Positive represents amounts being transferred to other tribes without excess undisbursed funds.

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

Dated: November 4, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–27208 Filed 11–21–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 842

[Docket ID: USAF–2015–0003]

RIN 0701–AA79

Administrative Claims

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: This rule contains amendments for policy changes and clarification and deletions for the Air Force guidance on Administrative claims and Personnel and Carrier Recovery Claims. The rule relates to the Air Force processes for claims filed for and against the Air Force as well as Air Force processes for filing personnel and carrier recovery claims.

DATES: This rule is effective on December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Lemieux (AFLOA/JACC), 1500 West Perimeter Rd, Ste 1700, Joint Base Andrews, MD 20762, (240) 612–4646, *daniel.g.lemieux.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: On March 30, 2016 (81 FR 17621–17635), the Department of the Air Force published a proposed rule titled ''Administrative Claims'' for a 60-day public comment period. At the end of the public comment period, no public comments were received. As a result, no changes were made to the regulatory text.

Executive Summary

I. Purpose of This Regulatory Action

The purpose of this rule is to provide the public with information necessary to file a claim against the United States Air Force for money damages and to notify the public of the procedures used to collect money from the public for damages to property under the control of the United States Air Force. Additionally, it is to provide the public with information about changes and deletions concerning the settlement and payment of claims under the Military Personnel and Civilian Employee's Claims Act for incident to service loss and damage to personal property.

II. Summary of the Major Provisions of This Regulatory Action

This part describes the process and procedures by which claims against the Air Force will be addressed, including who are proper claimants, how, where and when to file a claim, what claims are payable, how the Air Force will adjudicate claims and how to appeal unfavorable decisions. It also describes the process the Air Force will use for asserting claims against persons who damage Air Force property.

Changes: This part has been substantially revised since last codified and should be reviewed in its entirety to determine the changes made.

Deletions: This part has been substantially revised since last codified and should be reviewed in its entirety to determine the deletions made.

III. Costs and Benefits

The regulations contained herein require the public who wish to file a claim against the Air Force to substantiate their loss, which may result in minor or incidental costs to the claimant. Revised regulations pertaining to how the Air Force asserts claims for damage to Air Force property may result in increased costs to those who cause said damage. The benefits of these regulations include increased safeguards to ensure public funds are not expended for fraudulent claims and to ensure the U.S. government receives adequate compensation for damages to its property wrongfully caused by others.

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review,'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 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, distribute 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 Department of Air Force has assessed this rule and determined this rule to be a ''non-significant regulatory action.''

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 842

Administrative claims.

Accordingly, 32 CFR part 842 is amended as follows:

PART 842—[AMENDED]

■ 1. The authority citation for 32 CFR part 842 continues to read as follows:

Authority: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted; 28 CFR 14.11, except as otherwise noted.

■ 2. The Note for part 842 is revised to read as follows:

Note: Air Force Regulations are available on the e-Publishing Web site at *http://www.e-publishing.af.mil/* for downloading. This part is derived from Air Force Instruction 51–501, *Tort Claims,* and Air Force Instruction 51–502, *Personnel and Carrier Recovery Claims.*

■ 3. Amend part 842 by revising all references to ''HQ USAF/JACC'' to read ''AFLOA/JACC.''

■ 4. Revise § 842.0 to read as follows:

§ 842.0 Scope.

This part establishes standard policies and procedures for all administrative claims resulting from Air Force activities and for which the Air Force has assigned responsibility.

■ 5. Amend § 842.2 by:
■ a. Revising paragraph (f).
■ b. Removing paragraph (g).
■ c. Redesignating paragraphs (h) through (o) as (g) through (n).
■ d. Revising newly redesignated paragraph (g).

The revisions read as follows:

§ 842.2 Definitions.

* * * * *

(f) *AFLOA/JACC.* Claims and Tort Litigation Division, 1500 West Perimeter Road, Suite 1700, Joint Base Andrews, MD 20762.

(g) *Owner.* A holder of a legal title or an equitable interest in certain property. Specific examples include:

(1) *For real property.* The mortgagor, and the mortgagee if that individual can maintain a cause of action in the local courts involving a tort to that specific property.

(2) *For personal property.* A bailee, lessee, mortgagee and a conditional vendee. A mortgagor, conditional vendor, title loan company or someone else other than the owner, who has the title for purposes of security are not owners.

* * * * *

■ 6. Revise § 842.4 to read as follows:

§ 842.4 Where to file a claim.

File a claim at the base legal office of the unit or installation at or nearest to where the accident or incident occurred. If the accident or incident occurred in a foreign country where no Air Force unit is located, file the claim with the Defense Attache (DATT) or Military Assistance Advisory Group (MAAG) personnel authorized to receive claims (DIAM 100–1 and AFR 400–45). In a foreign country where a claimant is unable to obtain adequate assistance in filing a claim, the claimant may contact the nearest Air Force SJA. The SJA then advises AFLOA/JACC through claims channels of action taken and states why the DATT or MAAG was unable to adequately assist the claimant.

§ 842.9 [Removed]

■ 7. Remove § 842.9.

Subpart B—[Removed]

■ 8. Remove subpart B, consisting of §§ 842.10 through 842.14.

Subpart C—[Redesignated as Subpart B]

■ 9. Redesignate subpart C, consisting of §§ 842.15 through 842.20, as subpart B, consisting of §§ 842.9 through 842.14, respectively.

■ 10. Amend newly redesignated § 842.10 by revising paragraphs (a), (b), and (d) to read as follows:

§ 842.10 Definitions.

(a) *Appointing commander.* The commander exercising special court-martial jurisdiction over the offender.

(b) *Board of officers.* One to three commissioned officers appointed to investigate a complaint of willful property damage or wrongful taking by Air Force personnel.

* * * * *

(d) *Willful damage.* Damage or destruction caused intentionally, knowingly, and purposely, without justifiable excuse.

* * * * *

■ 11. Amend newly redesignated § 842.12 by adding paragraphs (g) through (i) to read as follows:

§ 842.12 Claims not payable.

* * * * *

(g) Claims involving wrongful taking stemming from larceny, forgery or deceit, which are not accompanied by riotous or violent action.

(h) Claims against Air National Guard members unless they are performing duty under Title 10 U.S.C.

(i) Claims for indirect, consequential or remote damages.

■ 12. Revise newly redesignated § 842.13 to read as follows:

§ 842.13 Limiting provisions.

(a) A complaint must be submitted within 90 days of the date of the incident. The appointing commander may find good cause for the delay and accept a late claim. The appointing commander's determination of good cause is final and not reviewable.

(b) Assessment of damages in excess of $5,000 against an offender's pay for a single incident requires AFLOA/JACC approval.

■ 13. Revise newly redesignated § 842.14 to read as follows:

§ 842.14 Filing a claim.

Claimant complains (orally or in writing) to the commander of a military organization or unit of the alleged offending member or members or to the commander of the nearest military installation. If the claim is made orally, the individual must assist the commander to reduce the complaint to writing within a reasonable time. The complainant need not request a sum certain in writing at the time the complaint is filed, but they must present such value and evidence before settlement is made.

Subpart D—[Redesignated as Subpart C]

■ 14. Redesignate subpart D, consisting of §§ 842.21 through 842.35, as subpart C, consisting of §§ 842.15 through 842.29.

§ 842.16 [Amended]

■ 15. Amend newly redesignated § 842.16 by:
■ a. Removing paragraphs (a), (c), (e), and (g).
■ b. Redesignating paragraphs (b), (d), (f), and (h) as paragraphs (a), (b), (c), and (d).

■ 16. Revise newly designated § 842.17 to read as follows:

§ 842.17 Delegations of authority.

(a) *Settlement authority.* The Secretary of the Air Force has delegated the authority to assign areas of responsibility and designate functional responsibility for claims under the Military Personnel and Civilian Employees' Claims Act to The Judge Advocate General (TJAG).

(b) *Reconsideration authority.* A settlement authority has the same authority specified in paragraph (a) of this section. However, with the exception of TJAG, a settlement authority may not deny a claim on reconsideration that it, or its delegate, had previously denied.

(c) *Authority to reduce, withdraw and restore delegated settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

■ 17. Amend newly designated § 842.18 by revising paragraph (a) to read as follows:

§ 842.18 Filing a claim.

(a) *How and when to file a claim.* A claim is filed when a federal military

agency receives from a claimant or duly authorized agent a properly completed AF Form 180, DD Form 1842 or other written and signed demand for a determinable sum of money.

(1) A claim is also filed when a federal military agency receives from a claimant or duly authorized agent an electronic submission, through a Department of Defense claims Web site, indicating that the claimant intends for the appropriate military branch to consider a digitally signed demand for a determinable sum of money.

(2) A claim is also filed when the Air Force receives from a claimant or duly authorized agent an electronic submission, through the Air Force claims Web site, a digitally signed demand for a determinable sum of money.

* * * * *

■ 18. Revise newly designated § 842.19 introductory text to read as follows:

§ 842.19 Partial payments.

Upon request of a claimant, a settlement authority may make a partial payment in advance of final settlement when a claimant experiences personal hardship due to extensive property damage or loss. Partial payments are made if a claim for only part of the loss is submitted and is readily provable, up to the amount of the settlement authority. (The claimant may later amend the claim for the remainder of the loss.) If the total payable amount of the claim exceeds the payment limits of the settlement authority, send it with recommendations to the proper settlement authority.

* * * * *

■ 19. Revise newly designated § 842.21 to read as follows:

§ 842.21 Who may file a claim.

A claim may be filed by:

(a) A proper claimant.

(b) An authorized agent or legal representative of a proper claimant.

(c) A survivor of a deceased proper claimant in this order:

(1) Spouse.

(2) Children.

(3) Father or mother.

(4) Brothers or sisters.

■ 20. Amend newly designated § 842.24 by revising paragraph (d) to read as follows:

§ 842.24 General provisions.

* * * * *

(d) Property that is owned by the claimants, or their immediate families, or borrowed for their use, or in which the claimants or their immediate families has an enforceable ownership interest.

* * * * *

■ 21. Amend newly designated § 842.25 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 842.25 Claims payable.

Claims may be payable for loss of or damage to tangible personal property when the damage occurs incident to service. For loss of or damage to property to be incident to service, it must occur at a place and time that is connected to the service of an active duty military member or employment of a civilian employee.

(a) *Authorized location.* Claims are only payable when the claimed property is located in an authorized location. There must be some connection between the claimant's service and the location of the claimed property. Duty locations where personal property is used, stored or held because of official duties are authorized places. Other authorized places may include:

(1) Any location on a military installation not otherwise excluded.

(2) Any office, building, recreation area, or real estate the Air Force or any other DoD element uses or controls.

(3) Any place a military member is required or ordered to be pursuant to their duties and while performing those duties.

(4) Assigned Government housing or quarters in the United States or provided in kind. The Military Personnel and Civilian Employees' Claims Act specifically prohibits payment for loss of or damage to property in quarters within the US unless the housing or quarters are assigned or otherwise provided in kind. Base housing that has not been privatized is generally considered assigned or provided in kind wherever it is located.

(i) Privatized housing or quarters within the United States subject to the Military Housing Privatization Initiative located within the fence line of a military installation or on federal land in which the DoD has an interest is considered assigned or otherwise provided in kind for the purposes of the Military Personnel and Civilian Employees' Claims Act.

(ii) [Reserved]

(5) Housing or quarters outside the United States. Outside the US, authorized off-base quarters, as well as assigned quarters, including quarters in US territories and possessions, are authorized places. The residence of a civilian employee is not an authorized location if the employee is a local inhabitant.

(6) Temporary duty (TDY) quarters and locations en route to the TDY destination. Significant deviations from the direct travel route are not authorized locations.

(7) Permanent change of station (PCS) temporary quarters and locations enroute to the PCS destination. Significant deviations from the direct travel route are not authorized locations.

(8) Entitlement and benefit locations. For these locations to be authorized, the claimant must be using them for the intended purpose and the property must be reasonably linked to that purpose.

(9) Locations where personal property shipped or stored at government expense are found. Government facilities where property is stored at the claimant's expense or for their convenience without an entitlement are not authorized places.

(b) *Payable causes of loss incident to service.* Because the Personnel Claims Act (PCA) is not a substitute for private insurance, loss or damage at quarters or other authorized locations may only be paid if caused by:

(1) An unusual occurrence;

(2) Theft, vandalism or other malfeasance;

(3) Hostile action;

(4) A carrier, contractor, warehouseman or other transportation service provider storing or moving goods or privately owned vehicles at government expense;

(5) An agent of the US; or

(6) A permanent seizure of a witness' property by the Air Force.

* * * * *

■ 22. Amend newly designated § 842.26 by:

■ a. Revising paragraphs (d), (j), (m), (n), (u), (y), and (z).

■ b. Remove paragraphs (aa), (bb), (cc), and (dd).

The revisions read as follows:

§ 842.26 Claims not payable.

* * * * *

(d) The loss is recovered or recoverable from an insurer or other source unless the settlement authority determines there is good cause for not claiming against the insurer.

* * * * *

(j) It is an appraisal fee, unless the settlement authority requires one to adjudicate the claim.

* * * * *

(m) It is an item acquired, possessed, shipped, or stored in violation of any US Armed Force directive or regulation.

(n) It is an item fraudulently claimed.

* * * * *

(u) It is an inconvenience expense.

* * * * *

(y) It is damage to, or loss of a rental vehicle which TDY or PCS orders authorized.

(z) It is a cost to relocate a telephone or mobile or manufactured home due to a government ordered quarters move.

Subpart E—[Removed]

■ 23. Remove subpart E.

Subpart F—[Redesignated as Subpart D]

■ 24. Redesignate subpart F, consisting of §§ 842.40 through 842.54, as subpart D consisting of §§ 842.30 through 842.44.

■ 25. Revise newly redesignated § 842.30 to read as follows:

§ 842.30 Scope of this subpart.

This subpart establishes policies and procedures for all administrative claims under the Military Claims Act for which the Air Force has assigned responsibility.

■ 26. Amend newly redesignated § 842.31 by revising paragraph (b) to read as follows:

§ 842.31 Definitions.

* * * * *

(b) *Final denial.* A letter mailed from the settlement authority to the claimant or authorized agent advising the claimant that the Air Force denies the claim. Final denial letters mailed from within the United States shall be sent by US Mail, certified mail, return receipt requested.

* * * * *

■ 27. Amend newly redesignated § 842.32 by:

■ a. Revising paragraphs (a)(1) introductory text, (a)(3) introductory text, (a)(3)(ii) and (iii), (a)(4) and (5), (b), and (f) introductory text.

■ b. Removing paragraph (f)(8) and redesignating paragraphs (f)(9) through (11) as paragraphs (f)(8) through (10).

The revisions read as follows:

§ 842.32 Delegations of authority.

(a) *Settlement authority.* (1) The Secretary of the Air Force has authority to:

* * * * *

(3) The following individuals have delegated authority to settle claims for $25,000 or less and to deny claims in any amount:

* * * * *

(ii) The Director, Civil Law and Litigation.

(iii) The Chief, Associate Chief and Branch Chiefs, Claims and Tort Litigation Division.

(4) SJAs of the Air Force component commander of the US geographic combatant commands for claims arising within their respective combatant command areas of responsibility have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of GCMs in PACAF and USAFE have delegated authority to settle claims payable, or deny claims filed for $15,000 or less.

(b) *Redelegation of authority.* The Chief, Claims and Tort Litigation Division may redelegate his or her authority to Staff Judge Advocates. A settlement authority may redelegate his or her authority for claims not exceeding $25,000, to a subordinate judge advocate or civilian attorney in writing. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

* * * * *

(f) *Special exceptions.* Do not settle or deny claims for the following reasons without AFLOA/JACC approval:

* * * * *

■ 28. Amend newly redesignated § 842.33 by revising paragraph (a) to read as follows:

§ 842.33 Filing a claim.

(a) *Elements of a proper claim.* A claim is must be filed on a Standard Form 95 or other written document. It must be signed by the Claimant or authorized agent, be for money damages in a sum certain, and lay out a basic statement as to the nature of the claim that will allow the Air Force to investigate the allegations contained therein.

* * * * *

■ 29. Revise newly redesignated § 842.34 to read as follows:

§ 842.34 Advance payments.

Subpart P of this part sets forth procedures for advance payments.

■ 30. Amend newly redesignated § 842.35 by revising paragraphs (a) and (c) to read as follows:

§ 842.35 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It is deemed to be filed upon receipt by The Judge Advocate General, AFLOA/JACC, or a Staff Judge Advocate of the Air Force. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the Military Claims Act. Upon receipt of a claim that properly belongs with another military department, the claim is promptly transferred to that department.

* * * * *

(c) A claim filed after the statute of limitations has run is considered if the US is at war or in an armed conflict when the claim accrues or if the US enters a war or armed conflict after the claim accrues, and if good causes shows how the war or armed conflict prevented the claimant from diligently filing the claim within the statute of limitations. But in no case will a claim be considered if filed more than two years after the war or armed conflict ends.

■ 31. Revise newly redesignated § 842.37 to read as follows:

§ 842.37 Who are proper claimants.

(a) Citizens and inhabitants of the United States. US inhabitants includes dependents of the US military personnel and federal civilian employees temporarily outside the US for purposes of US Government service.

(b) US military personnel and civilian employees. Note: These personnel are not proper claimants for claims for personal injury or death that occurred incident to their service.

(c) Foreign military personnel when the damage or injury occurs in the US. Do not pay for claims under the Military Claims Act (MCA) for personal injury or death of a foreign military personnel that occurred incident to their service.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Subrogees of proper claimants to the extent they have paid for the claim in question.

■ 32. Revise newly redesignated § 842.38 to read as follows:

§ 842.38 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and nonappropriated fund instrumentalities (NAFIs) of the US Government.

(c) Subrogees of § 842.42(a) and (b).

(d) Inhabitants of foreign countries.

■ 33. Amend newly redesignated § 842.39 by:

■ a. Revising paragraph (a).

■ b. Removing paragraphs (c), (d), and (f).

■ c. Redesignating paragraph (e) as paragraph (c).

The revision reads as follows:

§ 842.39 Claims payable.

(a) Claims arising from negligent or wrongful acts or omissions committed by United States military or civilian personnel while acting in the scope of their employment, subject to the exceptions listed in this subpart.

* * * * *

■ 34. Revise newly redesignated § 842.40 to read as follows:

§ 842.40 Claims not payable.

(a) Claims covered by the Federal Tort Claims Act (FTCA), Foreign Claims Act (FCA), International Agreements Claims Act (IACA), 10 U.S.C. 2734a and 2734b, Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801–9804, 9806, National Guard Claims Act (NGCA), 32 U.S.C. 715, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

(1) MCA claims arising from noncombat activities in the US are not covered by the FTCA because more elements are needed to state an FTCA claim than are needed to state a claim under the MCA for noncombat activities. All FTCA claims are based on elements of traditional tort liability (*i.e.,* duty, breach, causation, and damages); that is, they are fault based. Noncombat activity claims under the MCA are based solely on causation and damages. Because MCA claims for noncombat activities are not fault based, they are not covered by the FTCA.

(2) Claims for incident-to-service damage to vehicles caused by the negligence of a member or employee of the armed forces acting in the scope of employment are paid under the MCA, instead of the Military Personnel and Civilian Employees' Claims Act.

(b) Arises with respect to the assessment or collection of any customs duty, or the detention of any goods or merchandise by any US officer of customs or excise, or any other US law enforcement officer. Note: This includes loss or damage to property detained by members of the Security Forces or Office of Special Investigation (OSI).

(c) Is cognizable under US admiralty and maritime law, to include:

(1) The Suits in Admiralty Act, 46 U.S.C. 30901 and following.

(2) The Death on the High Seas Act, 46 U.S.C. 30301 and following.

(3) The Public Vessels Act, 46 U.S.C. 31101 and following.

(4) Exception: Claims arising from noncombat activities may be paid under the MCA, even if they are also cognizable under paragraphs (c)(1) through (3) of this section.

(d) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. Exception: Unless such actions were committed by an investigative or law enforcement officer of the US who is empowered by law to conduct searches, seize evidence, or make arrests for violations of federal law.

(e) Arises out of libel, slander, misrepresentation, or deceit.

(f) Arises out of an interference with contract rights.

(g) Arises out of the combat activities of US military forces.

(h) Is for the personal injury or death of a member of the Armed Forces of the US incident to the member's service.

(i) Is for the personal injury or death of any person for workplace injuries covered by the Federal Employees' Compensation Act, 5 U.S.C. 8101, and following.

(j) Is for the personal injury or death of any employee of the US, including nonappropriated fund employees, for workplace injuries covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, and following.

(k) Is for a taking of property, *e.g.,* by technical trespass or over flight of aircraft.

(l) Is for patent or copyright infringement.

(m) Results wholly from the negligent or wrongful act of the claimant.

(n) Is for the reimbursement of medical, hospital, or burial expenses furnished at the expense of the US, either directly or through contractual payments.

(o) Arises from contractual transactions, express or implied (including rental agreements, sales agreements, leases, and easements), that:

(1) Are payable or enforceable under oral or written contracts; or

(2) Arise out of an irregular procurement or implied contract.

(p) Is for the personal injury or death of military or civilian personnel of a foreign government incident to their service.

(q) Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of USAF/JACC. Claims under the noncombat activities provision of this subpart may be paid even if this paragraph (q) applies. Is based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a federal agency or a Federal Government employee, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of USAF/JACC. Exception: Claims under the noncombat activities provision may be paid even if this paragraph (q) applies.

(r) Is not in the best interests of the US, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA. Examples include, but are not limited to, when a claimant's criminal conduct or failure to comply with a nonpunitive regulation is a proximate cause of the loss. Prior approval must be obtained from USAF/JACC before denying claims solely on this exception.

(s) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act, 50 U.S.C. app. 1–44.

(t) Is for damages caused by the imposition or establishment of a quarantine by the US.

(u) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.

(v) Arises from the activities of the Tennessee Valley Authority.

(w) Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives.

(x) Is for the personal injury or death of any government contractor employee for whom benefits are available under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the US pays insurance either directly or as part of the consideration under the contract. Only USAF/JACC may act on these claims.

(y) Is for damage, injury or death from or by flood or flood waters at any place.

(z) Is for damage to property or other losses of a state, commonwealth, territory, or the District of Columbia caused by Air National Guard personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia.

(aa) Is for damage to property or for any death or personal injury arising out of activities of any federal agency or employee of the government in carrying out the provisions of the Disaster Relief Act of 1974 (42 U.S.C. 5121, *et seq.*), as amended.

(bb) Arises from activities that present a political question.

(cc) Arises from private, as distinguished from government, transactions.

(dd) Is based solely on compassionate grounds.

(ee) Is for rent, damage, or other expenses or payments involving the

regular acquisition, use, possession, or disposition of real property or interests therein by and for the US.

(ff) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the US., or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the US. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the US otherwise payable. Forward claims considered not payable under this paragraph (ff), with recommendations for disposition, to USAF/JACC.

(gg) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter by the US Postal Service or its agents or employees.

(hh) Is for damage to or loss of bailed property when the bailor specifically assumes such risk.

(ii) Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of a foreign country.

(jj) Is for interest incurred prior to the payment of a claim.

(kk) Arises out of matters which are in litigation against the US.

(ll) Is for attorney fees or costs in connection with pursuing an administrative or judicial remedy against the US or any of its agencies.

(mm) Is for bail, interest or inconvenience expenses incurred in connection with the preparation and presentation of the claim.

(nn) Is for a failure to use a duty of care to keep premises owned or under the control of the US safe for use for any recreational purpose, or for a failure by the US to give any warning of hazardous conditions on such premises to persons entering for a recreational purpose unless there is a willful or malicious failure to guard or warn against a dangerous condition, or unless consideration was paid to the US (including a nonappropriated fund instrumentality) to use the premises.

■ 35. Revise newly redesignated § 842.41 to read as follows:

§ 842.41 Applicable law.

This section provides the existing law governing liability, measurement of liability and the effects of settlement upon awards.

(a) *Federal preemption.* Many of the exclusions in this subpart are based upon the wording of 28 U.S.C. 2680 or other federal statutes or court decisions interpreting the Federal Tort Claims Act. Federal case law interpreting the same exclusions under the Federal Tort Claims Act is applied to the Military Claims Act. Where state law differs with federal law, federal law prevails.

(b) *Extent of liability.* Where the claim arises is important in determining the extent of liability.

(1) *Applicable law.* When a claim arises in the United States, its territories or possessions, the same law as if the claim was cognizable under the FTCA will be applied.

(2) *Claims in foreign countries.* In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to federal case law interpreting the FTCA. Where the FTCA requires application of the law of the place where the act or omission occurred, settlement authorities will use the rules set forth in the currently adopted edition of the *Restatement of the* Law, published by the American Law Institute, to evaluate the liability of the Air Force, subject to the following rules:

(i) Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by United States military traffic regulations.

(ii) Absolute or strict liability will not apply for claims not arising from noncombat activities.

(iii) Hedonic damages are not payable.

(iv) The collateral source doctrine does not apply.

(v) Joint and several liability does not apply. Payment will be made only upon the portion of loss, damage, injury or death attributable to the Armed Forces of the United States.

(vi) Future economic loss will be discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

(c) *Claims not payable.* Do not approve payment for:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at the expense of the United States.

(iii) Cost of burial expenses paid by the United States.

(d) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tortfeasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

■ 36. Amend newly redesignated § 842.42, by revising paragraphs (a) and (c) to read as follows:

§ 842.42 Appeal of final denials.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority that issued the denial letter within 60 days of the date the denial letter was mailed. The settlement authority may waive the 60 day time limit for good cause.

* * * * *

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim. Any higher settlement authority may act upon an appeal.

* * * * *

Subpart G—[Redesignated as Subpart E]

■ 37. Redesignate subpart G, consisting of §§ 842.55 through 842.68, as subpart E, consisting of §§ 842.45 through 842.58, respectively.

■ 38. Revise newly redesignated § 842.47 to read as follows:

§ 842.47 Delegations of authority.

(a) *Settlement authority.* (1) The Secretary of the Air Force has the authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Settle claims for more than $100,000, pay the first $100,000, and report the excess to the Department of the Treasury for payment.

(iii) Deny claims in any amount.

(2) The Judge Advocate General, Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are FCCs and have delegated authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Deny claims in any amount.

(3) The SJAs of the Air Force component commander of the US geographic combatant commands are FCC for claims arising in their respective combatant command Areas of Responsibility (AORs) and may deny claims of $50,000 or less and will pay claims filed in any amount when payment is for $50,000 or less.

(b) *Redelegating settlement authority.* A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys to act as FCC, and redelegate all or part of that settlement authority to such persons.

(c) *Settlement negotiations.* A settlement authority may settle a claim in any sum within its settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority through claims channels to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(d) *Special exceptions.* Do not settle claims for medical malpractice without HQ USAF/JACC approval.

■ 39. Amend newly redesignated § 842.48 by revising paragraph (a) to read as follows:

§ 842.48 Filing a claim.

(a) *How and when filed.* A claim is filed when the Air Force receives from a claimant or authorized agent a properly completed SF 95 or other signed and written demand for money damages in a sum certain. A claim may be presented orally only if oral claims are the custom in the country where the incident occurred and the claimant is functionally illiterate. In any case where an oral claim is made, claims personnel must promptly reduce the claim to writing with all particulars carefully noted. A claim belonging to another agency is promptly transferred to the appropriate agency.

* * * * *

■ 40. Revise newly redesignated § 842.49 to read as follows:

§ 842.49 Advance payments.

Subpart P of this part outlines procedures for advance payments.

■ 41. Amend newly redesignated § 842.50 by revising paragraph (a) to read as follows:

§ 842.50 Statute of limitations.

(a) A claim must be presented to the Air Force within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss or injury.

* * * * *

■ 42. Amend newly redesignated § 842.52 by revising paragraphs (a) and (b) to read as follows:

§ 842.52 Who are proper claimants.

* * * * *

(a) Foreign nationals. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his or her survivors are US inhabitants, the FCA will apply.

(b) US nationals residing abroad, unless the claim arises from a benefit, privilege or service provided to them by the US Government, or they reside in the foreign country primarily because they are employed directly by the United States, or sponsored by or accompanying such a person, or employed by a US civilian contractor in furtherance of a contract with the US Government, or sponsored by or accompanying such a person.

* * * * *

■ 43. Amend newly redesignated § 842.53 by revising paragraphs (b), (c), and (e) to read as follows:

§ 842.53 Who are not proper claimants.

* * * * *

(b) Persons determined to be US inhabitants. US inhabitants include dependents of US military personnel and US Government civilian employees.

(c) Foreign military personnel suffering personal injury, or death arising incident to service or pursuant to combined and/or joint military operations. Such operations include, but are not limited to, military exercises and United Nations, NATO, and other regional peacekeeping and humanitarian missions.

* * * * *

(e) National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies. This includes factions that have not necessarily been recognized by the international community as a legitimate nation state.

* * * * *

■ 44. Amend newly redesignated § 842.54 by:

■ a. Revising paragraph (a).

■ b. Removing paragraph (b).

■ c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 842.54 Payment criteria.

* * * * *

(a) The incident causing the damage or injury must arise in a foreign country and be caused by noncombatant activities of the US Armed Forces or by the negligent or wrongful acts of civilian employees or military members of the Armed Forces.

(1) It is a prerequisite to US responsibility if the employee causing the damage or injury is a local inhabitant, a prisoner of war, or an interned enemy alien. These persons are ''employees'' within the meaning of the Foreign Claims Act (FCA) only when in the service of the United States. Ordinarily, a slight deviation as to time or place does not constitute a departure from the scope of employment. The purpose of the activity and whether it furthers the general interest of the United States is considered. If the claim arose from the operation or use of a US Armed Forces vehicle or other equipment by such a person, pay it provided local law imposes liability on the owner of the vehicle or other equipment in the circumstances involved.

(2) It is immaterial when the claim arises from the acts or omissions of any US Armed Forces member or employee not listed in § 842.64(c)(1). The Act imposes responsibility on the United States when it places a US citizen or non-US citizen employee in a position to cause the injury or damage. If the cause is a criminal act clearly outside the scope of employment, ordinarily pay the claim and consider disciplinary action against the offender.

* * * * *

■ 45. Amend newly redesignated § 842.55 by:

■ a. Revising paragraphs (a), (c), (f), (h), (m), (o), and (q).

■ b. Adding paragraphs (s) and (t).

The revisions and additions read as follows:

§ 842.55 Claims not payable.

* * * * *

(a) Is waived under an applicable international agreement, or pursuant to an applicable international agreement, a receiving state should adjudicate and pay the claim. However, if a foreign government subject to such an international agreement disputes its legal responsibilities under the agreement, and the claimant has no other means of compensation, USAF/JACC may authorize payment.

* * * * *

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs. FCC should consider providing early notice to claimants that attorney fees are not payable as an item of damage under the FCA.

* * * * *

(f) Is a paternity claim.

* * * * *

(h) Results wholly from the negligent or wrongful act of the claimant or agent.

* * * * *

(m) Results from an action by an enemy, or directly or indirectly from an act of the US Armed Forces in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft

of the US Armed Forces, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

* * * * *

(o) Arises out of personal activities of family members, guests, servants, or activities of the pets of members and employees of the US Armed Forces.

* * * * *

(q) Is covered under US admiralty or maritime laws, unless authorized by The Judge Advocate General or Chief, Claims and Tort Litigation Staff.

* * * * *

(s) Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the FCA. Claims considered not payable on this basis will be forwarded to USAF/JACC for final decision.

(t) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the settlement authority determines the claimant is, and at the time of the incident was, friendly to the United States. Exception: A prisoner of war or interned enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the US Armed Forces' custody if the claim is otherwise payable.

■ 46. Revise newly redesignated § 842.56 to read as follows:

§ 842.56 Applicable law.

This section provides guidance to determine the applicable law for assessment of liability.

(a) In adjudicating FCA claims, settlement authorities will follow the law, customs, and standards of the country where the claim arose, except:

(1) Causation is determined based upon general principles of US tort law found in federal case law and standard legal publications.

(2) Joint and several liability does not apply. Payment is based solely on the portion of loss, damage, injury or death attributable to the US Armed Forces.

(3) If lost income or lost profits is recoverable under the law where the claim arose, they shall be limited to net lost income or net lost profits, taking into account appropriate deductions for taxes, regular business expenditures, and in the case of wrongful death, personal consumption during the loss period.

(b) Settlement authorities will not deduct compensation from collateral sources except for:

(1) Direct payments by a member or civilian employee of the US Armed Forces for damages (not solatia).

(2) Any payments recovered or recoverable from an insurance policy when premiums were paid, directly or indirectly, by the United States, or a member or civilian employee of the US Armed Forces; or when the member or employee has the benefit of the insurance (such as when a US member or employee borrows a vehicle of a local national, and the vehicle carries insurance for the benefit of any driver with permission to drive the vehicle).

■ 47. Revise newly redesignated § 842.57 to read as follows:

§ 842.57 Reconsideration of final denials.

This section provides the procedures used to reconsider a final denial.

(a) An FCC has the inherent authority to reconsider a final decision. The mere fact that a request for reconsideration is received does not obligate the settlement authority to reopen the claim.

(b) The FCC does not mention a reconsideration right in the original denial letter.

(c) A settlement authority must reconsider the final action when there is:

(1) New and material evidence concerning the claim; or

(2) Obvious errors in the original decision.

(d) The FCC must document in the claim file the reason for reconsideration.

(e) A FCC above the original settlement authority may direct a claim be forwarded to a higher FCC for reconsideration.

■ 48. Revise newly redesignated § 842.58 to read as follows:

§ 842.58 Right of subrogation, indemnity, and contribution.

The Air Force has all the rights of subrogation, indemnity and contribution, as local law permits. However, settlement authorities will not seek contribution or indemnity from US military members or civilian employees whose conduct gave rise to US Government liability, or whenever it would be harmful to international relations.

Subpart H—[Redesignated as Subpart F]

■ 49. Redesignate subpart H, consisting of §§ 842.69 through 842.72, as subpart F, consisting of §§ 842.59 through 842.62, respectively.

■ 50. Revise newly redesignated § 842.59 to read as follows:

§ 842.59 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under the International Agreement Claims Act.

■ 51. Amend newly redesignated § 842.60 by revising paragraphs (a), (d), (e), (f), and (g) to read as follows:

§ 842.60 Definitions.

* * * * *

(a) *Civilian component.* Civilian personnel accompanying and employed by an international agreement contracting force. Local employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

* * * * *

(d) *Legally responsible.* A term of art providing for settlement of claims under cost sharing international agreements in accordance with the law of the receiving state. Often, employees who are local inhabitants, not part of the civilian component of the force, could cause the sending state to be legally responsible under a respondeat superior theory.

(e) *Receiving state.* The country where the force or civilian component of another contracting party is temporarily located. It is often thought of as the ''host nation.''

(f) *Sending state.* The country sending the force or civilian component to the receiving State. In cases where US personnel are stationed in a foreign country, the US is the sending state.

(g) *Third parties.* A term of art used in International Agreements. Parties other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties (and therefore can generally make a claim under a SOFA) unless the international agreement, or an understanding between the countries involved, specifically excludes them.

■ 52. Revise newly redesignated § 842.61 to read as follows:

§ 842.61 Delegations of authority.

(a) *Overseas settlement authority.* Staff Judge Advocates of the Air Force component commands of the US geographic combatant commands will, within their combatant command AORs, fulfill US obligations concerning claims abroad subject to 10 U.S.C. 2734a for which the Air Force has settlement authority. Consistent with 10 U.S.C. 2734a and the international agreement, they may reimburse or pay the pro rata share of a claim as agreed, or if inconsistent with the IACA or the

international agreement, they may object to a bill presented,

(b) *Settlement authority.* The Secretary of the Air Force, The Judge Advocate General, the Deputy Judge Advocate General, The Director of Civil Law and Chief of the Claims and Tort Litigation Division may also exercise settlement authority under 10 U.S.C. 2734a.

(c) *Redelegation of authority.* A settlement authority may redelegate his or her authority to a subordinate judge advocate or civilian attorney in writing.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

■ 53. Amend newly redesignated § 842.62 by revising paragraph (b) to read as follows:

§ 842.62 Filing a claim.

* * * * *

(b) *Claims arising in the United States.* The claimant files tort claims arising from the act or omission of military or civilian personnel of another contracting party at any US military installation. The Staff Judge Advocate for the installation where such military or civilian personnel is assigned or attached will promptly notify the Foreign Claims Branch of USAF/JACC as well as the Commander, US Army Claims Service. If the claimant files said claim at an installation other than the location where said military or civilian personnel is assigned, the Staff Judge Advocate for that installation will promptly forward the claim to the appropriate installation Staff Judge Advocate.

Subpart I—[Redesignated as Subpart G]

■ 54. Redesignate subpart I, consisting of §§ 842.73 through 842.81 as subpart G, consisting of §§ 842.63 through 842.71, respectively.

■ 55. Revise newly redesignated § 842.63 to read as follows:

§ 842.63 Scope of this subpart.

This subpart explains how to settle and pay claims against the United States, for property damage, personal injury, or death incident to the use of a government vehicle or any other government property on a government installation which are not payable under any other statute.

■ 56. Amend newly redesignated § 842.65 by revising paragraph (a)(5) to read as follows:

§ 842.65 Delegations of authority.

(a) * * *

(5) SJA of the Air Force component commands of the US geographic combatant commands.

* * * * *

■ 57. Amend newly redesignated § 842.68 by:

■ a. Removing the parentheses in the second sentence of paragraph (a).

■ b. Revising paragraph (c).

The revision reads as follows:

§ 842.68 Claims payable.

* * * * *

(c) Arose from the use of a government vehicle at any place or from the use of other government property on a government installation.

* * * * *

■ 58. Amend newly redesignated § 842.69 by adding paragraph (e) to read as follows:

§ 842.69 Claims not payable.

* * * * *

(e) For pain and suffering or other general damages.

■ 59. Revise newly redesignated § 842.71 to read as follows:

§ 842.71 Settlement agreement.

Do not pay a claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement to that effect, in which the claimant agrees to release any and all claims against the United States, its employees and agents arising from the incident in question. Use the settlement agreement approved for use by the Department of Justice for the settlement of FTCA claims, tailored to this claim.

Subpart J—[Redesignated as Subpart H]

■ 60. Redesignate subpart J, consisting of §§ 842.82 through 842.85, as subpart H, consisting of §§ 842.72 through 842.75, respectively.

■ 61. Amend newly redesignated § 842.74 by:

■ a. Revising paragraph (a)(1)(i).

■ b. Removing and reserving paragraph (a)(1)(ii) and removing paragraph (a)(1)(iii).

■ c. Revising paragraph (b)(3)(iv).

The revisions read as follows:

§ 842.74 Delegations of authority.

(a) * * *

(1) * * *

(i) Settle or deny a claim in any amount. Settlements for payment of more than $500,000 are certified to Congress for payment.

* * * * *

(b) * * *

(3) * * *

(iv) The Chief and Deputy Chief, Claims and Tort Litigation Division.

■ 62. In newly redesignated § 842.75, add paragraph (c) to read as follows:

§ 842.75 Reconsidering claims against the United States.

* * * * *

(c) There is no time limit for submitting a request for reconsideration, but it is within the discretion of the settlement authority to decline to reconsider a claim based on the amount of time passed since the claim was originally denied.

Subpart K—[Removed]

■ 63. Remove subpart K, consisting of §§ 842.86 through 842.91.

■ 64. Add new subpart I, consisting of §§ 842.76 through 842.79, to read as follows:

Subpart I—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

Sec.

842.76 Scope of this subpart.
842.77 Delegations of authority.
842.78 Settlement agreements.
842.79 Administrative claim; when presented.

Subpart I—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

§ 842.76 Scope of this subpart.

This subpart, promulgated under the authority of 28 CFR 14.11, governs claims against the United States for property damage, personal injury, or death, from the negligent or wrongful acts or omission of Air Force military or civilian personnel while acting within the scope of their employment.

§ 842.77 Delegations of authority.

(a) *Settlement authority.* The following individuals are delegated the full authority of the Secretary of the Air Force to settle and deny claims:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Director of Civil Law.

(4) The Division Chief of Claims and Tort Litigation.

(5) The Division Chief of Environmental Law and Litigation.

(b) *Redelegation of authority.* A settlement authority may be redelegated, in writing, to a subordinate judge advocate or civilian attorney. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff

Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

(c) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(d) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated authority. Unsettled claims in excess of the delegated authority will be sent to the next highest level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

§ 842.78 Settlement agreements.

The claimant must sign a settlement agreement and general release before any payment is made.

§ 842.79 Administrative claim; when presented.

When the Air Force is the proper agency to receive a claim pursuant to 28 CFR 14.2(b), for purposes of the provisions of 28 U.S.C. 2401(b), 2672 and 2675, a claim shall be deemed to have been presented when it is received by:

(a) The office of the Staff Judge Advocate of the Air Force installation nearest the location of the incident; or

(b) The Claims and Tort Litigation Division, 1500 West Perimeter Road, Suite 1700, Joint Base Andrews, MD 20762.

Subpart L—[Redesignated as Subpart J]

■ 65. Redesignate subpart L, consisting of §§ 842.92 through 842.99, as subpart J, consisting of §§ 842.80 through 842.87, respectively.

■ 66. Revise newly redesigated § 842.80 to read as follows:

§ 842.80 Scope of this subpart.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of government property and lost wages of Air Force servicemembers through negligent or wrongful acts. It does not cover admiralty, hospital recovery, or nonappropriated fund claims.

■ 67. Amend newly redesignated § 842.81 by revising paragraph (a) to read as follows:

§ 842.81 Delegations of authority.

(a) *Settlement authority.* (1) The following individuals have delegated authority to settle, compromise, suspend, or terminate action on claims asserted for $100,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) Installation staff judge advocates have authority to assert claims in any amount, accept full payment on any claim and to compromise, suspend or terminate action on claims asserted for $25,000 or less.

* * * * *

■ 68. Amend newly redesignated § 842.82 by revising paragraphs (a)(2), (c), and (e) to read as follows:

§ 842.82 Assertable claims.

* * * * *

(a) * * *

(2) Less than $100 but collection is practicable and economical.

* * * * *

(c) The claim is for property damage arising from the same incident as a hospital recovery claim.

* * * * *

(e) The claim is assertable as a counterclaim under an international agreement. (The claim should be processed under subpart G of this part).

* * * * *

■ 69. Amend newly redesignated § 842.83 by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

§ 842.83 Non-assertable claims.

* * * * *

(b) * * *

(2) Caused by a person who has accountability and responsibility for the damaged property under the Report of Survey system.

* * * * *

(f) Loss or damage caused by an employee of another federal agency while the employee was acting in the scope of his employment.

■ 70. Revise newly redesignated § 842.85 to read as follows:

§ 842.85 Referring a claim to the US Attorney or the Department of Justice.

If collection efforts are unsuccessful, AFLOA/JACC may refer a claim to the appropriate US Attorney's Office or the Department of Justice for initiation of a lawsuit.

Subpart M—[Redesignated as Subpart K]

■ 71. Redesignate subpart M, consisting of §§ 842.100 through 842.114, as subpart K, consisting of §§ 842.88 through 842.102, respectively.

■ 72. Revise newly redesignated § 842.88 to read as follows:

§ 842.88 Scope of this subpart.

This subpart establishes policies and procedures for all administrative claims under the National Guard Claims Act for which the Air Force has assigned responsibility. Unless otherwise outlined in this subpart, follow procedures as outlined in subpart E of this part for claims arising out of noncombat activities.

■ 73. Revise newly redesignated § 842.89 to read as follows:

§ 842.89 Definitions.

(a) *Air National Guard (ANG).* The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(b) *ANG member.* An ANG member is one who is performing duty under 32 U.S.C., section 316, 502, 503, 504, or 505 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(c) *ANG duty status*—(1) *Active federal service.* ANG members may serve on active Federal duty under 10 U.S.C. to augment the active Air Force under certain circumstances or for certain types of duty or training (*e.g.,* overseas training exercises and ANG alert duty). Duty under 10 U.S.C. does not fall under this subpart.

(2) *Federally funded duty.* ANG members perform specified federally funded duty or training under 32 U.S.C. such as weekend drills, annual training, field exercises, range firing, military schooling, full time unit support, or recruiting duties. Duty under 32 U.S.C. falls under this subpart for noncombat activities.

(3) *State duty.* State duty is duty not authorized by federal law but required by the governor of the state and paid for from state funds. Such duty includes civil emergencies (natural or other disasters), civil disturbances (riots and strikes), and transportation requirements for official state functions, public health, or safety. State duty does not fall under this subpart.

(d) *ANG technicians.* An ANG technician is a Federal employee employed under 32 U.S.C. 709. Tort claims arising out of his or her activity are settled under the Federal Tort Claims Act (FTCA).

■ 74. Amend newly redesignated § 842.90 by:

■ a. Removing the introductory text.

■ b. Revising paragraphs (a)(4) and (5) and (b).

■ c. Removing paragraph (f)(1) and redesignating paragraphs (f)(2) and (3) as (f)(1) and (2), respectively.

The revisions read as follows:

§ 842.90 Delegations of authority.

(a) * * *

(4) The SJAs of the Air Force component commander of the US geographic combatant commands for claims arising within their respective combatant command areas of responsibility have delegated authority to settle claims payable or to deny claims filed for $25,000 or less.

(5) SJAs of GCMs in PACAF and USAFE have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate up to $25,000 of settlement authority to a subordinate judge advocate or civilian attorney. This redelegation must be in writing and can be for all claims or limited to a single claim. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

* * * * *

■ 75. Revise newly redesignated § 842.91 to read as follows:

§ 842.91 Filing a claim.

(a) *Elements of a proper claim.* A claim is must be filed on a Standard Form 95 or other written document. It must be signed by the Claimant or authorized agent, be for money damages in a sum certain, and lay out a basic statement as to the nature of the claim that will allow the Air Force to investigate the allegations contained therein.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim the claimant or his or her authorized agent must submit a written, signed demand.

■ 76. Revise newly redesignated § 842.92 to read as follows:

§ 842.92 Advance payments.

Subpart P of this part sets forth procedures for such payments.

■ 77. Revise newly redesignated § 842.93 to read as follows:

§ 842.93 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It is deemed to be filed upon receipt by The Judge Advocate General, USAF/JACC, or a Staff Judge Advocate of the Air Force. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the National Guard Claims Act. Upon receipt of a claim that properly belongs with another military department, the claim is promptly transferred to that department.

(b) The statutory time period excludes the day of the incident and includes the day the claim was filed.

(c) A claim filed after the statute of limitations has run is considered if the US is at war or in an armed conflict when the claim accrues or if the US enters a war or armed conflict after the claim accrues, and if good causes shows how the war or armed conflict prevented the claimant from diligently filing the claim within the statute of limitations. But in no case will a claim be considered if filed more than two years after the war or armed conflict ends.

■ 78. Revise newly redesignated § 842.94 to read as follows:

§ 842.94 Who may file a claim.

The following individuals may file a claim under this subpart.

(a) Owners of the property or their authorized agents may file claims for property damage.

(b) Injured persons or their duly authorized agents may file claims for personal injury.

(c) Duly appointed guardians of minor children or any other persons legally entitled to do so under applicable local law may file claims for minors' personal injuries.

(d) Executors or administrators of a decedent's estate or another person legally entitled to do so under applicable local law, may file claims based on:

(1) An individual's death.

(2) A cause of action surviving an individual's death.

(e) Insurers with subrogation rights may file claims for losses paid in full by them. The parties may file claims jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(f) Authorized agents signing claims show their title or legal capacity and present evidence of authority to present the claims.

■ 79. Revise newly redesignated § 842.95 to read as follows:

§ 842.95 Who are proper claimants.

(a) Citizens and inhabitants of the United States. US inhabitants includes dependents of the US military personnel and federal civilian employees temporarily outside the US for purposes of US Government service.

(b) US military personnel and civilian employees. Note: These personnel are not proper claimants for claims for personal injury or death that occurred incident to their service.

(c) Foreign military personnel when the damage or injury occurs in the US. Do not pay for claims under the MCA for personal injury or death of a foreign military personnel that occurred incident to their service.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Subrogees of proper claimants to the extent they have paid for the claim in question.

■ 80. Revise newly redesignated § 842.96 to read as follows:

§ 842.96 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and nonappropriated fund instrumentalities of the US Government including the District of Columbia government.

(c) Inhabitants of foreign countries.

(d) The state, territory and its political subdivisions whose Air National Guard member caused the loss.

(e) Subrogees of the claimants in paragraphs (a) through (d) of this section.

■ 81. Revise newly redesignated § 842.97 to read as follows:

§ 842.97 Claims payable.

Claims arising from noncombat activities of the United States when caused by ANG members performing duty under 32 U.S.C. and acting within the scope of their employment, whether or not such injuries or damages arose out of their negligent or wrongful acts or omissions.

■ 82. In newly redesignated § 842.98, revise paragraphs (a), (b), and (c) to read as follows:

§ 842.98 Claims not payable.

* * * * *

(a) Claims covered by the FTCA, FCA, IACA, 10 U.S.C. 2734a and 2734b, Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801–9804, 9806, MCA, 10 U.S.C. 2733, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

(b) NGCA claims arising from noncombat activities in the US are not covered by the FTCA because more elements are needed to state an FTCA claim than are needed to state a claim under the NGCA for noncombat activities. All FTCA claims are based on elements of traditional tort liability (*i.e.,* duty, breach, causation, and damages); that is, they are fault based. Noncombat

activity claims under the NGCA are based solely on causation and damages. Because NGCA claims for noncombat activities are not fault based, they are not covered by the FTCA.

(c) See subpart E of this part for other claims not payable.

* * * * *

■ 83. Revise newly redesignated § 842.99 to read as follows:

§ 842.99 Applicable law.

(a) *Federal preemption.* Many of the exclusions in this subpart are based upon the wording of 28 U.S.C. 2680 or other federal statutes or court decisions interpreting the Federal Tort Claims Act. Federal case law interpreting the same exclusions under the Federal Tort Claims Act is applied to the National Guard Claims Act. Where state law differs with federal law, federal law prevails.

(b) *Extent of liability.* Where the claim arises is important in determining the extent of liability.

(1) *Applicable law.* When a claim arises in the United States, its territories or possessions, the same law as if the claim was cognizable under the FTCA will be applied.

(2) *Claims in foreign countries.* In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to federal case law interpreting the FTCA. Where the FTCA requires application of the law of the place where the act or omission occurred, settlement authorities will use the rules set forth in the currently adopted edition of the *Restatement of the Law,* published by the American Law Institute, to evaluate the liability of the Air Force, subject to the following rules:

(i) Absolute or strict liability will not apply for claims not arising from noncombat activities.

(ii) Hedonic damages are not payable.

(iii) The collateral source doctrine will not apply.

(iv) Joint and several liability does not apply. Payment will be made only upon the portion of loss, damage, injury or death attributable to the Armed Forces of the United States.

(v) Future economic loss will be discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

(c) *Claims not payable.* Do not approve payment for:

(1) Punitive damages.

(2) Cost of medical or hospital services furnished at US expense.

(3) Cost of burial expenses paid by the United States.

(d) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tortfeasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

■ 84. Revise newly redesignated § 842.100 to read as follows:

§ 842.100 Appeal of final denials.

This section explains the steps to take when a denial is appealed.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority that issued the denial letter within 60 days of the date the denial letter was mailed. The settlement authority may waive the 60 day time limit for good cause.

(b) Upon receipt of the appeal, the original settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim. Any higher settlement authority may act upon an appeal.

(d) The decision of the appellate authority is the final administrative action on the claim.

■ 85. Revise newly redesignated § 842.101 to read as follows:

§ 842.101 Government's right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or under contract. Do not seek contribution or indemnity from ANG members whose conduct gave rise to Government liability.

■ 86. Revise newly redesignated § 842.102 to read as follows:

§ 842.102 Attorney fees.

In the settlement of any claim pursuant to 32 U.S.C. 715 and this subpart, attorney fees will not exceed 20 percent of any award provided that when a claim involves payment of an award over $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary of the Air Force. For the purposes of this section, an award is deemed to be the cost to the United States at the time of purchase of a structured settlement, and not its future value.

Subpart N—[Redesignated as Subpart L]

■ 87. Redesignate subpart N, consisting of §§ 842.115 through 842.125 as subpart L, consisting of §§ 842.103 through 842.113, respectively.

■ 88. Revise newly redesignated § 842.103 to read as follows:

§ 842.103 Scope of this subpart.

This subpart explains how the United States asserts and settles claims for costs of medical care, against third parties under the Federal Medical Care Recovery Act (FMCRA) (10 U.S.C. 1095) and various other laws.

■ 89. Amend newly redesignated § 842.104 by revising the introductory text and paragraph (a) and adding paragraphs (h) and (i) to read as follows:

§ 842.104 Definitions.

This section defines terms which are used within this subpart.

(a) *Medical Cost Reimbursement Program Regional Field Offices.* The Chief of the Medical Cost Reimbursement Program (MCRP) Branch determines and assigns geographic responsibility for all regional field offices. Each field office is responsible for investigating all potential claims and asserting claims within their jurisdiction for the cost of medical care provided by either a Medical Treatment Facility or at a civilian facility through Tricare.

* * * * *

(h) *Accrued pay.* The total of all pay accrued to the account of an active duty member during a period when the member is unable to perform military duties. It does not include allowances.

(i) *Future care.* Medical care reasonably expected to be provided or paid for in the future treatment of an injured party as determined during the investigative process.

■ 90. Revise newly redesignated § 842.105 to read as follows:

§ 842.105 Delegations of authority.

(a) *Settlement authority.* The following individuals have delegated authority to settle, compromise, or waive MCRP claims for $300,000 or less and to accept full payment on any claim:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Director of Civil Law.

(4) Chief, Claims and Tort Litigation Staff and the Chief, MCRP.

(b) *Redelegation of authority.* The individuals described in paragraph (a) of this section may re-delegate a portion or all of their authority to subordinates, subject to the following limitations:

(1) SJAs, when given Medical Cost Reimbursement (MCR) claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of $25,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

(2) SJAs of numbered Air Forces, when given MCR claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of $40,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

(3) SJAs of single base GCMs, the SJAs of GCMs in PACAF and USAFE, and the SJAs of each Air Force base, station, or fixed installation have delegated authority to compromise or waive claims for $15,000 or less and to accept full payment on any claim.

(c) *Authority to assert a claim.* Each settlement authority has authority to assert a claim in any amount for the reasonable value of medical care.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim filed for an amount within the delegated settlement authority. Claims in excess of the delegated authority must be approved by the next higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

Note to paragraph (e): Telephonic approvals, in the discretion of the higher settlement authority, are authorized.

(f) *Special exceptions.* Only the Department of Justice (DOJ) may approve claims involving:

(1) Compromise or waiver of a claim for more than $300,000.

(2) Settlement previously referred to DOJ.

(3) Settlement where a third party files suit against the US or the injured party arising out of the same incident.

■ 91. Revise newly redesignated § 842.107 to read as follows:

§ 842.107 Nonassertable claims.

The following are considered nonassertable claims and should not be asserted:

(a) *Claims against any department, agency, or instrumentality of the United States.* ''Agency or instrumentality'' includes any self-insured nonappropriated fund activity whether revenue producing, welfare, or sundry. The term does not include private associations.

(b) *Claims for care furnished a veteran by the Department of Veterans Affairs (VA) for service connected disability.* However, claims may be asserted for the reasonable value of medical care an Air Force member receives prior to his or her discharge and transfer to the VA facility or when the Air Force has reimbursed the VA facility for the care.

(c) *Claims for care furnished a merchant seaman under 42 U.S.C. 249.* A claim against the seaman's employer should not be filed.

(d) *Government contractors.* In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, settlement authorities investigate the circumstances surrounding the incident to determine if assertion is appropriate. If the US is not required to reimburse the contractor, the MCR authority may assert a claim against the contractor.

(e) *Foreign governments.* Settlement authorities investigate any claims that might be made against foreign governments, their political subdivisions, armed forces members or civilian employees.

(f) *U.S. personnel.* Claims are not asserted against members of the uniformed services; employees of the US, its agencies or instrumentalities; or an individual who is a dependent of a service member or employee at the time of assertion unless they have insurance to pay the claim, they were required by law or regulation to have insurance which would have covered the Air Force, or their actions, which necessitated the medical treatment provided at government expense, constituted willful misconduct or gross negligence.

■ 92. Amend newly redesignated § 842.108 by revising paragraphs (a) and (b) to read as follows:

§ 842.108 Asserting the claim.

* * * * *

(a) MCR personnel assert a claim against a tortfeasor or other third party using a formal letter on Air Force stationery. The assertion is made against all potential payers, including insurers. The demand letter should state the legal basis for recovery and sufficiently describe the facts and circumstances surrounding the incident giving rise to medical care. Applicable bases of recovery include US status as a third-party beneficiary under various types of insurance policies, workers' compensation laws, no-fault laws, or other Federal statutes, including Coordination of Benefits (COB) or FMCRA.

(b) The MCR authority must promptly notify the injured parties or their legal representatives, in writing, that the United States will attempt to recover from the third parties the reasonable value of medical care furnished or to be furnished and that they:

(1) Should seek advice from a legal assistance officer or civilian counsel.

(2) Must cooperate in the prosecution of all actions of the United States against third parties.

(3) Must furnish a complete statement regarding the facts and circumstances surrounding the incident which caused the injury.

(4) Must not execute a release or settle any claim which exists as a result of the injury without prior notice to the MCR authority.

* * * * *

■ 93. Revise newly redesignated § 842.109 to read as follows:

§ 842.109 Referring a claim to the US Attorney.

(a) All cases that require forwarding to the DoJ must be routed through the Chief, MCRP. The MCR authority ensures that personnel review all claims for possible referral not later than two years after the date of the incident for tort based cases.

(b) The United States or the injured party on behalf of the United States must file suit within 3 years after an action accrues. This is usually 3 years after the initial treatment is provided in a federal medical facility or after the initial payment is made by Tricare, whichever is first.

■ 94. Revise newly redesignated § 842.111 to read as follows:

§ 842.111 Recovery rates in government facilities.

The **Federal Register** contains the rates set by the Office of Management and Budget, of which judges take judicial notice. Apply the rates in effect at the time of care to claims.

■ 95. Revise newly redesignated § 842.112 to read as follows:

§ 842.112 Waiver and compromise of United States interest.

Waivers and compromises of government claims can be made. This section lists the basic guidance for each action. (See this subpart for claims involving waiver and compromise of amounts in excess of settlement authorities' delegated amounts.)

(a) *Convenience of the Government.* When compromising or waiving a claim

for convenience of the Government, settlement authorities should consider the following factors:

(1) Risks of litigation.

(2) Questionable liability of the third party.

(3) Costs of litigation.

(4) Insurance (Uninsured or Underinsured Motorist and Medical Payment Coverage) or other assets of the tortfeasor available to satisfy a judgment for the entire claim.

(5) Potential counterclaim against the US.

(6) Jury verdict expectancy amount.

(7) Amount of settlement with proposed distribution.

(8) Cost of any future care.

(9) Tortfeasor cannot be located.

(10) Tortfeasor is judgment proof.

(11) Tortfeasor has refused to pay and the case is too weak for litigation.

(b) *Hardship on the injured party.* When compromising or waiving a claim to avoid undue hardship on the injured party, settlement authorities should consider the following factors:

(1) Permanent disability or disfigurement of the injured party.

(2) Decreased earning power of the injured party.

(3) Out of pocket losses to the injured party.

(4) Financial status of the injured party.

(5) Pension rights of the injured party.

(6) Other government benefits available to the injured party.

(7) An offer of settlement from a third party which includes virtually all of the thirty party's assets, although the amount is considerably less than the calculation of the injured party's damages.

(8) Whether the injured party received excessive treatment.

(9) Amount of settlement with proposed distribution, including reductions in fees or damages by other parties, medical providers, or attorneys in order to reduce the hardship on the injured party.

(c) *Compromise or waiver.* A compromise or waiver can be made upon written request from the injured party or the injured party's legal representative.

■ 96. Revise newly redesignated § 842.113 to read as follows:

§ 842.113 Reconsideration of a waiver for undue hardship.

A settlement authority may reconsider its previous action on a request for waiver or compromise whether requested or not. Reconsideration is normally on the basis of new evidence or discovery of errors in the waiver submission or settlement, but can be based upon a re-evaluation of the claim by the settlement authority.

Subpart O—[Removed]

■ 97. Remove subpart O, consisting of §§ 842.126 through 842.136.

■ 98. Add new subpart M, consisting of §§ 842.114 through 842.117, to read as follows:

Subpart M—Nonappropriated Fund Claims

Sec.

842.114 Scope of this subpart.
842.115 Definitions.
842.116 Payment of claims against NAFIs.
842.117 Claims by customers, members, participants, or authorized users.

§ 842.114 Scope of this subpart.

This subpart describes how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of nonappropriated fund instrumentalities (NAFIs). Unless stated below, such claims will follow procedures outlined in other subparts of this part for the substantive law applicable to the particular claim. For example, a NAFI claim adjudicated under the Federal Tort Claims Act will follow procedures in this subpart as well as subpart K of this part.

§ 842.115 Definitions.

(a) *Army and Air Force Exchange Service (AAFES).* The Army and Air Force Exchange Service is a joint command of the Army and Air Force, under the jurisdiction of the Chiefs of Staff of the Army and Air Force, which provides exchange and motion picture services to authorized patrons.

(b) *Morale, welfare, and recreation (MWR) activities.* Air Force MWR activities are activities operated directly or by contract which provide programs to promote morale and well-being of the Air Force's military and civilian personnel and their dependents. They may be funded wholly with appropriated funds, primarily with nonappropriated funds (NAF), or with a combination of appropriated funds and NAFs.

(c) *Nonappropriated funds.* Nonappropriated funds are funds generated by Department of Defense military and civilian personnel and their dependents and used to augment funds appropriated by the Congress to provide a comprehensive morale-building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

(d) *Nonappropriated funds instrumentality.* A nonappropriated fund instrumentality is a Federal Government instrumentality established to generate and administer nonappropriated funds for programs and services contributing to the mental and physical well-being of personnel.

§ 842.116 Payment of claims against NAFIs.

Substantiated claims against NAFIs must not be paid solely from appropriated funds. Claims are sent for payment as set out in this subpart. Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFs. Pay the claim initially from appropriated funds and decide the correct funding source later.

§ 842.117 Claims by customers, members, participants, or authorized users.

(a) *Customer complaints.* Do not adjudicate claims complaints or claims for property loss or damage under this subpart that the local NAFI activity can satisfactorily resolve.

(b) *Claims generated by concessionaires.* Most concessionaires must have commercial insurance. Any unresolved claims or complaints against concessionaires or their insurers are sent to the appropriate contracting officers.

Subpart P—[Redesignated as Subpart N]

■ 99. Redesignate subpart P, consisting of §§ 842.137 through 842.143, as subpart N, consisting of §§ 842.118 through 842.124.

■ 100. Revise newly redesignated § 842.118 to read as follows:

§ 842.118 Scope of this subpart.

(a) This subpart explains how to process certain administrative claims:

(1) Against the United States for property damage, personal injury, or death, arising out of Air Force assigned noncombat missions performed by the Civil Air Patrol (CAP), as well as certain other Air Force authorized missions performed by the CAP in support of the Federal Government.

(2) In favor of the United States for damage to US Government property caused by CAP members or third parties.

(b) Unless stated in this subpart, such claims will follow procedures outlined in other subparts of this part for the substantive law applicable to the particular claim. For example, a CAP claim adjudicated under the Military Claims Act will follow procedures in this subpart as well as subpart E of this part.

§§ 842.120 and 842.121 [Removed]

■ 101. Remove newly redesignated §§ 842.120 and 842.121.

§§ 842.122 through 842.124 [Redesignated as §§ 842.120 through 842.122]

■ 102. Newly redesignated §§ 842.122 through 842.124 are further redesignated as §§ 842.120 through 842.122, respectively.

Subpart Q—[Redesignated as Subpart O]

■ 103. Redesignate subpart Q, consisting of §§ 842.144 through 842.150, as subpart O, consisting of §§ 842.123 through 842.129.

■ 104. Revise newly redesignated § 842.123 to read as follows:

§ 842.123 Scope of this subpart.

This subpart tells how to make an advance payment before a claim is filed or finalized under the Military Claims, Foreign Claims and National Guard Claims Acts.

■ 105. In newly redesignated § 842.124, revise paragraph (c)(4) to read as follows:

§ 842.124 Delegation of authority.

* * * * *

(c) * * *

(4) SJAs of the Air Force component commander of the U.S. geographic combatant commands for claims arising within their respective combatant command areas of responsibility.

* * * * *

■ 106. In newly redesignated § 842.126, revise paragraph (b) to read as follows:

§ 842.126 When authorized.

* * * * *

(b) The potential claimant has an immediate need amounting to a hardship for food, shelter, medical or burial expenses, or other necessities. In the case of a commercial enterprise, severe financial loss or bankruptcy will result if the Air Force does not make an advance payment.

* * * * *

Henry Williams,

Acting Air Force Federal Liaison Officer.

[FR Doc. 2016–25554 Filed 11–21–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0492; FRL–9955–50–OAR]

RIN 2060–AR97

Clarification of Requirements for Method 303 Certification Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action adds language that clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

DATES: The final rule is effective on December 22, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0492. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

This action applies to you if you are a potential provider of Method 303 training services, someone seeking training to conduct Method 303, or a facility subject to Method 303.

B. What action is the agency taking?

This final action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 23, 2017. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background

On October 27, 1993, we published Method 303 for determining VE from