§ 536.46 Other exclusions.

(a) Statutory employer. A claim is not payable under any subpart if it is for personal injury or death of any contract employee for whom benefits are provided under any workers’ compensation law, if the provisions of the workers’ compensation insurance are retrospective and charge an allowable expense to a cost-type contract, or if precluded by state law. See Federal Tort Claims Handbook (FTCH), section II, D7 (posted on the Web at https://www.jagcnet.army.mil/laawsxxi/cds.nsf. Select the link “Claims” under “JAG Publications.”) The statutory employer exclusion also applies to claims that may be covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(b) Flood exclusion. Within the United States a claim is not payable if it arises from damage caused by flood or flood waters associated with the construction or operation of a COE flood control project, 33 U.S.C. 702(c). See DA Pam 27–162, paragraph 2–40.

(c) ARNG property. A claim is not payable under any subpart if it is for damage to, or loss of, property of a state, commonwealth, territory, or the District of Columbia caused by ARNG personnel, engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505, who are assigned to a unit maintained

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by that state, commonwealth, territory, or the District of Columbia. See DA Pam 27–162, paragraph 2–41.

(d) Federal Disaster Relief Act. Within the United States a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. 5173. See DA Pam 27–162, paragraph 2–42.

(e) Non-justiciability doctrine. A claim is not payable under any subpart if it arises from activities that present a non-justiciable political question. See DA Pam 27–162, paragraph 2–43.

(f) National Vaccine Act. (42 U.S.C. 300aa–1 through 300aa–7). A claim is not payable under any subpart if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. 300aa–9 through 300aa–19) have been met. See DA Pam 27–162, paragraph 2–17c(6)(a).

(g) Defense Mapping Agency. A claim is not payable under any subpart if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. 456. See FTCH section II, B4s (Web address at paragraph (a) of this section).

(h) Quiet Title Act. Within the U.S., a claim is not payable under any subpart if it falls under the Quiet Title Act 28 U.S.C. 2409a.


§ 536.47 Statute of limitations.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees). A claim arising from noncombat activities must be based on the armed service’s official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.48 Federal employee requirement.

To be payable, a claim under any subpart except subpart K of this part, §§536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees), must be based on the acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal civilian employee. This does not include a contractor of the United States. Apply federal case law for interpretation. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.49 Scope of employment requirement.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees). A claim arising from noncombat activities must be based on the armed service’s official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.50 Determination of damages—applicable law.

(a) The Federal Tort Claims Act. The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express proviso of the FTCA, the latter governs.

(b) The Military Claims Act or National Guard Claims Act. See subparts C and F of this part. The law set forth in §536.80 applies only to claims accruing on or after September 1, 1995. The law of the