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**DEPARTMENT OF JUSTICE**

**Foreign Claims Settlement Commission**

**45 CFR PARTS 500 AND 510**

**[Docket No. FCSC 101]**

**Filing of Claims under the Guam World War II Loyalty Recognition Act**

**AGENCY:** Foreign Claims Settlement Commission of the United States, Department of Justice.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Guam World War II Loyalty Recognition Act authorizes the Foreign Claims Settlement Commission of the United States to adjudicate claims and determine the eligibility of individuals for payment for harms suffered by residents of Guam resulting from the occupation of Guam by Imperial Japanese military forces during World War II. This rule establishes procedures for the filing and adjudication of claims brought under the Guam Loyalty Recognition Act. The rule also provides definitions for the statutory terms “severe personal injury” and “personal injury,” and amends regulations concerning the payment of attorney’s fees.

**DATES:** *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comment date:* Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

**ADDRESSES:** Please address all comments regarding this rule that are submitted by U.S. mail to Jeremy R. LaFrancois, Chief Administrative Counsel, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6002, Washington, DC 20579. To ensure proper handling, please reference FCSC Docket No. 101 on your correspondence. Comments may also be submitted electronically through <http://regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site. The Commission will accept attachments to electronic comments in Microsoft Word, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Brian M. Simkin, Chief Counsel, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6002, Washington, DC 20579, Tel. (202) 616-6975, FAX (202) 616-6993.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

The Commission is publishing this interim final rule, effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], in light of the statutory requirements of the Act. The Commission is providing a 60-day period for public comment.

**Posting of Public Comments**

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase

“PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to only partially post that comment) on <http://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

## **Background**

Pursuant to the Guam War Claims Review Commission Act, Pub. L. No. 107-333, 116 Stat. 2873 (2002), the Guam War Claims Review Commission (“GWCRC”) was established to evaluate the war claims compensation program conducted by the U.S. Navy on Guam during and after World War II, and to compare it with other compensation programs covering claims of U.S. nationals arising in other areas in the Pacific attacked by Japanese forces during the war. The GWCRC was required to submit a report of its findings and recommendations to the Secretary of the Interior and specified Congressional committees within nine months of its establishment.

Pub. L. No. 107-333, section 5(6).

In September 2003, the Secretary of the Interior requested the Foreign Claims Settlement Commission of the United States (Commission) to provide part-time technical assistance to GWCRC. Between 2003 and 2004, members of the Commission's staff were detailed to the GWCRC, where they planned and organized GWCRC meetings and conducted research on the Guam claims program and the other compensation programs with which it was to be compared. The GWCRC held hearings on Guam in December 2003, at which it received testimony by numerous residents of Guam who had survived the 32-month Japanese occupation of the island. The hearings on Guam were followed by a legal experts' conference convened in Washington, DC, in February 2004 to discuss the nature and extent of the United States Government's legal responsibility for the various types of claims that arose out of World War II, and the treatment the Government accorded the claims of the people of Guam as compared with that given to the claims of United States nationals elsewhere in the Pacific Ocean area.

The GWCRC's Final Report, issued on June 9, 2004, determined that, in some respects, there was a lack of parity of war claims paid to the residents of Guam compared with awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II. Based on this determination, the GWCRC recommended that Congress enact legislation providing for additional compensation to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment. As required by statute, the GWCRC terminated 30 days after submission of its report. Pub. L. No. 107-333, section 7.

Following from the findings and recommendations of the GWCRC, on December 23, 2016, the President signed into law the Guam World War II Loyalty Recognition Act, Title

XVII, Pub. L. No. 114-328, 130 Stat. 2000, 2641-2647 (2016) (the “Guam Loyalty Recognition Act” or “Act”). The Act provides, *inter alia*, that “[t]he United States recognizes that, as described by the Guam War Claims Review Commission, the residents of Guam, on account of their United States nationality, suffered unspeakable harm as a result of the occupation of Guam by Imperial Japanese military forces during World War II, by being subjected to death, rape, severe personal injury, personal injury, forced labor, forced march, or internment.” The Act further recognizes that “[t]he United States forever will be grateful to the residents of Guam for their steadfast loyalty to the United States, as demonstrated by the countless acts of courage they performed despite the threat of death or great bodily harm they faced at the hands of the Imperial Japanese military forces that occupied Guam during World War II.” Pub. L. No. 114-328, section 1702. Pursuant to section 1705(a) of the Act, the Commission is authorized to adjudicate claims and determine the eligibility of individuals for payments under the Act, in recognition of harms suffered by residents of Guam as a result of the occupation of Guam by Imperial Japanese military forces during World War II.

The Commission is issuing this Interim Final Rule to enable the Commission to carry out its functions under the Act. Specifically, this rule adds a new subchapter to the Commission’s regulations—subchapter D, 45 CFR part 510—to establish procedures for the filing and adjudication of claims brought under the Act. Subchapter D also provides definitions for certain statutory terms (“severe personal injury” and “personal injury”), as required by the Act. Finally, miscellaneous amendments are made to the Commission’s existing regulations at 45 CFR part 500 (Appearance and practice) to reflect an attorney’s fees provision contained in the Act.

With respect to the filing of claims, as required by the Act, the Commission intends to establish a claims filing deadline, and will publish notice of the deadline in the Federal Register

and in newspaper, radio, and television media in Guam. This notice will be published on or before June 20, 2017 (*i.e.*, not later than 180 days after the date of the enactment of the Act).

Thereafter, claimants will have one year from the date on which the Commission publishes this notice to file claims under the Act. *See* Pub. L. No. 114-328, section 1705(b)(2).

## **Regulatory Certifications**

### *Administrative Procedure Act*

The Commission's implementation of this rule as an interim final rule, with provision for post-promulgation public comment, is based on Sections 553(b)(3)(A), 553(b)(3)(B) and 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553. Under Section 553(b)(3), an agency may issue a rule without notice of proposed rulemaking and the pre-promulgation opportunity for public comment where "good cause" exists or for "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice."

The changes made by this interim final rule fit within the exceptions to the requirement for pre-promulgation opportunity for notice and comment set out in Section 553. An agency may find good cause to exempt a rule from provisions of the APA if it determines that those procedures are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B). The Commission has determined that it is unnecessary and contrary to the public interest to seek public comment prior to promulgating this interim final rule for several reasons. First, delaying the implementation of the rule would delay the determination and payment of appropriate compensation. Eligibility determinations and corresponding payments will not be issued until the rule is effective. Thus, eligible claimants would be harmed by any delay. Second, the interim rule will be subject to public comment before its final implementation. The Commission will consider any public comments made following publication of this interim final

rule and make any appropriate adjustments or clarifications in the final rule. Finally, the deadline imposed by Congress to implement the regulations is strict and therefore the Commission has a limited period of time within which to promulgate the regulations.

Furthermore, several of the changes made by this interim final rule fit within the exceptions to the requirement for pre-promulgation opportunity for notice and comment set out in Section 553 for “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.” See 5 U.S.C. 553(b)(3)(A). First, miscellaneous amendments are made to the Commission’s existing regulations at 45 CFR part 500 (Appearance and practice) to reflect the attorney’s fees provisions contained in the Guam Loyalty Recognition Act. These changes reflect general statements of policy; they serve only to advise the public that the Commission may exercise its discretionary power in certain ways regarding attorney appearance and practice before the Commission. Second, the interim final rule adds a new subchapter to the Commission’s regulations—subchapter D—to establish procedures for the filing and adjudication of claims under the Guam Loyalty Recognition Act. In this regard, the rule merely incorporates by reference the Commission’s existing procedures for the filing and adjudication of claims under the International Claims Settlement Act of 1949 (subchapter C); thus, the new subchapter D is entirely procedural in nature.

The APA also permits an agency to make a rule effective upon date of publication in the Federal Register where “good cause” exists or for “interpretive rules and statements of policy.” 5 U.S.C. 553(d). As stated, the Commission has determined that it would be unnecessary and contrary to the public interest to engage in full notice and comment rulemaking before putting these interim final regulations into effect, and that it is in the public interest to promulgate interim final regulations. For the same reasons, the Commission has determined that there is

good cause to make these interim final regulations effective immediately upon publication in the Federal Register, in accordance with Section 553(d) of the APA (5 U.S.C. 553(d)). Therefore, waiver of the 30-day period prior to the rule's effective date is appropriate here. The Commission welcomes public comments on the changes being made by this interim final rule, and will carefully review any comments to ensure that any substantive concerns or issues regarding these changes are addressed in the final rule.

#### *Paperwork Reduction Act of 1995*

This interim final rule implements the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114-328, which authorizes the Commission to adjudicate claims for certain harms suffered by Guam residents during World War II. In order to be able to evaluate claims, the Commission will need to collect information from individuals (or personal representatives of deceased individuals) who suffered harm or who are survivors of a decedent who died as a result of the occupation of Guam by Japanese military forces. Accordingly, the Commission will submit an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The Commission will also publish a Notice in the Federal Register soliciting public comment on the information collection associated with this rulemaking.

#### *Regulatory Flexibility Act*

The Commission, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this interim final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. This rule sets forth procedures by which the Commission will adjudicate claims for payments under the Guam World War II Loyalty Recognition Act. In its adjudication of claims, the Commission will determine the

eligibility of individuals, not entities. Moreover, under 5 U.S.C. 601(6), the term “small entity” does not include the Federal government. Because this rule is being adopted as an interim final rule, a Regulatory Flexibility analysis is not required.

*Executive Orders 12866 and 13563*

This interim final rule, which enables and is necessary for the Commission to carry out its functions under the Guam World War II Loyalty Recognition Act, has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review” section 1(b), General Principles of Regulation.

The Commission has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Commission has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

*Executive Order 12988*

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132*

This interim final rule does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175*

This interim final rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*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 \$100,000,000 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.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. 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 on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### **List of Subjects in 45 CFR Parts 500 and 510**

Administrative practice and procedure, Foreign claims, War claims

Accordingly, for the reasons set forth in the preamble, the Foreign Claims Settlement Commission amends 10 CFR parts 500 and 510 as follows:

### **PART 500--APPEARANCE AND PRACTICE**

1. The authority citation for part 500 is revised to read as follows:

**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; Sec.1705(a)(2), Pub. L. 114-328, 114th Cong., 130 Stat. 2644.

2. Amend § 500.3 by adding paragraph (c) to read as follows:

#### **§ 500.3 Fees.**

\* \* \* \* \*

(c) The amount of attorney's fees that may be charged in connection with claims falling within the purview of subchapter D of this chapter is governed by the provisions of section 1705(b)(6) of the National Defense Authorization Act for Fiscal Year 2017, Title XVII, Guam World War II Loyalty Recognition Act, Public Law 114-328.

3. In § 500.4, revise paragraph (a)(3) to read as follows:

**§ 500.4 Suspension of attorneys.**

(a) \* \* \*

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, section 4(f) of the International Claims Settlement Act of 1949, as amended, or section 1705(b)(6) of the National Defense Authorization Act for Fiscal Year 2017, Title XVII, Guam World War II Loyalty Recognition Act.

\* \* \* \* \*

4. Add subchapter D, consisting of part 510, to read as follows:

**SUBCHAPTER D--RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS  
UNDER THE GUAM WORLD WAR II LOYALTY RECOGNITION ACT**

**PART 510—FILING OF CLAIMS AND PROCEDURES THEREFOR**

Sec.

510.1 Definitions.

510.2 Time for filing.

510.3 Applicability of administrative provisions concerning claims under the International Claims Settlement Act of 1949.

**Authority:** Sec.1705(a)(2), Pub. L. 114-328, 114th Cong., 130 Stat. 2644.

### **§ 510.1 Definitions**

For purposes of this subchapter:

*Personal injury* means a discernible injury (such as disfigurement, scarring, or burns) that is more serious than a superficial injury.

*Severe personal injury* means loss of a limb, dismemberment, paralysis, or any injury of a similar type or that is comparable in severity.

### **§ 510.2 Time for filing.**

Claims for payments under the Guam World War II Loyalty Recognition Act, Title XVII, Pub. L. No. 114-328 (the “Act”), must be filed not later than one year after the date on which the Commission publishes the notice described in section 1705(b)(2)(B) of the Act.

### **§ 510.3 Applicability of administrative provisions concerning claims under the International Claims Settlement Act of 1949.**

To the extent they are not inconsistent with the provisions of the Act, the following provisions of subchapter C of this chapter shall be applicable to claims under this subchapter: §§ 509.2, 509.3, 509.4, 509.5, and 509.6.

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Brian M. Simkin  
Chief Counsel

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