

CIVILIAN MARINE PERSONNEL INSTRUCTIONS

CMPI 815 COVER SHEET 194

WAR RISK BENEFITS

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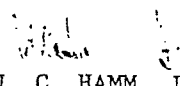
REASONS FOR REVISION

CMPI 815 has been revised for clarity and updated references.

EFFECTIVE DATE

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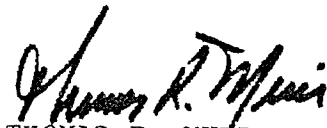
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INSTRUCTION 815

WAR RISK BENEFITS

- Section 1. General Provisions
2. Loss of Life Benefits
 3. Benefits for Loss of or Damage to Personal Effects

SECTION 1. GENERAL PROVISIONS

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1-1. PURPOSE.--This Instruction describes war risk benefits payable to civilian mariners employed by the Military Sealift Command (MSC).

1-2. AUTHORITY.--This Instruction is established pursuant to the following authorities:

a. SECNAV letter of 26 May 1967 which determined that the benefits described in the Second Seamen's War Risk Policy (1955) are applicable to all civilian mariners employed by MSC.

b. 46 CFR 308.305 and 46 CFR 308.306 outline the Second Seamen's War Risk Policy (1955).

c. 46 USC 1281-1294 outline Article XII of the Merchant Marine Act of 1936, as amended.

1-3. POLICY.--Civilian mariners of the Military Sealift Command will be provided war risk benefits against loss of life, disability, detention, and loss of or damage to personal effects which is directly and proximately caused by war and certain marine risks, as described by the Second Seamen's War Risk Policy (1955), and as may be provided otherwise herein. In accordance with Department of the Navy's policy of being a self-insurer, the benefits are paid to civilian mariners of MSC and their beneficiaries directly by the Navy.

1-4. DEFINITION.--War and marine risks, as defined by the Second Seamen's War Risk Policy, are:

a. Risks of war and warlike operations, including capture, seizure, destruction by men-of-war, sabotage, piracy, takings at sea, arrests, restraints and detainments, acts of kings, princes and peoples in the prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including actions engaged in civil war, revolution, rebellion or insurrection, scuttling to prevent capture, aerial bombardment,

or attempt at, or measures taken in defense of, all of the foregoing acts, floating or stationary mines, torpedoes, whether derelict or not, collision caused by failure, in compliance with wartime regulations, of said vessel or any vessel with which she is in collision, to show the usual full peacetime navigation or anchorage lights, stranding caused by the absence of lights, buoys, or similar peacetime aids to navigation consequent upon wartime regulations, stranding caused by the failure of said vessel to employ a pilot in waters where a pilot would ordinarily be employed in peacetime, but in which the employment of a pilot is dispensed with in compliance with military, naval or other government orders, or with a view to avoiding imminent enemy attack (for the purposes of the foregoing, the failure to show lights, the absence of lights, buoys, etc., and the failure to employ a pilot shall be presumed to be the cause of the collision or stranding unless the contrary be proved, and stranding shall include sinking consequent upon stranding or contact with any part of the land), collision with another vessel in the same convoy or collision with any military or naval vessel; that is, a vessel manned by and under control of military or naval personnel and designed to be employed primarily in armed combat service, stranding, collision or contact with any external substance (including ice, but excluding water), as a result of deliberately placing vessel in jeopardy, in compliance with military, naval or other government orders in order to avoid imminent enemy attack, or as an act or measure of war taken in the actual process of embarking or disembarking troops or loading or unloading material of war. Also stranding, sinking or break-up of the vessel, explosion or fire causing loss of or substantial damage to the vessel, or collision by the vessel or contact with any external substance (including ice, but excluding water), irrespective of whether the same was caused by risks of war or war-like operations or by marine risks and perils,

1-5. PERIOD OF COVERAGE.--War risk benefits are applicable to civilian mariners while employed by the MSC and assigned to a ship or during any period of repatriation or detention. Detention benefits, alternative to those described in the Second Seamen's War Risk Policy (1955), may be provided in accordance with CMPI 900 subject to the prohibition of multiple claims against the government.

1-6. MULTIPLE CLAIMS AGAINST THE UNITED STATES.

a. Intent and conditions.--It is the intent of the MSC in prescribing war risk benefits to avoid providing or paying any benefits or any sum of money for any loss, event, or occurrence to the extent that legal liability to pay for the same loss, event, or occurrence otherwise exists on the part of the United States of America and this Instruction shall be construed as giving effect to such intent. By the acceptance of employment to serve in any capacity on board an MSC ship, by the designation of any beneficiary for war risk benefits or by otherwise acting pursuant to the terms of these instructions governing war risk benefits, the employee, in behalf of himself, his personal and legal representatives, administrators, executors, heirs-at-law, next of kin, dependents, and beneficiaries, acknowledges such intent and agrees to the conditions and provisions of this Instruction including specifically those contained in this paragraph. Similarly, any beneficiary or person to whom any benefit or sum of money is paid under the provisions of this Instruction does, by making claim therefore or by the acceptance thereof, acknowledge such intent

and agrees to the conditions and provisions of this Instruction including specifically the conditions and provisions of this paragraph.

b. Final judgment or award.--If any final judgment or award is obtained by any person against the United States of America by reason of the loss of life, disability, detention, loss of or damage to personal effects of the employee but based on a claim or cause of action other than under this Instruction, and if such respective loss of life, disability, detention, or loss of or damage to personal effects of such employee, either separately or combined, also constitutes or forms the basis of a claim payable under this Instruction, the amount which otherwise would have been payable hereunder because of such claim shall be reduced by an amount equal to the amount of such final judgment or award unless such person, in a form and manner satisfactory to the Commander, Military Sealift Command, effectively and validly releases or discharges the United States of America from its obligation under such final judgment or award to the extent of the amount of such claim payable under this Instruction.

c. Effect of payment and acceptance of benefit.--The payment and acceptance of any benefit or sum of money under this Instruction shall constitute a waiver, release, acceptance, discharge, and satisfaction, to the extent of such payment, of any and all claims, causes of actions, judgments, or awards against the United States of America other than under this Instruction but arising out of the respective loss of life, disability, detention, or loss of or damage to personal effects for which such benefits or sum of money was paid and accepted under this Instruction.

1-7. BASIS OF COMPENSABILITY.--5 USC 8101 et seq, Compensation for Work Injuries, provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. If disability or death is sustained by a crew member he, or his beneficiary, shall be eligible for the benefits of 5 USC 8101 et seq, if the disability or death was sustained while in the performance of duty. Disability resulting from war or marine risks will be compensable under 5 USC 8101 et seq, or, alternatively at the option of the employee, as described in the Second Seamen's War Risk Policy (1955). If death or disability is sustained by a crew member as a result of war or marine risks, the employee concerned, or his beneficiary, has an option between war risk benefits and compensation benefits subject, however, to the provisions prohibiting multiple claims against the government. The Office of Workers' Compensation Programs (OWCP), Department of Labor, is by statute authorized to make final decisions as to claims under 5 USC 8101 et seq; there is no appeal from its decision. The OWCP has ruled that any war risk benefits paid will be offset against compensation benefits, e.g., if a beneficiary or beneficiaries elect to accept a lump sum payment of \$5,000 under the system of war risk benefits, no compensation benefits will be paid until such time as the total monthly payments prescribed under 5 USC 8101 et seq, shall total the amount of war risk benefits paid. Should the beneficiary or beneficiaries still be eligible for benefits under 5 USC 8101 et seq, after the expiration of such period, such benefits will be extended to execute in full the statutory obligations of the United States Government by reason of 5 USC 8101, et seq.

SECTION 2. LOSS OF LIFE BENEFITS

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2-1. AMOUNT OF BENEFITS.--Civilian mariners will be provided with war risk benefits, free of premiums, for loss of life. Payment for loss of life shall be made in a lump sum or in monthly installments, not exceeding twenty-four, as requested by the crew member or beneficiary. Benefits for loss of life shall be in the amounts indicated below:

a. Masters, officers, and crew members.....\$5,000 each

b. The benefits are increased by 100 percent while a ship is in the areas described by the Increased Benefits Endorsement of the Second Seamen's War Risk Policy (1955).

2-2. DESIGNATION OF BENEFICIARIES.

a. To whom benefits are payable.--The benefits shall be payable only to a lawful widow or widower, child (including a posthumous child, a child legally adopted by the crew member, and, if designated, a child in relation to whom the crew member stood in loco parentis, and a step-child or acknowledged illegitimate child), parent (including a step-parent, parent by adoption, and, if designated, a person who stood in the place of a parent to the crew member), brother or sister (including, if designated, step-brothers or step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption), grandparents, grandchildren, and, if designated, nephews, nieces, aunts, or uncles of the crew member.

(1) Mariners shall have the right to designate beneficiaries only within the classes described above and shall have the right to change the beneficiaries at any time without the consent of the beneficiaries. Such beneficiaries shall be known as the primary beneficiaries.

(2) Mariners shall have the right to also designate other persons within the above classes to whom benefits shall be paid if the primary beneficiaries die before the benefits or any portion thereof are paid. Such beneficiaries shall be known as the contingent beneficiaries.

(3) If a mariner fails to designate a beneficiary, or if all primary and contingent beneficiaries die before the benefits or any portion thereof are paid, the benefits will be paid to the following classes of survivors in the order shown:

(a) lawful widow or widower with no surviving child--100 percent to widow or widower.

(b) lawful widow or widower with surviving children--50 percent to the widow or widower and 50 percent to surviving children in equal shares.

(c) no lawful widow or widower but surviving children--100 percent to the children in equal shares.

(d) no lawful widow or widower or children--100 percent to the parents in equal shares.

(e) no lawful widow or widower, children, or parents--100 percent to the brothers, sisters, grandparents, and grandchildren in equal shares. The persons in these classes shall be known as the schedule beneficiaries.

b. Right to payment.--The right of any beneficiary to payment of the benefits, or any unpaid installment thereof, shall be conditioned upon his or her being alive to receive payment. No person shall have a vested right to any such benefits or any installment of any such benefits. No benefits shall be paid to the heirs, executors, or administrator of the mariner or of any beneficiary.

c. Payments to persons within permitted class of beneficiaries.--Any payments of benefits made to a person represented by the crew members to be within the permitted classes of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligation of the United States under this Instruction.

d. Execution of designation of beneficiary form.--Civilian marine employees will execute the Designation of Beneficiary for War Risk Benefits, MSC Form 12815-1 (see CMPI 310).

2-3. PROOF OF DEATH.--The time and facts of death of any civilian mariner shall be established in a manner satisfactory to the Secretary of the Navy; his determination of the time and facts of death shall be binding and conclusive against all persons and for all purposes.

2-4. PROCEDURE FOR PROCESSING CLAIMS FOR LOSS OF LIFE BENEFITS.

a. Responsibility of claimant.--Each claimant will be required to file a claim with the Commander, home port, setting out the following information:

- (1) Name and address of claimant.
- (2) The following information about the decedent: name, address, name of ship in which last served, and statement of the time and circumstances surrounding death.
- (3) Claimant's relationship to the decedent with satisfactory proof of such relationship.
- (4) When the claimant is not the primary beneficiary designated in the designation of beneficiary form, claimant will be required to submit satisfactory proof that claimant is the person or persons entitled to receive the benefit.
 - (a) If claimant is the designated contingent beneficiary, claimant will submit satisfactory proof that the primary beneficiary is dead.

(b) If claimant is a schedule beneficiary, claimant will be required to submit satisfactory proof (i) that the primary beneficiary and contingent beneficiary are dead, if the decedent executed a designation of beneficiary form, and (ii) that claimant is the schedule beneficiary, i.e., the person most closely related to decedent in the order of relationship defined in 2-2a(3), above. For example, if the claimant is the mother of the decedent, proof that she is the schedule beneficiary will consist of showing that decedent has no widow or children and that she is the only surviving parent.

(5) Claimant will furnish a certificate and release evidencing whether the claimant has made application for OWCP benefits and that claimant elects to receive war risk benefits, in lieu of OWCP benefits, and agrees to release the U. S. Government from any further claims on behalf of himself or herself, his or her heirs, executors, or administrators and assigns for payment of any additional monies as a result of the loss of life of the crew member concerned. The release will state that the acceptance of the payment shall constitute a waiver, release, acceptance, discharge, and satisfaction to the extent of such payment of any and all further claims against the Government and such payment shall be accepted as a pro tanto satisfaction of any claim for OWCP benefits. In the event the claimant has previously applied for the OWCP benefits arising out of the same loss of life, the certificate will recite such fact and will state whether the OWCP has made any payment on such claim and the total amount of such payments as of that date. In such case, the claim will include a letter to OWCP advising of the claimant's election to receive war risk benefits in lieu of further OWCP benefits and requesting the OWCP to discontinue further benefits pending final outcome of the claim for war risk benefits.

(6) The claim will be either sworn to or certified as true and correct by the claimant and, if certified, will include a statement that the claimant is aware of the penalties for making a false certificate in support of a claim against the Government.

b. Responsibility of the Area Command.

(1) The Area Command will render the claimant all reasonable assistance in the preparation of the claim, including explaining the different benefits available under 5 USC 8101 and this Instruction, and will assure that it is fully developed in accordance with the provisions of this Instruction.

(2) The Area Command will also be responsible for conducting an investigation of the casualty and the circumstances surrounding the same and will cause a detailed report thereof to be prepared. The report of investigation will be analyzed in connection with each claim received to determine whether the death of the crew member was directly or proximately caused by a war or marine risk. The Area Command will prepare a report and recommendation on the claim.

(3) The Area Command will then submit the following to COMSC:

(a) The claim filed by the claimant together with all supporting data.

(b) Report of investigation of the casualty by the Area Command.

(c) Report and recommendation on the claim.

c. Action by the Commander, Military Sealift Command.

(1) Upon receipt of the claim and other data submitted by the Area Command, the Commander, MSC, will review the claim and other data to ascertain compliance with the provisions of this Instruction. In the event additional data are required, the claim will be returned to the Area Command for appropriate action.

(2) The certificate and release of OWCP benefits and letter from the claimant to the OWCP will be forwarded by the Commander, MSC, to the OWCP and information will be obtained as to whether a claim has been filed with that office and the action taken thereon.

(3) The Commander, MSC, will make a reasonable effort to ascertain whether claimant is the same person as the beneficiary eligible for benefits under OWCP. In the event the claimant is not the same person as the beneficiary under the OWCP, no war risk benefits will be paid on account of the loss of life unless and until, in the opinion of the Commander, MSC, there is no substantial danger of the Government being required to make multiple payments.

(4) When the claim has been fully developed and payment is warranted, the claim will be processed by COMSC for payment through appropriate finance channels.

SECTION 3. BENEFITS FOR LOSS OF OR DAMAGE TO PERSONAL EFFECTS

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3-1. Definition.--The term "personal effects" includes personal property reasonably necessary or required for use on board the ship as well as those articles ordinarily or customarily carried on board for the personal use, wear, comfort, or convenience of the insured either while on board, while in a foreign port, or upon return to the home port. Articles of apparel, whether used for ornamentation or otherwise, and articles used in the performance of duties on board are also included. Articles carried for the purpose of business not related to the actual duties of the employee, or for resale, are excluded.

3-2. BENEFITS.

a. Total loss or damage.--In the event of total loss of or damage equivalent to total loss of the personal effects of any civilian mariner, cadet, or cadet officer resulting from war or marine risks as defined in 1-4, above,

reimbursement for such total loss or damage shall be \$750.00. If an employee shall establish the loss of a sextant which he carried aboard the vessel, he shall be paid \$100 extra. If the employee shall establish the loss of binoculars, which he carried aboard the ship, he shall be paid \$50 extra. A total loss shall be determined without reference to apparel actually worn by the crew member at the time of the loss or damage.

b. Partial loss or damage.--In the event of a partial loss of or damage to the personal effects of the insured, he shall be reimbursed for the actual value of such effects lost or damaged to the extent of such loss or damage but in no event shall the payment for such effects lost or damaged exceed the amount for which total loss or damage is payable as set forth in 3-2a, above.

c. Increased benefits.--The benefits as provided above with respect to loss of or damage to personal effects of unlicensed personnel are increased while a ship is in the areas described by the Increased Benefits Endorsement of the Second Seamen's War Risk Policy (1955).

d. Replacement effects.--For the loss of or damage to effects proximately caused by the risks and perils defined in 1-4, above, the employee shall be paid an amount not exceeding \$50 for each such loss or damage.

e. Statutory benefits.--A civilian marine employee sustaining loss of or damage to personal property resulting from war or marine risks as defined in 1-4, above, may elect to recover under 31 USC 240 et seq instead of under this Instruction. Under that statute, the Department provides a maximum payment limitation of \$10,000 or replacement of the property in kind in cases of loss of or damage to personal property incident to the employee's service. Any recovery under 31 USC 240 et seq is subject to the provisions prohibiting multiple claims against the government.

3-3. DEATH OF AN EMPLOYEE PRIOR TO PAYMENT UNDER THIS INSTRUCTION FOR LOSS OF OR DAMAGE TO PERSONAL EFFECTS.--Payment for loss of or damage to personal effects shall be conditioned upon the employee's being alive to receive payment and shall not be payable to heirs, executors, administrators, or assigns except if the personal effects of the employee are lost or damaged under circumstances where payment would be due under this Instruction to the employee for such loss or damage and the employee, either before or after such loss or damage dies, his death being proximately caused by the risks and perils covered by this Instruction. In that case, the amount which would have been payable for the loss of or damage to such personal effects had he survived shall be added to the payment for loss of life and shall be payable to the beneficiary of the benefits for loss of life.

3-4. PROCEDURE FOR PROCESSING CLAIMS FOR LOSS OF OR DAMAGE TO PERSONAL EFFECTS.

a. General.--Claims for loss of or damage to personal effects will be developed separately from claims for loss of life benefits. Any claim under 31 USC 240 et seq will be processed in accordance with the pertinent provisions of the Manual of the Judge Advocate General. Any claim for benefits under this Instruction will be processed as outlined below:

b. Claimant's responsibilities.--The claimant will furnish the following data:

(1) Proof of loss.--A certified statement listing the effects alleged to be lost or damaged and the circumstances under which loss or damage occurred.

(2) Certificate or affidavit of election to receive war risk benefits and release.--The claimant shall be required to submit a certified statement or affidavit that he or she elects to receive war risk benefits for the loss in lieu of the statutory benefits under 31 USC 240 et seq and that he has not filed any claims for the same loss with the Judge Advocate General thereunder. The certification or affidavit will recite that the payment and acceptance of such loss of personal effects benefits shall constitute a waiver, release, acceptance, discharge, and satisfaction of any and all claims, causes of action, judgments, or awards against the United States.

c. Responsibility of the Area Command.--The Area Command will be responsible for advising each claimant of the difference in benefits available under 31 USC 240 and this Instruction, furnishing the required data outlined above, and assuring that each claim is fully developed in accordance with the provisions of 3-4b, above. The Area Command will prepare a recommendation to COMSC completely documented with the required data incident to the development of the claim stating whether or not payment is warranted and whether or not the claimant or any other person on his behalf has submitted claim to the Judge Advocate General under 31 USC 240 et seq.

d. Action by COMSC.--Upon receipt of recommendation for payment for loss of personal effects, the claim will be processed for payment, if warranted.

e. Offset.--War risk benefits for loss of personal effects is alternative to any statutory right to compensation for loss of personal effects. Any statutory recovery for loss of personal effects shall be offset against war risk benefits.