a) The Commission meets in its offices at 600 E Street, NW, Washington, DC, from time to time as announced by timely notice published in the **Federal Register**.

(b) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission, the Commission will make available for public inspection in its offices, and, if requested, will furnish by telephone or in writing, a notice of the subject matter of the meeting, except to the extent that the information is exempt from disclosure under the provisions of § 503.24.

§ 503.26 Procedures for closing of meetings.

(a) The closing of a meeting will occur when:

(1) A majority of the membership of the Commission votes to take that action. A separate vote of the Commission members will be taken with respect to each Commission meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 503.24, or with respect to any information which is proposed withheld under § 503.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning that series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. The vote of each Commission member participating in the voting will be recorded and no proxies will be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close that portion to the public for any of the reasons referred to in § 503.24(e), (f), or (g), the Commission, upon request of any one of its Commission members, will take a recorded vote, whether to close that portion of the meeting.

(b) Within one day of any vote taken, the Commission will make publicly available a written copy of the voting reflecting the vote of each member on the question and a full written explanation of its action closing the entire or portion of the meeting together

with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission will announce the time, place and subject matter of the meeting at least eight days before the meeting.

(d) For every closed meeting, before the meeting is closed, the Commission's Chair will publicly certify that the meeting may be closed to the public, and will state each relevant closure provision. A copy of the certification, together with a statement setting forth the time and place of the meeting, and the persons present, will be retained by the Commission.

§ 503.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the changes was possible, and the Commission publicly announces the changes and the vote of each member upon the changes at the earliest practicable time.

§ 503.28 Record of closed meetings, or closed portion of a meeting.

(a) The Commission will maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 503.24(d), (h), or (j), the Commission will maintain either a transcript or recording, or a detailed set of minutes.

(b) Any minutes so maintained will fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any action will be identified in the minutes.

(c) The Commission will promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for the item or items of discussion which the Commission

determines to contain information which may be withheld under § 503.24. Copies of the transcript or minutes, or a transcription of the recording, disclosing the identity of each speaker, will be furnished to any person at the actual cost of duplication or transcription.

(d) The Commission will maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of the closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Commission will be by or under the authority of the Chair of the Commission.

§ 503.29 Requests for information.

Requests to the Commission for information about the time, place, and subject matter of a meeting, whether it or any portions thereof are closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 503.24, must be addressed to the Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579, telephone (202) 616-6975.

SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED

PART 504—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

504.1 Claim defined.

504.2 Time within which claims may be filed.

504.3 Official claim forms.

504.4 Place of filing claims.

504.5 Documents to accompany forms.

504.6 Receipt of claims.

Authority: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

§ 504.1 Claim defined.

(a) This subchapter is included solely in order to provide for the adjudication of any additional claims that may arise on behalf of survivors of deceased civilians and military veterans who had been listed as missing during the Vietnam conflict but were subsequently determined to have been interned, in hiding, or captured by a hostile force in Southeast Asia (see § 504.2(a)(3) and (b)(3)). The Commission no longer has authority to receive or consider any

other types of claims based on the internment of civilians or the maltreatment of military servicemen held as prisoners of war by forces hostile to the United States.

(b) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(c) Any communication, letter, note, or memorandum from a claimant, or the claimant's duly authorized representative, or a person acting as next friend of a claimant who is not legally competent, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i) and 6(f) of the Act, will be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for completion and execution by the applicant, that official form will be considered as evidence necessary to complete the initial claim, and unless that official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States, or forty-five (45) days if outside the continental United States, the claim may be disallowed.

§ 504.2 Time within which claims may be filed.

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Public Law 91-289, will be accepted by the Commission during the period beginning June 24, 1970, and ending:

(1) June 24, 1973, inclusive;

(2) 3 years from the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or

(3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Public Law 91-289, will be accepted by the Commission during the period beginning June 24, 1970, and ending:

(1) June 24, 1973, inclusive;

(2) 3 years from the date the prisoner of war by whom the claim is filed

returned to the jurisdiction of the Armed Forces of the United States; or

(3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States, whichever of the preceding dates last occurs.

§ 504.3 Official claim forms.

Official forms are provided for use in the preparation of claims for submission to the Commission for processing. Claim forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under section 5(i) and 6(f) has been designated FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoner of War in Vietnam; for Persons Assigned to Duty on board the 'U.S.S. Pueblo' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Who Went into Hiding to Avoid Capture or Internment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

§ 504.4 Place of filing claims.

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579.

§ 504.5 Documents to accompany forms.

All claims filed pursuant to sections 5(a) and 6(f) of the Act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

§ 504.6 Receipt of claims.

(a) *Claims deemed received.* A claim will be deemed to have been received by the Commission on the date postmarked, if mailed, or if delivery is made in person, on the date of delivery at the offices of the Commission in Washington, DC.

(b) *Claims developed.* In the event that a claim has been insufficiently prepared so as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing of the claim. In case the evidence or official claim form requested is not returned within the time which may be designated by the

Commission, the claim may be deemed to have been abandoned and may be disallowed.

PART 505—PROVISIONS OF GENERAL APPLICATION

Sec.

505.1 Persons eligible to file claims.

505.2 Persons under legal disability.

505.3 Definitions applicable under the Act.

Authority: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

§ 505.1 Persons eligible to file claims.

Persons eligible to file claims with the Commission under the provisions of sections 5(i) and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the Act; and

(b) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the Act.

§ 505.2 Persons under legal disability.

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i) and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of the claimant, whom the Commission determines is charged with the care of the claimant.

(b) Upon the death of any individual for whom an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of preference as set forth under sections 5(i) and 6(d)(4) of the Act.

§ 505.3 Definitions applicable under the Act.

Child means:

(1) A natural or adopted son or daughter of a deceased prisoner of war or a deceased civilian prisoner of war or a deceased American citizen including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of a deceased person born out of wedlock will be deemed to be a child of the deceased for the purpose of this Act, if:

(i) Legitimated by a subsequent marriage of the parents,

(ii) Recognized as a child of the deceased by his or her admission, or

(iii) So declared by an order or decree of any court of competent jurisdiction.

Husband means the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

Natural guardian means father and mother who shall be deemed to be the natural guardians of the person of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then the blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

Parent means:

(1)(i) The natural or adoptive father or mother of a deceased prisoner of war, or any other individual standing in loco parentis to the deceased person for a period of not less than 1 year immediately preceding the date of that person's entry into active service and during at least 1 year of the person's minority. Not more than one mother or one father as defined shall be recognized in any case. An individual will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner of war;

(ii) An award in the full amount allowable had the deceased prisoner of war survived may be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purposes of the Act unless evidence establishes that:

(i) He has legitimated the child by subsequent marriage with the mother;

(ii) Recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or

(iii) Prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

Widow means the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by marriage valid under the applicable law of the place where entered into.

PART 506—ELIGIBILITY REQUIREMENTS FOR COMPENSATION

Subpart A—Civilian American Citizens

Sec.

506.1 "Civilian American citizen" defined.

506.2 Other definitions.

506.3 Rate of benefits payable.

506.4 Survivors entitled to award of detention benefits.

506.5 Persons not eligible to award of civilian detention benefits.

Subpart B—Prisoners of War

506.10 "Vietnam conflict" defined.

506.11 "Prisoner of war" defined.

506.12 Membership in the Armed Forces of the United States; establishment of.

506.13 "Armed Forces of the United States" defined.

506.14 "Force hostile to the United States" defined.

506.15 Geneva Convention of August 12, 1949.

506.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

506.17 Rate of and basis for award of compensation.

506.18 Entitlement of survivors to award in case of death of prisoner of war.

506.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

Authority: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

Subpart A—Civilian American Citizens

§ 506.1 "Civilian American citizen" defined.

Civilian American citizen means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

§ 506.2 Other definitions.

Calendar month means the period of time between a designated day of any given month and the date preceding a similarly designated day of the following month.

Citizen of the United States means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

Dependent husband means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

Force hostile to the United States means any organization or force in

Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

Southeast Asia means, but is not necessarily restricted to, the areas of Vietnam, Laos, and Cambodia.

Went into hiding means the action taken by a civilian American citizen when that person initiated a course of conduct consistent with an intention to evade capture or detention by a hostile force in Southeast Asia.

§ 506.3 Rate of benefits payable.

Detention benefits awarded to a civilian American citizen will be paid at the rate of \$150 for each calendar month of internment or during the period in which that civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards shall take account of fractional parts of a calendar month.

§ 506.4 Survivors entitled to award of detention benefits.

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, benefits will be awarded, if claim is made, only to the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(c) The child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

§ 506.5 Persons not eligible to award of civilian detention benefits.

An individual is disqualified as a "civilian American citizen" under the Act, and thus is precluded from receiving an award of detention benefits, if that person:

(a) Voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served the detaining hostile force; or

(b) While detained, was a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

Subpart B—Prisoners of War

§ 506.10 "Vietnam conflict" defined.

Vietnam conflict refers to the period beginning February 28, 1961, and ending on a date to be determined by

Presidential proclamation or concurrent resolution of the Congress. (For purposes of determining eligibility for certain veterans' benefits, the President has proclaimed the date of May 7, 1975, to be the ending date of the "Vietnam era" (Presidential Proclamation No. 4373, 38 U.S.C. 101 note). In addition, Congress has set May 7, 1975, as the ending date of the "Vietnam conflict" for purposes of payment of interest on missing military service members' deposits in the United States Treasury under 10 U.S.C. 1035. However, neither the President nor the Congress has set an ending date for the Vietnam conflict for purposes of determining eligibility for compensation under 50 U.S.C. App. 2004 and 2005.)

§ 506.11 "Prisoner of war" defined.

Prisoner of war means any regularly appointed, enrolled, enlisted or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

§ 506.12 Membership in the Armed Forces of the United States; establishment of.

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States must be established by certification obtained from the Department of Defense.

§ 506.13 "Armed Forces of the United States" defined.

Armed Forces of the United States means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, and commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

§ 506.14 "Force hostile to the United States" defined.

Force hostile to the United States means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

§ 506.15 Geneva Convention of August 12, 1949.

The Geneva Convention of August 12, 1949, as identified in section 6(f) of the War Claims Act of 1948, as amended, is the "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949" which is included under the "Geneva Convention of August 12, 1949, for the Protection of War Victims," entered into by the United

States and other governments, including the former government in North Vietnam which acceded to it on June 28, 1957.

§ 506.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

For the purpose of this part, obligations under the Geneva Convention of August 12, 1949, consist of the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

§ 506.17 Rate of and basis for award of compensation.

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of \$2 per day for each day on which that person was held as prisoner of war and on which the hostile force, or its agents, failed to furnish the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of \$3 per day for each day on which that person was held as a prisoner of war and on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which such person was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or qualified applicant on a lump-sum basis at a total rate of \$5 per day for each day the prisoner of war was entitled to compensation. § 506.18 Entitlement of survivors to award in case of death of prisoner of war.

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, the compensation will be awarded, if claim is made, only to the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(c) Child or children of the deceased (in equal shares) if there is no widow or husband; and

(d) Parents (in equal shares) if there is no widow, husband or child.

§ 506.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States, is precluded from receiving an award of compensation based on that member's capture and internment.

PART 507—PAYMENT

Sec.

507.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.

507.2 Payments to persons under legal disability.

507.3 Reissuance of awards.

Authority: Sec. 2, Pub. L. 80-896, as amended (50 U.S.C. App. 2001).

§ 507.1 Payments under the War Claims Act of 1948, as amended by Public Law 91-289.

(a) Upon a determination by the Commission as to the amount and validity of each claim filed pursuant to section 5(i) and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war will be certified to the Secretary of the Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 507.3, except that as to persons under legal disability, payment will be made as specified in § 507.2.

§ 507.2 Payments to persons under legal disability.

Any awards or any part of an award payable under sections 5(i) and 6(f) of the Act to any person under legal disability may, in the discretion of the

Commission, be certified for payment for the use of the claimant, to the natural or legal guardian, committee, conservator or curator, or if there is no natural or legal guardian, committee, conservator or curator, then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is charged with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment to that minor.

§ 507.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be canceled and the amount of the award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

PART 508—HEARINGS

Sec.

- 508.1 Basis for hearing.
- 508.2 Request for hearing.
- 508.3 Notification to claimant.
- 508.4 Failure to file request for hearing.
- 508.5 Purpose of hearing.
- 508.6 Resume of hearing, preparation of.
- 508.7 Action by the Commission.
- 508.8 Application of other regulations.

Authority: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

§ 508.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of his or her claim will be entitled to a hearing before the Commission or its representative with respect to that claim. Hearings may also be held on the Commission's own motion.

§ 508.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim, or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, must notify the Commission in writing, and must set forth in full the reasons for requesting the hearing, including any statement of law or facts upon which the claimant relies.

§ 508.3 Notification to claimant.

Upon receipt of such a request, the Commission will schedule a hearing and notify the claimant as to the date and place the hearing is to be held. No later than 10 days prior to the scheduled hearing date, the claimant must submit

all documents, briefs, or other additional evidence relevant to his or her appeal.

§ 508.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 of this chapter will be deemed to constitute a waiver of right to a hearing and the decision of the Commission will constitute a full and final disposition of the case.

§ 508.5 Purpose of hearing.

(a) Hearings will be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of an unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence will be ruled upon by the presiding officer.

(b) Hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. A claimant making such a request must notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

(c) Such hearings will be open to the public.

§ 508.6 Résumé of hearing, preparation of.

Following each hearing, the hearing officer will prepare a résumé of the hearing, specifying the issues on which the hearing was based, and including a list of documents and contents and other items relative to the issues that were introduced as evidence. A brief analysis of oral testimony will also be prepared and included in the résumé of each hearing not stenographically reported.

§ 508.7 Action by the Commission.

After the conclusion of the hearing and a review of the résumé, the Commission may affirm, modify, or reverse its former action with respect to the claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, are conclusive and not reviewable by any court.

§ 508.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisions of this subchapter, the other regulations of the Commission will also be applicable to the claims filed hereunder.

SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED, AND RELATED ACTS

PART 509—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

- 509.1 Time for filing.
- 509.2 Form, content and filing of claims.
- 509.3 Exhibits and documents in support of claim.
- 509.4 Acknowledgment and numbering.
- 509.5 Procedure for determination of claims.
- 509.6 Hearings.
- 509.7 Presettlement conference.

Authority: Sec. 3, Pub. L. 455, 81st Cong., as amended (22 U.S.C. 1622).

§ 509.1 Time for filing.

Claims must be filed as specified by the Commission by duly promulgated notice published in the **Federal Register**, or as specified in legislation passed by Congress, as applicable.

§ 509.2 Form, content and filing of claims.

(a) Unless otherwise specified by law, or by regulations published in the **Federal Register**, claims must be filed on official forms, which will be provided by the Commission upon request in writing addressed to the Commission at its office at 600 E Street, NW, Suite 6002, Washington, DC 20579. Each form must include all of the information called for in it and must be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency of an intention to file a claim against a foreign government, prior to the enactment of the statute authorizing a claims program, prior to a referral of claims to the Commission by the Secretary for pre-adjudication, or prior to the effective date of a lump-sum claims settlement agreement, will *not* be considered as a timely filing of a claim under the statute, referral, or agreement.

(c) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof will be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

§ 509.3 Exhibits and documents in support of claim.

(a) *Original documents.* If available, all exhibits and documents must be filed with and at the same time as the claim, and must, wherever possible, be in the form of original documents, or copies or originals certified as such by their public or other official custodian.

(b) *Documents in a foreign language.* Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, must be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) *Preparation of papers.* All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, must be on business letter (8½" × 11") size paper.

§ 509.4 Acknowledgment and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number must be used on all further correspondence and papers filed with regard to the claim.

§ 509.5 Procedure for determination of claims.

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission or a designated member of the staff may issue a Proposed Decision in determination of a claim. This Proposed Decision will set forth findings of fact and conclusions of law on the relevant elements of the claim, to the extent that evidence and information relevant to such elements is before the Commission. The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

(c) The Proposed Decision will be delivered to the claimant or the claimant's attorney of record in person or by mail. Delivery by mail will be deemed completed 5 days after the mailing of the Proposed Decision addressed to the last known address of the claimant or the claimant's attorney of record. A copy of the Proposed Decision will be available for public inspection at the offices of the Commission, except in cases where public disclosure of the names of claimants is barred by statute.

(d) It will be the policy of the Commission to post on a bulletin board and on its World Wide Web site (<http://www.usdoj.gov/fcsc>), any information of general interest to claimants before the Commission.

(e) When the Proposed Decision denies a claim in whole or in part, the claimant may file notice of objection to the denial within 15 days of delivery of the decision. If the claimant wishes to appear at an oral hearing before the Commission to present his or her objection, the claimant must request the oral hearing at the time of submission of his or her objection, stating the reasons for objection, and may request a hearing on the claim, specifying whether for the taking of evidence or for oral argument on the legal issues which are the subject of the objection.

(f) Copies of objections to or requests for hearings on Proposed Decisions will be available for public inspection at the Commission's offices.

(g) Upon the expiration of 30 days after delivery to the claimant or claimant's attorney, if no objection under this section has in the meantime been filed, a staff Proposed Decision, upon approval by the Commission, will become the Commission's final determination and decision on the claim. A Proposed Decision issued by the Commission will become final 30 days after delivery to the claimant or the claimant's attorney without further order or decision by the Commission.

(h) If an objection has in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof:

(1) Issue a Final Decision affirming or modifying its Proposed Decision,

(2) Issue an Amended Proposed Decision, or

(3) On its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or for the hearing of oral arguments.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the Commission for further submissions, the Commission may proceed to issue a Final Decision in determination of the claim.

(j)(1) In case an individual claimant dies prior to the issuance of the Final Decision, that person's legal representative will be substituted as party claimant. However, upon failure of a representative to qualify for substitution, the Commission may issue its decision in the name of the estate of the deceased and, in case of an award, certify the award in the same manner to the Secretary of the Treasury for

payment, if the payment of the award is provided for by statute.

(2) Notice of the Commission's action under this paragraph will be forwarded to the claimant's attorney of record, or if the claimant is not represented by an attorney, the notice will be addressed to the estate of the claimant at the last known place of residence.

(3) The term *legal representative* as applied in this paragraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) After the date of filing with the Commission no claim may be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final Decision has been issued on a claim, or a Proposed Decision has been entered as the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition will be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; that it was not for want of due diligence that the evidence did not come sooner to the claimant's knowledge; and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of that evidence would produce a different decision. The petition must include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and the reasons for failure to make earlier submission of the evidence.

§ 509.6 Hearings.

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, will be held upon not less than fifteen days' notice of the time and place thereof.

(b) The hearings will be open to the public unless otherwise requested by claimant and ordered by the Commission, or when required by law.

(c) The hearings will be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practices, may be offered in evidence on the claimant's behalf or by counsel for the Commission designated by it to

represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence will be ruled upon by the presiding officer.

(d) The hearings will be conducted as non-adversarial proceedings. However, the claimant will be the moving party, and will have the burden of proof on all issues involved in the determination of his or her claim.

(e) Hearings may be stenographically reported or electronically recorded, either at the request of the claimant or upon the discretion of the Commission. A claimant making such a request must notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record or transcript of a hearing is ordered at the claimant's request, the cost of the reporting and transcription will be charged to the claimant.

(f) The following rules of procedure will apply in the conduct of hearings held by the Commission for presentation of objections to Proposed Decisions:

(1) *Presentation of Objections to Proposed Decisions*

(i) Objections should focus either on the presentation of new evidence, or on the presentation of arguments demonstrating that, in the claimant's view, the Commission erred in considering the evidence previously submitted. Restatements of facts, evidence or materials already established in the record should be avoided.

(ii) The Chief Counsel of the Commission or designated staff attorney will first introduce the objecting claimant and any witnesses to the Commission, and will then present a brief summary of the case, together with reasons supporting the decision as issued.

(iii) The objecting claimant and all witnesses will be sworn.

(iv) The objecting claimant, or the claimant's attorney, will then present the claimant's objections to the Commission, specifically setting forth the basis for the claimant's disagreement with the Proposed Decision, and the reasons supporting the claimant's contention that a more favorable decision should be rendered. Claimants will normally be limited to fifteen (15) minutes for their presentation of objections, but may request additional time if needed.

(v) Following presentation of the claimant's objection, the Chief Counsel or designated staff attorney will be

allotted an equivalent amount of time to question the claimant and the claimant's witnesses with respect to the testimony and other evidence presented in support of the objection.

(vi) The objecting claimant or the claimant's attorney, and the Chief Counsel or designated staff attorney, will then be allotted up to five (5) minutes each for follow-up or rebuttal.

(vii) The Chair and Commissioners may direct questions to the objecting claimant and the claimant's attorney, and to the Chief Counsel or designated staff attorney, at any time during the proceedings described in the foregoing.

(viii) The foregoing provisions may be modified at the discretion of the Chair as circumstances may require.

(ix) At the conclusion, the Chair will inform the participants that the Commission will take the matter under advisement, and that a written Final Decision disposing of the objection will issue in due course.

(2) *Submission to Questioning/Conduct of Proceedings*

(i) Presentation of the claimant's objection by the objecting claimant or the claimant's attorney, and of follow-up and rebuttal by the claimant or the claimant's attorney and by the Chief Counsel or designated staff attorney, must be directed to the Commission. Verbal exchanges between the objecting claimant or the claimant's attorney, and the Chief Counsel or designated staff attorney, will be limited to questions and answers during the questioning phase of the proceeding described in paragraph (f)(1)(v) of this section, unless otherwise necessary for clarification or exchange of documents.

(ii) Professional conduct and courtesies of the kind normally accorded in appellate judicial proceedings must be observed in all appearances and proceedings before the Commission.

§ 509.7 Presettlement conference.

The Commission on its own motion or initiative, or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

John R. Lacey,
Chairman.

[FR Doc. 01-24399 Filed 9-28-01; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 219, 236, 237, 242, 245, 252, and Appendices F and G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to delete obsolete text and update activity names and addresses, titles, reference numbers, and paragraph designations.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Parts 202, 204, 211, 212, 219, 236, 237, 242, 245, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202, 204, 211, 212, 219, 236, 237, 242, 245, 252, and Appendices F and G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 202, 204, 211, 212, 219, 236, 237, 242, 252, and Appendices F and G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended in the definition of "Contracting activity" as follows:

a. Under the heading "AIR FORCE", by adding as the first entry, "Office of the Assistant Secretary of the Air Force (Acquisition)"; and

b. Under the heading "DEFENSE LOGISTICS AGENCY", in the first entry, by removing "Procurement Management, Defense Logistics Support Command" and adding it its place "Logistics Policy and Acquisition Management".