

SUBCHAPTER D—CLAIMS AND LITIGATION

PART 842—ADMINISTRATIVE CLAIMS

Sec.
842.0 Scope.

Subpart A—General Information

842.1 Scope of this subpart.
842.2 Definitions.
842.3 Claims authorities.
842.4 Where to file a claim.
842.5 Claims forms.
842.6 Signature on the claim form.
842.7 Who may file a claim.
842.8 Insured claimants.

Subpart B—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

842.9 Scope of this subpart.
842.10 Definitions.
842.11 Claims payable.
842.12 Claims not payable.
842.13 Limiting provisions.
842.14 Filing a claim.

Subpart C—Personnel Claims (31 U.S.C. 3701, 3721)

842.15 Scope of this subpart.
842.16 Definitions.
842.17 Delegations of authority.
842.18 Filing a claim.
842.19 Partial payments.
842.20 Statute of limitations.
842.21 Who may file a claim.
842.22 Who are proper claimants.
842.23 Who are not proper claimants.
842.24 General provisions.
842.25 Claims payable.
842.26 Claims not payable.
842.27 Reconsideration of a claim.
842.28 Right of subrogation, indemnity, and contribution.
842.29 Depreciation and maximum allowances.

Subpart D—Military Claims Act (10 U.S.C. 2733)

842.30 Scope of this subpart.
842.31 Definitions.
842.32 Delegations of authority.
842.33 Filing a claim.
842.34 Advance payments.
842.35 Statute of limitations.
842.36 Who may file a claim.
842.37 Who are proper claimants.
842.38 Who are not proper claimants.
842.39 Claims payable.
842.40 Claims not payable.

842.41 Applicable law.
842.42 Appeal of final denials.
842.43 Right of subrogation, indemnity, and contribution.
842.44 Attorney fees.

Subpart E—Foreign Claims (10 U.S.C. 2734)

842.45 Scope of this subpart.
842.46 Definitions.
842.47 Delegations of authority.
842.48 Filing a claim.
842.49 Advance payments.
842.50 Statute of limitations.
842.51 Who may file a claim.
842.52 Who are proper claimants.
842.53 Who are not proper claimants.
842.54 Payment criteria.
842.55 Claims not payable.
842.56 Applicable law.
842.57 Reconsideration of final denials.
842.58 Right of subrogation, indemnity, and contribution.

Subpart F—International Agreement Claims (10 U.S.C. 2734a and 2734b)

842.59 Scope of this subpart.
842.60 Definitions.
842.61 Delegations of authority.
842.62 Filing a claim.

Subpart G—Use of Government Property Claims (10 U.S.C. 2737)

842.63 Scope of this subpart.
842.64 Definitions.
842.65 Delegations of authority.
842.66 Filing a claim.
842.67 Statute of limitations.
842.68 Claims payable.
842.69 Claims not payable.
842.70 Reconsideration of final denial.
842.71 Settlement agreement.

Subpart H—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

842.72 Scope of this subpart.
842.73 Definitions.
842.74 Delegations of authority.
842.75 Reconsidering claims against the United States.

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.
842.77 Delegations of authority.
842.78 Settlement agreements.

Department of the Air Force, DoD

§ 842.2

842.79 Administrative claim; when presented.

Subpart J—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

- 842.80 Scope of this subpart.
- 842.81 Delegations of authority.
- 842.82 Assertable claims.
- 842.83 Non-assertable claims.
- 842.84 Asserting the claim.
- 842.85 Referring a claim to the U.S. Attorney or the Department of Justice.
- 842.86 Statute of limitations.
- 842.87 Compromise, termination, and suspension of collection.

Subpart K—Claims Under the National Guard Claims Act (32 U.S.C. 715)

- 842.88 Scope of this subpart.
- 842.89 Definitions.
- 842.90 Delegations of authority.
- 842.91 Filing a claim.
- 842.92 Advance payments.
- 842.93 Statute of limitations.
- 842.94 Who may file a claim.
- 842.95 Who are proper claimants.
- 842.96 Who are not proper claimants.
- 842.97 Claims payable.
- 842.98 Claims not payable.
- 842.99 Applicable law.
- 842.100 Appeal of final denials.
- 842.101 Government's right of subrogation, indemnity, and contribution.
- 842.102 Attorney fees.

Subpart L—Hospital Recovery Claims (42 U.S.C. 2651–2653)

- 842.103 Scope of this subpart.
- 842.104 Definitions.
- 842.105 Delegations of authority.
- 842.106 Assertable claims.
- 842.107 Nonassertable claims.
- 842.108 Asserting the claim.
- 842.109 Referring a claim to the U.S. Attorney.
- 842.110 Statute of limitations.
- 842.111 Recovery rates in government facilities.
- 842.112 Waiver and compromise of United States interest.
- 842.113 Reconsideration of a waiver for undue hardship.

Subpart M—Nonappropriated Fund Claims

- 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.

Subpart N—Civil Air Patrol Claims (5 U.S.C. 8101(1)(B), 8102(a), 8116(c), 8141; 10 U.S.C. 9441, 9442; 36 U.S.C. 201–208)

- 842.118 Scope of this subpart.
- 842.119 Definitions.
- 842.120 Improper claimants.
- 842.121 Claims payable.
- 842.122 Claims not payable.

Subpart O—Advance Payments (10 U.S.C. 2736)

- 842.123 Scope of this subpart.
- 842.124 Delegation of authority.
- 842.125 Who may request.
- 842.126 When authorized.
- 842.127 When not authorized.
- 842.128 Separate advance payment claims.
- 842.129 Liability for repayment.

AUTHORITY: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted.

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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*.

[81 FR 83688, Nov. 22, 2016]

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§ 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.

[81 FR 83688, Nov. 22, 2016]

Subpart A—General Information

§ 842.1 Scope of this subpart.

This subpart explains terms used in this part. It states basic Air Force claims policy and identifies proper claimants.

§ 842.2 Definitions.

(a) *Authorized agent*. Any person or corporation, including a legal representative, empowered to act on a claimant's behalf.

(b) *Civilian personnel*. Civilian employees of the Air Force who are paid

§ 842.3

from appropriated or nonappropriated funds. They include prisoners of war, interned enemy aliens performing paid labor, and volunteer workers except for claims under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim*. Any signed written demand made on or by the Air Force for the payment of a sum certain. It does not include any obligations incurred in the regular procurement of services, supplies, equipment, or real estate. An oral demand made under Article 139, Uniform Code of Military Justice (UCMJ) is sufficient.

(d) *Claimant*. An individual, partnership, association, corporation, country, state, territory, or its political subdivisions, and the District of Columbia. The U.S. Government or any of its instrumentalities may be a claimant in admiralty, tort, carrier recovery and hospital recovery claims in favor of the United States.

(e) *Geographic area of claims responsibility*. The base Staff Judge Advocate's (SJA's) jurisdiction for claims. CONUS jurisdictional areas are designated by AFLOA/JACC on maps distributed to the field. HQ PACAF, HQ USAFE, and HQ 9AF SJAs designate these areas within their jurisdictions. DOD assigns areas of single service responsibility to each military department.

(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.

(h) *HQ PACAF*. Headquarters, Pacific Air Forces, Hickam AFB, HI 96853-5001.

(i) *Personal injury*. The term "personal injury" includes both bodily injury and death.

32 CFR Ch. VII (7-1-25 Edition)

(j) *Property damage*. Damage to, loss of, or destruction of real or personal property.

(k) *Settle*. To consider and pay, or deny a claim in full or in part.

(1) *Single Base General Court-Martial Jurisdiction (GCM)*. For claims purposes, a base legal office serving the commander who exercises GCM authority over that base, or that base and other bases.

(m) *Subrogation*. The act of assuming the legal rights of another after paying a claim or debt, for example, an insurance company (subrogee) paying its insured's (subrogor's) claim, thereby assuming the insured's right of recovery.

(n) *HQ USAFE*. Headquarters, United States Air Forces in Europe, Ramstein Air Base, Germany, APO NY 09012-5001.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991; 81 FR 83688, Nov. 22, 2016]

§ 842.3 Claims authorities.

(a) *Appellate authority*. The individual authorized to review the final decision of a settlement authority upon appeal or reconsideration.

(b) *Settlement authority*. The individual or foreign claims commission authorized to settle a claim upon its initial presentation.

§ 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.

[81 FR 83688, Nov. 22, 2016]

§ 842.5 Claims forms.

Any signed written demand on the Air Force for a sum certain is sufficient to file a claim. The claimant should use these forms when filing a claim:

(a) *Claim processed under the Military Personnel and Civilian Employees' Claims Act.* Use AF Form 180, Claim for Loss of or Damage to Personal Property Incident to Service, or DD Forms 1842, Claim for Personal Property Against the United States, and 1844, Schedule of Property and Claim Analysis Chart, to file the claim.

(b) *Claim processed under international agreements.* Use any form specified by the host country.

(c) *Any other type claim.* Use SF 95, Claim for Damage, Injury, or Death.

§ 842.6 Signature on the claim form.

The claimant or authorized agent signs the claim form in ink using the first name, middle initial, and last name.

(a) *Claim filed by an individual.* (1) A married woman signs her name, for example, Mary A. Doe, rather than Mrs. John Doe.

(2) An authorized agent signing for a claimant shows, after the signature, the title or capacity and attaches evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative; for example, John Doe by Richard Roe, Attorney in Fact. A copy of a current and valid power of attorney, court order, or other legal document is sufficient evidence of the agent's authority.

(b) *Claim with joint interest.* Where a joint ownership or interest in real property exists, all joint owners must sign the claim form. This includes a husband and wife signing a claim if the claim is for property damage. However, only the military member or civilian employee signs the claim form for a claim under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim filed by a corporation.* (1) A corporate officer signing the form must show title or capacity and affix the corporate seal (if any) to the claim form.

(2) If the person signing the claim is other than the corporate officer they must:

(i) Attach to the claim form a certification by a proper corporate officer that the individual is an agent of the corporation duly authorized to file and settle the claim;

(ii) Affix to the claim form the corporate seal (if any) to the certification.

(d) *Claim filed by a partnership.* A partner must sign the form showing his or her title as partner and list the full name of the partnership.

§ 842.7 Who may file a claim.

(a) *Property damage.* The owner or owners of the property or their authorized agent may file a claim for property damage.

(b) *Personal injury or death.* (1) The injured person or authorized agent may file a claim for personal injury.

(2) The duly appointed guardian of a minor child or any other person legally entitled to do so under applicable local law may file a claim for a minor's personal injury.

(3) The executor or administrator of the decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on an individual's death.

(c) *Subrogation.* The subrogor (insured) and the subrogee (insurer) may file a claim jointly or individually. Pay a fully subrogated claim only to the subrogee. A joint claim must be asserted in the names of and signed by the real parties in interest. Make payment by sending a joint check to the subrogee, made payable to the subrogor and subrogee. If separate claims are filed, make payment by check issued to each claimant to the extent of each undisputed interest.

§ 842.8 Insured claimants.

Insured claimants must make a detailed disclosure of their insurance coverage by stating:

(a) Their name and address.

(b) Kind, amount, and dates of coverage of insurance.

(c) Insurance policy number.

(d) Whether a claim was presented to the insurer and, if so, in what amount.

(e) Whether the insurer paid or is expected to pay the claim.

§ 842.9

(f) The amount of any payment made or promised.

Subpart B—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016, unless otherwise noted.

§ 842.9 Scope of this subpart.

It sets out the Air Force procedures for processing Article 139, UCMJ claims.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 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.

(c) *Property.* Property is an item that is owned or possessed by an individual or business. Property includes a tangible item such as clothing, household furnishings, motor vehicles, real property, and currency. The term does not include intangible property or items having no independent monetary worth. Items that should not be considered as property for the purpose of this part include a stock, bond, check, check book, credit card, telephone service and cable television services.

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

(e) *Wrongful taking.* Any unauthorized taking or withholding of property with intent to deprive the owner or person in lawful possession either temporarily or permanently.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, Nov. 22, 2016]

§ 842.11 Claims payable.

Claims for property willfully damaged or wrongfully taken by Air Force military personnel as a result of riotous, violent, or disorderly conduct. If a

32 CFR Ch. VII (7–1–25 Edition)

claim is payable under this part and also under another part, it may be paid under this part if authorized by AFLOA/JACC.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.12 Claims not payable.

Claims that are not payable are:

(a) Claims resulting from simple negligence.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of Air Force military personnel while acting within the scope of their duty.

(d) Claims of subrogees.

(e) Claims arising from private indebtedness.

(f) Claims for reimbursement for bad checks.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, Nov. 22, 2016]

§ 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.

[81 FR 83688, Nov. 22, 2016]

§ 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

Department of the Air Force, DoD

§ 842.19

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.

[81 FR 83688, Nov. 22, 2016]

Subpart C—Personnel Claims (31 U.S.C. 3701, 3721)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016, unless otherwise noted.

§ 842.15 Scope of this subpart.

It explains how to settle and pay claims under the Military Personnel and Civilian Employees' Claims Act for incident to service loss and damage of personal property. These claims are paid according to this subpart even when another subpart may also apply.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.16 Definitions.

(a) *Military installation.* A facility used to serve a military purpose and used or controlled by the Air Force or any other Department of Defense (DOD) element.

(b) *Personal property.* Tangible property an individual owns, including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV), and mobile homes.

(c) *Reconsideration.* The original or a higher settlement authority's review of a prior settlement action.

(d) *Unusual Occurrence.* Something not expected to happen in the normal course of events.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, Nov. 22, 2016]

§ 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 sec-

tion. 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.

[81 FR 83688, Nov. 22, 2016]

§ 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.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to the expiration of the statute of limitations by submitting a signed amendment. The settlement authority adjudicates and settles or forwards the amended claim as appropriate.

(c) *Separate claims.* The claimant files a separate claim for each incident which caused a loss. For transportation claims, this means a separate claim for each shipment.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, Nov. 22, 2016]

§ 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

§ 842.20

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.

(a) If a claim for only part of the loss is submitted and is readily provable, pay it 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 through claims channels to the proper settlement authority.

(b) When the total claim is submitted and the amount payable exceeds the settlement authority, pay a partial payment within the limits of settlement authority and send the claim, with recommendations, through claims channels to the proper settlement authority.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, 83689, Nov. 22, 2016]

§ 842.20 Statute of limitations.

(a) The claimant must file the claim in writing within 2 years after it accrues. It accrues when the claimant discovered or reasonably should have discovered the full extent of the property damage or loss. For transportation losses, the claim usually accrues on the date of delivery.

(b) To compute the statutory period, the incident date is excluded and the day the claim was filed is included.

(c) Consider a claim filed after the statute has run if both of the following are present:

(1) The United States is at war or in an armed conflict when the claim accrues, or the United States enters a war or armed conflict after the claim accrues. Congress or the President establishes the beginning and end of war or armed conflict. A claimant may not file a claim more than 2 years after the war or armed conflict ends.

32 CFR Ch. VII (7-1-25 Edition)

(2) Good cause is shown. A claimant may not file a claim more than 2 years after the good cause ceases to exist.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 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.

[81 FR 83689, Nov. 22, 2016]

§ 842.22 Who are proper claimants.

Proper claimants are:

- (a) Active duty Air Force military personnel.
- (b) Civilian employees of the Air Force who are paid from appropriated funds.
- (c) DOD school teachers and school administrative personnel who are provided logistic and administrative support by an Air Force installation commander.
- (d) Air Force Reserve (AFRES) and Air National Guard (ANG) personnel when performing active duty, full-time National Guard duty, or inactive duty training, ANG technicians under 32 U.S.C. 709.
- (e) Retired or separated Air Force military personnel who suffer damage or loss resulting from the last storage or movement of personal property, or for claims accruing before retirement or separation.
- (f) AFROTC cadets while on active duty for summer training.
- (g) United States Air Force Academy cadets.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.23 Who are not proper claimants.

The following individuals are not proper claimants:

- (a) Subrogees and assignees of proper claimants, including insurance companies.
- (b) Conditional vendors and lienholders.

Department of the Air Force, DoD

§ 842.25

(c) Non-Air Force personnel, including American Red Cross personnel, United Services Organization (USO) performers, employees of government contractors, and Civil Air Patrol (CAP) members.

(d) AFROTC cadets who are not on active duty for summer training.

(e) Active duty military personnel and civilian employees of a military service other than the Air Force.

(f) DOD employees who are not assigned to the Air Force.

(g) Army and Air Force Exchange Service (AAFES) employees and other employees whose salaries are paid from nonappropriated funds (see subpart O).

(h) Military personnel of foreign governments.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.24 General provisions.

Payable claims must be for:

(a) Personal property which is reasonable or useful under the circumstances of military service.

(b) Loss, damage, destruction, confiscation, or forced abandonment which is incident to service.

(c) Losses that are not collectible from any other source, including insurance and carriers.

(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.

(e) Losses occurring without the claimants' negligence.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, 83689, Nov. 22, 2016]

§ 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 U.S. 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 U.S. 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.

§ 842.25

32 CFR Ch. VII (7-1-25 Edition)

(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.

(c) *Privately owned vehicles (POV).* Pay for damage to or loss of POVs caused by government negligence under subpart F or K. Pay under this subpart for damage or loss incident to:

- (1) Theft of POVs or their contents, or vandalism to parked POVs:
 - (i) Anywhere on a military installation.
 - (ii) At offbase quarters overseas.
 - (iii) At other authorized places.
- (2) Government shipment:
 - (i) To or from oversea areas incident to PCS.
 - (ii) On a space available reimbursable basis.
 - (iii) As a replacement vehicle under the provisions of the Joint Travel Regulations (JTR).
- (3) Authorized use for government duty other than PCS moves. The owner must have specific advance permission of the appropriate supervisor or official. Adequate proof of the permission and of nonavailability of official transportation must be provided prior to paying such claims. Claims arising while the claimant is deviating from

the principal route or purpose of the trip should not be paid, but claims occurring after the claimant returns to the route or purpose should be paid. Travel between quarters and place of duty, including parking, is not authorized use for government duty.

(4) Paint spray, smokestack emission, and other similar operations by the Air Force on a military installation caused by a contractor's negligence. (Process the claim under subpart F or K, if government negligence causes such losses.) If a contractor's operation caused the damage:

(i) Refer the claim first to the contractor for settlement.

(ii) Settle the claim under this subpart if the contractor does not pay it or excessively delays payment, and assert a claim against the contractor.

(d) *Damage to mobile or manufactured homes and contents in shipment.* Pay such claims if there is no evidence of structural or mechanical failure for which the manufacturer is responsible.

(e) *Borrowed property.* Pay for loss or damage to property claimants borrow for their use. Either the borrower or lender, if proper claimants, may file a claim. Do not pay for property borrowed to accommodate the lender, i.e., such as to avoid weight or baggage restrictions in travel.

(f) *Marine or aircraft incident.* Pay claims of crewmembers and passengers who are in duty or leave status at the time of the incident. Payable items include jettisoned baggage, clothing worn at the time of an incident, and reasonable amounts of money, jewelry, and other personal items.

(g) *Combat losses.* Pay for personal property losses, whether or not the United States was involved, due to:

- (1) Enemy action.
- (2) Action to prevent capture and confiscation.
- (3) Combat activities.

(h) *Civil activity losses.* Pay for losses resulting from a claimant's acts to:

- (1) Quell a civil disturbance.
- (2) Assist during a public disaster.
- (3) Save human life.
- (4) Save government property.

(i) *Confiscated property.* Pay for losses when:

- (1) A foreign government unjustly confiscates property.

(2) An unjust change or application of foreign law forces surrender or abandonment of property.

(j) *Clothing and accessories worn on the person.* Pay claims for damage to eyeglasses, hearing aids, and dentures the government did not supply, when the damage results from actions beyond the normal risks associated with daily living and working. Claimants assume the risk of normal wear and tear, and their negligence bars payment of the claim.

(k) *Money losses.* Pay claims for loss of money when the losses are due to theft from quarters, other authorized places, or from the person, if the claimant was required to be in the area and could not avoid the theft by due care. As a general rule, \$200.00 is reasonable to have in quarters, and \$100.00 is reasonable to have on the person unless:

(1) The money was in a bona fide coin collection.

(2) The claimant can justify possession of the money for a PCS move, extended TDY, vacation, extensive shopping trip, or similar circumstances. The claimant must show a good reason why the money had not been deposited in a bank or converted into travelers checks or a money order.

(3) Local commercial facilities are not available or because U.S. personnel do not generally use such facilities.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, 83689, Nov. 22, 2016]

§ 842.26 Claims not payable.

A claim is not payable if:

(a) It is not incident to the claimant's service.

(b) The loss or damage is caused in whole or in part by the negligence or wrongful act of the claimant, the claimant's spouse, agent, or employee.

(c) It is a subrogation or assigned claim.

(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.

(e) It is intangible property including bank books, promissory notes, stock certificates, bonds, baggage checks, insurance policies, checks, money orders, travelers checks and credit cards.

(f) It is government property, including issued clothing items carried on an individual issue supply account. (Clothing not carried on an individual issue supply account which is stolen or clothing lost or damaged in transit may be considered as a payable item when claimed.)

(g) It is enemy property.

(h) It is a loss within the United States at offbase quarters the government did not provide.

(i) It is damage to real property.

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

(k) It is property acquired or shipped for persons other than the claimant or the claimant's immediate family; however, a claim for property acquired for bona fide gifts may be paid.

(l) It is an article held for sale, resale, or used primarily in a private business.

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

(n) It is an item fraudulently claimed.

(o) It is for charges for labor performed by the owner or immediate family member.

(p) It is for financial loss due to changed or cancelled orders.

(q) It is for expenses of enroute repair of a mobile or manufactured home.

(r) It is a loss of use of personal property.

(s) It is an attorney or agent fee.

(t) It is the cost of preparing a claim, other than estimate fees.

(u) It is an inconvenience expense.

(v) It is a loss of, or damage to POV driven during PCS.

(w) It is a personal property insurance premium.

(x) It is a claim for a thesis or other similar papers, except for the cost of materials.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83688, 83689, Nov. 22, 2016]

§ 842.27

§ 842.27 Reconsideration of a claim.

A claimant may request reconsideration of an initial settlement or denial of a claim. The claimant sends the request in writing, to the settlement authority within a reasonable time following the initial settlement or denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(a) The original settlement authority reviews the reconsideration request. The settlement authority sends the entire claim file with recommendations and supporting rationale to the next higher settlement authority if all relief the claimant requests is not granted.

(b) The decision of the higher settlement authority is the final administrative action on the claim.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.28 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. The Air Force does not seek contribution or indemnity from U.S. military personnel or civilian employees whose conduct in scope of employment gave rise to government liability.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

§ 842.29 Depreciation and maximum allowances.

The military services have jointly established the "Allowance List-Depreciation Guide" to determine values for most items and to limit payment for some categories of items.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83688, Nov. 22, 2016]

Subpart D—Military Claims Act (10 U.S.C. 2733)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83690, Nov. 22, 2016, unless otherwise noted.

32 CFR Ch. VII (7–1–25 Edition)

§ 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.

[81 FR 83690, Nov. 22, 2016]

§ 842.31 Definitions.

(a) *Appeal*. A request by the claimant or claimant's authorized agent to re-evaluate the final decision. A request for reconsideration and an appeal are the same for the purposes of this subpart.

(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 U.S. Mail, certified mail, return receipt requested.

(c) *Noncombat activity*. Activity, other than combat, war or armed conflict, that is particularly military in character and has little parallel in the civilian community.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83690, Nov. 22, 2016]

§ 842.32 Delegations of authority.

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

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

(ii) Settle claims for more than \$100,000, paying the first \$100,000 and reporting the excess to the General Accounting Office for payment.

(iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle claims for \$100,000 or less and deny claims in any amount.

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

(i) The Deputy Judge Advocate General.

(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 U.S. 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.

(c) *Appellate authority.* Upon appeal, a settlement authority has the same authority specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it had previously denied.

(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 in any sum within its delegated settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

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

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

(4) On-base animal bite cases.

(5) Personal injury from asbestos or radon.

(6) Claims based upon an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation.

(7) Claims based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government.

(8) Claims not payable because payment is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA.

(9) Claims 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.

(10) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991. Redesignated and amended at 81 FR 83690, Nov. 22, 2016]

§ 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.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83690, Nov. 22, 2016]

§ 842.34 Advance payments.

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

[81 FR 83690, Nov. 22, 2016]

§ 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

§ 842.36

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.

(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 U.S. is at war or in an armed conflict when the claim accrues or if the U.S. 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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83690, Nov. 22, 2016]

§ 842.36 Who may file a claim.

(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

32 CFR Ch. VII (7-1-25 Edition)

present evidence of authority to present the claims.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83690, Nov. 22, 2016]

§ 842.37 Who are proper claimants.

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

(b) U.S. 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 U.S. 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.

[81 FR 83690, Nov. 22, 2016]

§ 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 U.S. Government.

(c) Subrogees of § 842.42(a) and (b).

(d) Inhabitants of foreign countries.

[81 FR 83690, Nov. 22, 2016]

§ 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.

(b) Claims arising from noncombat activities of the United States, whether or not such injuries of damages arose out of the negligent or wrongful acts or omissions by United States military or civilian employees acting within the scope of their employment.

Department of the Air Force, DoD

§ 842.40

(c) Claims for property damage of U.S. military personnel under conditions listed in paragraphs (a) and (b) of this section, where the damage occurred on a military installation and is not payable under the Military Personnel and Civilian Employees' Claims Act.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990. Redesignated and amended at 81 FR 83690, Nov. 22, 2016]

§ 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 U.S. 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 U.S. officer of customs or excise, or any other U.S. 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 U.S. 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 U.S. 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 U.S. military forces.

(h) Is for the personal injury or death of a member of the Armed Forces of the U.S. 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:

§ 842.40

32 CFR Ch. VII (7-1-25 Edition)

(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 U.S.

(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 U.S. 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 U.S.

(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 U.S., 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 U.S. 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 U.S. otherwise payable. Forward claims considered not payable under this paragraph (ff), with recommendations for disposition, to USAF/JACC.

(gg) Arises out of the loss, mis-carriage, or negligent transmission of letters or postal matter by the U.S. 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 U.S.

(ll) Is for attorney fees or costs in connection with pursuing an administrative or judicial remedy against the U.S. 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 U.S. safe for use for any recreational purpose, or for a failure by the U.S. 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 U.S. (including a nonappropriated fund instrumentality) to use the premises.

[81 FR 83691, Nov. 22, 2016]

§ 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.

§ 842.42

(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.

[81 FR 83692, Nov. 22, 2016]

§ 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.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83690, 83692, Nov. 22, 2016]

§ 842.43 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 U.S. military personnel or civilian employees whose conduct gave rise to government liability.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83690, Nov. 22, 2016]

§ 842.44 Attorney fees.

In the settlement of any claim pursuant to 10 U.S.C. 2733 and this subpart, attorney fees will not exceed 20 percent

32 CFR Ch. VII (7–1–25 Edition)

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 paragraph, an award is deemed to be the cost to the United States of any trust or structured settlement, and not its future value.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83690, Nov. 22, 2016]

Subpart E—Foreign Claims (10 U.S.C. 2734)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83692, Nov. 22, 2016, unless otherwise noted.

§ 842.45 Scope of this subpart.

This subpart tells how to settle and pay claims against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death caused by military and civilian members of the U.S. Armed Forces in foreign countries.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83692, Nov. 22, 2016]

§ 842.46 Definitions.

(a) *Foreign country.* A national state other than the United States, including any place under jurisdiction of the United States in a foreign country.

(b) *Inhabitant of a foreign country.* A person, corporation, or other business association whose usual place of abode is in a foreign country. The term “inhabitant” has a broader meaning than such terms as “citizen” or “national”, but does not include persons who are merely temporarily present in a foreign country. It does not require foreign citizenship or domicile.

(c) *Appointing authority.* An Air Force official authorized to appoint members to foreign claims commissions (FCC).

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83692, Nov. 22, 2016]

§ 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.

Department of the Air Force, DoD

§ 842.52

(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 U.S. 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.

[81 FR 83692, Nov. 22, 2016]

§ 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.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. An amendment must be in writing and signed by the claimant or authorized agent.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 842.49 Advance payments.

Subpart P of this part outlines procedures for advance payments.

[81 FR 83693, Nov. 22, 2016]

§ 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.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) War or armed conflict does not toll the statute of limitations.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 842.51 Who may file a claim.

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

(b) Injured persons or other authorized agents for personal injury.

(c) Executors or administrators of a decedent's estate, or any other person legally entitled to do so under applicable local law, for an individual's death.

(d) Authorized agents (including the claimant's attorney) must show their title or legal capacity and present evidence of authority to present the claim.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83692, Nov. 22, 2016]

§ 842.52 Who are proper claimants.

Claimants include inhabitants of a foreign country who are:

(a) Foreign nationals. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though

§ 842.53

his or her survivors are U.S. inhabitants, the FCA will apply.

(b) U.S. nationals residing abroad, unless the claim arises from a benefit, privilege or service provided to them by the U.S. 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 U.S. civilian contractor in furtherance of a contract with the U.S. Government, or sponsored by or accompanying such a person.

(c) U.S. corporations with a place of business in the country in which the claim arose.

(d) Foreign governments and their political subdivisions, including a municipal and prefectural government.

(e) Foreign companies and business entities.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 842.53 Who are not proper claimants.

Persons who are not proper claimants include:

(a) Insurers and other subrogees.

(b) Persons determined to be U.S. inhabitants. U.S. inhabitants include dependents of U.S. military personnel and U.S. 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.

(d) Civilian employees of the United States, including local inhabitants, injured in the scope of their employment.

(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.

(f) A national or nationally controlled corporation of a country engaging in war or armed conflict with the United States or its allies, unless the FCC or local military commander de-

32 CFR Ch. VII (7-1-25 Edition)

termines the claimant is friendly with the United States.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 842.54 Payment criteria.

The following criteria is considered before determining liability.

(a) The incident causing the damage or injury must arise in a foreign country and be caused by noncombatant activities of the U.S. 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 U.S. 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 U.S. 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 U.S. Armed Forces member or employee not listed in § 842.64(c)(1). The Act imposes responsibility on the United States when it places a U.S. 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.

(b) Scope of employment is considered in the following situations.

(1) It is a prerequisite to U.S. 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

Department of the Air Force, DoD

§ 842.55

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 U.S. 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 U.S. Armed Forces member or employee not listed in § 842.64(c)(1) of this part. The Act imposes responsibility on the United States when it places a U.S. 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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 842.55 Claims not payable.

A claim is not payable when it:

(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.

(b) Is purely contractual in nature.

(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.

(d) Accrues from a private contractual relationship between U.S. personnel and third parties about property leases, public utilities, hiring of domestic servants, and debts of any description. This claim is sent for action to the commander of the person concerned (see 32 CFR part 818).

(e) Is based solely on compassionate grounds.

NOTE: A Solatium payment is paid from O&M funds as an investigative expense.

(f) Is a paternity claim.

(g) Is for patent or copyright infringement.

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

(i) Is for rent, damage, or other payments involving regular acquisition, possession, and disposition of real property by or for the Air Force.

(j) Is filed by a Communist country or its inhabitants, unless authorized by AFLOA/JACC.

(k) Is for real property taken by a continuing trespass.

(l) Is for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq.*).

(2) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

(3) A U.S. contract or agreement providing employee benefits through insurance, local law, or custom, where the United States pays for them either directly or as part of the consideration under the contract. (See 42 U.S.C. 1651 and 42 U.S.C. 1701.) The Judge Advocate General or Chief, Claims and Tort Litigation Staff, AFLOA/JACC, may authorize an award where local benefits are not adequate. Local benefits are deducted from any award.

(m) Results from an action by an enemy, or directly or indirectly from an act of the U.S. 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 U.S. Armed Forces, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

(n) Is based on negligence of a concessionaire or other independent contractor.

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

(p) Is the subject of litigation against the United States or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign

§ 842.56

32 CFR Ch. VII (7-1-25 Edition)

court. Claims settlement may be authorized by AFLOA/JACC in appropriate cases on request.

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

(r) Is one for which a foreign government is responsible under SOFA, treaty, or other agreement. However, AFLOA/JACC may authorize payment of a claim where the foreign government refuses to recognize its legal responsibilities and the claimant has no other means of compensation.

(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 U.S. Armed Forces' custody if the claim is otherwise payable.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83692, 83693, Nov. 22, 2016]

§ 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 U.S. 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 U.S. 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 U.S. 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 U.S. Armed Forces; or when the member or employee has the benefit of the insurance (such as when a U.S. 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).

[81 FR 83694, Nov. 22, 2016]

§ 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.

[81 FR 83694, Nov. 22, 2016]

§ 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 U.S. military members or civilian employees whose conduct gave rise to U.S. Government liability, or whenever it would be harmful to international relations.

[81 FR 83694, Nov. 22, 2016]

Subpart F—International Agreement Claims (10 U.S.C. 2734a and 2734b)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83694, Nov. 22, 2016, unless otherwise noted.

§ 842.59 Scope of this subpart.

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

[81 FR 83694, Nov. 22, 2016]

§ 842.60 Definitions.

The following are general definitions. See the relevant international agreement for the specific meaning of a term to use with a specific claim.

(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.

(b) *Contracting party.* A nation signing the governing agreement.

(c) *Force.* Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

(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 le-

gally 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 U.S. personnel are stationed in a foreign country, the U.S. 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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83694, Nov. 22, 2016]

§ 842.61 Delegations of authority.

(a) *Overseas settlement authority.* Staff Judge Advocates of the Air Force component commands of the U.S. geographic combatant commands will, within their combatant command AORs, fulfill U.S. 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.

§ 842.62

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

[81 FR 83694, Nov. 22, 2016]

§ 842.62 Filing a claim.

(a) *Claims arising in a foreign country.*
(1) If a third party claimant tries to file an international agreement claim with Air Force, direct that person to the appropriate receiving State office.

(2) If the Air Force receives a claim, send it to the U.S. sending State office for delivery to the receiving State.

(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 U.S. 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, U.S. 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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83694, 83695, Nov. 22, 2016]

Subpart G—Use of Government Property Claims (10 U.S.C. 2737)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016, unless otherwise noted.

§ 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.

[81 FR 83695, Nov. 22, 2016]

32 CFR Ch. VII (7–1–25 Edition)

§ 842.64 Definitions.

(a) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the government.

(b) *Vehicle.* Every mechanical device used as a means of transportation on land.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 842.65 Delegations of authority.

(a) *Settlement authority.* The following individuals have delegated authority to settle claims for \$1,000 or less and deny them in any amount.

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) Director of Civil Law.

(4) Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation staff.

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

(6) SJAs of single base GCMs and GCMs in PACAF and USAFE.

(7) The SJA of each Air Force base, station and fixed installation.

(8) Any other judge advocate designated by The Judge Advocate General.

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

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

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83695, Nov. 22, 2016]

§ 842.66 Filing a claim.

(a) *How and when filed.* A claim has been filed when a federal agency receives from a claimant or the claimant's duly authorized agent written notification of an incident of property damage, personal injury or death accompanied by a demand for money damages in a sum certain. A claim incorrectly presented to the Air Force will be promptly transferred to the appropriate Federal agency.

Department of the Air Force, DoD

§ 842.72

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final Air Force action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 842.67 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act causing property damage, personal injury or death for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was filed.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 842.68 Claims payable.

When all of the following are present, payment of a claim in the amount of \$1,000 or less is authorized if it:

(a) Is for property damage, personal injury, or death. Payment for a personal injury or death claim is limited to costs of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States.

(b) Was caused by a military member or civilian employee of the Air Force, whether acting within or outside the scope of employment.

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

(d) Is not payable under any other provision of law except Article 139, UCMJ.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83695, Nov. 22, 2016]

§ 842.69 Claims not payable.

A claim is not payable if it is:

(a) Payable under any other provision of the law.

(b) Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant's agent, or employee.

(c) A subrogated claim.

(d) Recoverable from other sources such as an insurance policy, or recovered from action under Article 139, UCMJ.

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

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83695, Nov. 22, 2016]

§ 842.70 Reconsideration of final denial.

(a) The statute does not provide for appeals. The original settlement authority may, however, reconsider any decision. There is no set format for a reconsideration but it should be submitted in writing within 60 days of the original decision.

(b) The settlement authority may either grant all or any portion of the requested relief without referral to any other office, or forward the entire file with the reasons for the action and recommendations to the next higher claims settlement authority for independent review and final action.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 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.

[81 FR 83695, Nov. 22, 2016]

Subpart H—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016, unless otherwise noted.

§ 842.72 Scope of this subpart.

It sets forth the procedure for administrative settlement of admiralty and

§ 842.73

maritime claims in favor of and against the United States.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 842.73 Definitions.

(a) *Admiralty contracts.* A contract covering maritime services or a maritime transaction such as vessel procurement and space for commercial ocean transportation of DOD cargo, mail, and personnel is an admiralty contract.

(b) *General average.* General average is the admiralty rule that when someone's property is thrown overboard to save a ship, the ship owner and all owners of the cargo must share the loss.

(c) *Maritime torts.* A maritime tort is one committed in navigable waters or on land or in the air where a substantial element of the damage, personal injury, or death occurred in navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

(d) *Vessel.* Every description of watercraft used or usable as a means of transportation on water is a vessel. (1 U.S.C. 3)

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83695, Nov. 22, 2016]

§ 842.74 Delegations of authority.

(a) The following officials have the authority to settle a claim against the Air Force in the amounts provided:

(1) The Secretary of the Air Force has the authority to:

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

(ii) [Reserved]

(2) The following individuals have delegated authority to settle claims for \$100,000 or less:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

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

(b) Delegation of settlement authority on claims in favor of the United States.

32 CFR Ch. VII (7-1-25 Edition)

(1) The Secretary of the Air Force has the authority to settle claims for damage to property under the jurisdiction of the Air Force in an amount not to exceed \$500,000, and to settle claims for salvage services performed by the Air Force in any amount.

(2) AFLOA/JACC refers all claims for damage to property under the jurisdiction of the Air Force for more than \$500,000 to the Department of Justice.

(3) The following individuals have delegated authority to settle claims for \$100,000 or less and deny them in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

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

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991. Redesignated and amended at 81 FR 83695, Nov. 22, 2016]

§ 842.75 Reconsidering claims against the United States.

This section provides the policy and procedures to reconsider any maritime claim made against the United States.

(a) The settlement authority may reconsider any claim previously disapproved in whole or in part when either:

(1) The claimant submits new evidence in support of the claim.

(2) There were errors or irregularities in the submission or settlement of the claim.

(b) There is no right of appeal to higher authority under this subpart.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83695, Nov. 22, 2016]

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

SOURCE: 81 FR 83695, Nov. 22, 2016, unless otherwise noted.

§ 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 J—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83696, Nov. 22, 2016, unless otherwise noted.

§ 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.

[81 FR 83696, Nov. 22, 2016]

§ 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

§ 842.82

32 CFR Ch. VII (7–1–25 Edition)

claim and to compromise, suspend or terminate action on claims asserted for \$25,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate it to a subordinate judge advocate or civilian attorney, in writing.

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

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83696, Nov. 22, 2016]

§ 842.82 Assertable claims.

A claim may be asserted in writing for loss of or damage to government property, against a tort-feasor when:

(a) Damage results from negligence and the claim is for:

(1) More than \$100.

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

(b) The claim is based on a contract and the contracting officer does not intend to assert a claim under the contract. The contracting officer's intention not to assert a claim should be recorded in a memorandum for the record and placed in the claim file.

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

(d) The Tort-feasor or his insurer presents a claim against the government arising from the same incident. (Both claims should be processed together.)

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

(f) The claim is based on product liability. AFLOA/JACC approval must be obtained before asserting the claim.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83696, Nov. 22, 2016]

§ 842.83 Non-assertable claims.

A claim is not assertable under this subpart when it is for:

(a) Reimbursement for military or civilian employees for their negligence claims paid by the United States.

(b) Loss or damage to government property:

(1) Caused by a nonappropriated fund employee acting in the scope of employment.

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

(c) Loss or damage to non-appropriated fund property assertable under other provisions.

(d) Loss or damage caused by an employee of an instrumentality of the government in the absence of statutory authority to reimburse.

(e) Monies recovered against a foreign government or any of its political subdivisions. (AFLOA/JACC may authorize this claim as an exception to the rule).

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

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990. Redesignated and amended at 81 FR 83696, Nov. 22, 2016]

§ 842.84 Asserting the claim.

The base SJA asserts the claim against the tort-feasor by mailing, certified mail, return receipt requested, the original and one copy of a "Notice of Claim" that includes the following:

(a) Reference to the statutory right to collect.

(b) A demand for payment or restoration.

(c) A description of damage.

(d) The date and place of incident.

(e) The name, phone number, and office address of claims personnel to contact.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83696, Nov. 22, 2016]

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

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

[81 FR 83696, Nov. 22, 2016]

Department of the Air Force, DoD

§ 842.89

§ 842.86 Statute of limitations.

The government must file suit within 3 years after the cause of action accrues. It accrues when a responsible U.S. official knew or reasonably should have known the material facts that resulted in the claimed loss.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83696, Nov. 22, 2016]

§ 842.87 Compromise, termination, and suspension of collection.

This section establishes the guidelines for compromise, termination, or suspension of a claim.

(a) Compromise of a claim is allowable when:

(1) The tort-feasor is unable to pay the full amount within a reasonable time. (A sworn statement showing the debtor's assets and liabilities, income, expenses, and insurance coverage should be obtained and included in the claim file).

(2) The Government is unable to collect a claim in full within a reasonable time even though the enforced collection proceedings are used for collection.

(3) The cost to collect does not justify enforced collection of the full amount.

(4) The government may have difficulty proving its case in court for the full amount claimed.

(b) Compromise is not allowable when there may be fraud, misrepresentation, or violation of antitrust laws. The Department of Justice must authorize compromise of such claims.

(c) Termination of collection is allowable when:

(1) The government is unable to collect the debt after exhausting all collection methods.

(2) The government is unable to locate the tort-feasor.

(3) The cost to collect will exceed recovery.

(4) The claim is legally without merit.

(5) The evidence does not substantiate the claim.

(d) Suspension of collection is allowable when:

(1) The government is unable to locate tort-feasor.

(2) The tort-feasor is presently unable to pay but:

(i) The statute of limitations is tolled or is running anew.

(ii) Future collection may be possible.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83696, Nov. 22, 2016]

Subpart K—Claims Under the National Guard Claims Act (32 U.S.C. 715)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83696, Nov. 22, 2016, unless otherwise noted.

§ 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 non-combat activities.

[81 FR 83696, Nov. 22, 2016]

§ 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.

§ 842.90

32 CFR Ch. VII (7–1–25 Edition)

(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).

[81 FR 83696, Nov. 22, 2016]

§ 842.90 Delegations of authority.

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

- (i) Settle a claim for \$100,000 or less.
- (ii) Settle a claim for more than \$100,000, paying the first \$100,000 and reporting the excess to the General Accounting Office for payment.
- (iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle a claim for \$100,000 or less, and deny a claim in any amount.

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

- (i) The Deputy Judge Advocate General.
- (ii) The Director of Civil Law.
- (iii) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The 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 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.

(c) *Appellate authority.* Upon appeal a settlement authority has the same authority to settle a claim as that specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it previously denied.

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

(e) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated settlement authority regardless of the amount claimed. Unsettled claims in excess of the delegated settlement authority are sent to the individual with higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions.* No authority below the level of AFLOA/JACC may settle claims for:

(1) On the job personal injury or death of an employee of a government contractor or subcontractor.

(2) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83696, Nov. 22, 2016]

§ 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

Department of the Air Force, DoD

§ 842.96

claimant or his or her authorized agent must submit a written, signed demand.

[81 FR 83697, Nov. 22, 2016]

§ 842.92 Advance payments.

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

[81 FR 83697, Nov. 22, 2016]

§ 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 U.S. is at war or in an armed conflict when the claim accrues or if the U.S. 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.

[81 FR 83697, Nov. 22, 2016]

§ 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.

[81 FR 83697, Nov. 22, 2016]

§ 842.95 Who are proper claimants.

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

(b) U.S. 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 U.S. 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.

[81 FR 83697, Nov. 22, 2016]

§ 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 U.S. 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.

§ 842.97

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

[81 FR 83697, Nov. 22, 2016]

§ 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.

[81 FR 83697, Nov. 22, 2016]

§ 842.98 Claims not payable.

The following are 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 U.S. 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.

(d) Claims for damage to or loss of bailed property when the bailor specifically assumed such risk.

(e) Claims for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act.

(2) The Longshore and Harbor Workers' Compensation Act.

(3) A United States contract or agreement providing employee benefits through insurance, local law, or custom and the United States pays for such benefits either directly or as a

32 CFR Ch. VII (7-1-25 Edition)

part of the consideration under the contract.

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

(g) Claims caused by the negligent or wrongful acts or omissions of members of the District of Columbia ANG.

(h) Claims arising from a private rather than a government transaction.

(i) Claims for patent or copyright infringement.

(j) Claims for damage, use, or other expenses involving the regular acquisition, possession, and disposition of real property by or for the ANG.

(k) Claims for the taking of private real property by a continuing trespass or by a technical trespass such as overflights of aircraft.

(l) Claims for loss of rental fee for personal property.

(m) Claims in litigation against the United States.

(n) Claims for a maritime occurrence covered under U.S. admiralty laws.

(o) Claims for:

(1) Any tax or customs duty.

(2) The detention of any goods or merchandise by any officer of customs, excise, or law enforcement officer.

(p) Claims from an act or omission of any employee of the Government while administering the provisions of the Trading With the Enemy Act.

(q) Claims for damages caused by the United States' imposition or establishment of a quarantine.

(r) Claims for libel, slander, misrepresentation, deceit or interference with contract rights.

(s) Claims that result wholly from the negligent or wrongful act of the claimant or the claimant's agent.

(t) Claims for reimbursement of medical, hospital, or burial expenses furnished at the expense of the United States, any state, the District of Columbia, or Puerto Rico.

(u) Claims for damage from floods or flood waters.

(v) Claims for damages caused by the fiscal operations of the Treasury or by regulation of the monetary system.

(w) Claims caused by the negligent or wrongful acts or omissions of ANG members acting within the scope of their employment, while performing

Department of the Air Force, DoD

§ 842.100

duty under 32 U.S.C., on or after 29 December 1981.

(x) Claims caused by the negligent or wrongful acts or omissions of ANG technicians employed under 32 U.S.C. 709.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83696, 83697, Nov. 22, 2016]

§ 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 U.S. 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.

[81 FR 83698, Nov. 22, 2016]

§ 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.

[81 FR 83698, Nov. 22, 2016]

§ 842.101

32 CFR Ch. VII (7–1–25 Edition)

§ 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.

[81 FR 83698, Nov. 22, 2016]

§ 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.

[81 FR 83698, Nov. 22, 2016]

Subpart L—Hospital Recovery Claims (42 U.S.C. 2651–2653)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83698, Nov. 22, 2016, unless otherwise noted.

§ 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.

[81 FR 83698, Nov. 22, 2016]

§ 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.

(b) *Compromise.* A mutually binding agreement where payment is made and accepted in an amount less than the full amount of the claim.

(c) *Injured party.* The person who received medical care for injury or disease as a result of the incident on which the claim is based. The injured party may be represented by a guardian, personal representative, estate, or survivor.

(d) *Medical care.* Includes medical and dental treatment, prostheses, and medical appliances the U.S. furnished or reimbursed other sources for providing.

(e) *Reasonable value of medical care.* Either:

(1) An amount determined by reference to rates set by the Director of the Office of Management and Budget for the value of necessary medical care in U.S. medical facilities.

(2) The actual cost of necessary care from other sources which was reimbursed by the United States.

(f) *Third party.* An individual, partnership, business, corporation (including insurance carriers), which is indebted to the United States for medical care provided to an injured party. (In some cases, a state or foreign government can be the third party.)

(g) *Waiver.* The voluntary relinquishment by the United States of the right to collect for medical care provided to an injured party.

(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.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83698, Nov. 22, 2016]

§ 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:

Department of the Air Force, DoD

§ 842.107

- (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 U.S. or the injured party arising out of the same incident.

[81 FR 83698, Nov. 22, 2016]

§ 842.106 Assertable claims.

A claim should be asserted when the Air Force has furnished or will furnish medical care in military health care facilities or when the Air Force is responsible for reimbursement to a private care provider and either of the following conditions are met:

(a) Third party liability in tort exists for causing an injury or disease.

(b) Local or foreign law permits the United States to recover or the United States is a third party beneficiary under uninsured motorist coverage, medical pay insurance coverage, worker's compensation, no-fault statutes, or other statutes.

A claim should only be asserted if the base SJA determines it merits assertion. Claims for \$150 or less need not be asserted; they should be asserted only if the base SJA or designee determines the collection will not exceed the cost to collect, the third party offers payment and demands a release from the United States before paying damages to the injured party, or the United States asserts a property damage claim under subpart L arising out of the same incident.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83698, Nov. 22, 2016]

§ 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 non-appropriated 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.*

§ 842.108

32 CFR Ch. VII (7-1-25 Edition)

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 U.S. 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.

[81 FR 83699, Nov. 22, 2016]

§ 842.108 Asserting the claim.

When asserting the claim, the base SJA will:

(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 U.S. status as a third-party beneficiary under various types of insurance poli-

cies, 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.

(c) Mail all copies of the SF 96, or claim notice on Air Force letterhead:

(1) By certified mail with return receipt requested in all claims in which the amount claimed is \$5,000.00 or more or in which there is a substantial likelihood that the final amount claimed will be \$5,000.00 or more.

(2) By regular or certified mail with return receipt requested at the SJA's discretion in cases in which the final amount claimed is less than \$5,000.00, unless there is no response to the initial notice of claim within a reasonable period of time and a second notice of claim is required to be mailed. All second notices of claim and copies will be mailed by certified mail, return receipt requested.

(d) Notify the injured parties promptly 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 and furnish the civilian counsel's name to the claims officer.

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

Department of the Air Force, DoD

§ 842.112

(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 SJA.

(5) Should read the enclosed Privacy Act statement.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83698, 83699, Nov. 22, 2016]

§ 842.109 Referring a claim to the U.S. 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.

[81 FR 83699, Nov. 22, 2016]

§ 842.110 Statute of limitations.

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 CHAMPUS, whichever is first.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83698, Nov. 22, 2016]

§ 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.

[81 FR 83699, Nov. 22, 2016]

§ 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 U.S.

(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 third 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.

§ 842.113

(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.

[81 FR 83699, Nov. 22, 2016]

§ 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.

[81 FR 83700, Nov. 22, 2016]

Subpart M—Nonappropriated Fund Claims

SOURCE: 81 FR 83700, Nov. 22, 2016, unless otherwise noted.

§ 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.

[81 FR 83700, Nov. 22, 2016]

§ 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

32 CFR Ch. VII (7–1–25 Edition)

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.

[81 FR 83700, Nov. 22, 2016]

§ 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.

[81 FR 83700, Nov. 22, 2016]

§ 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.

[81 FR 83700, Nov. 22, 2016]

**Subpart N—Civil Air Patrol Claims
(5 U.S.C. 8101(1)(B), 8102(a),
8116(c), 8141; 10 U.S.C. 9441,
9442; 36 U.S.C. 201–208)**

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83700, Nov. 22, 2016, unless otherwise noted.

§ 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 U.S. 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.

[81 FR 83700, Nov. 22, 2016]

§ 842.119 Definitions.

(a) *Civil Air Patrol (CAP)*. A federally chartered, non-profit corporation which was designated by Congress in 1948 as a volunteer civilian auxiliary of the Air Force.

(b) *Air Force noncombat mission*. Although not defined in any statute, an Air Force noncombat mission is any mission for which the Air Force is tasked, by statute, regulation, or higher authority, which does not involve actual combat, combat operations or combat training. The Air Force, in lieu of using Air Force resources, can use the services of the Civil Air Patrol to fulfill these type missions. When performing an Air Force noncombat mission, the Civil Air Patrol is deemed to be an instrumentality of the United States. In order for a mission to be a noncombat mission of the Air Force under this part, it must either:

(1) Have a special Air Force mission order assigned, and, the Air Force must exercise operational control over the mission.

(2) Involve a peacetime mission the Air Force is tasked to perform by higher authority which requires the expenditure of Air Force resources to accomplish, and the Air Force specifically approves the mission as a noncombat mission, and assigns the mission to the Civil Air Patrol to perform.

(c) *CAP members*. CAP members are private citizens who volunteer their time, services, and resources to accomplish CAP objectives and purposes. The two primary categories of members are:

(1) *Cadets*. Youths, 13 years (or having satisfactorily completed the sixth grade) through 17 years of age, who meet such prerequisites as the CAP corporation may establish from time to time. Cadet status may be retained until age 21.

(2) *Seniors*. Adults, 18 years of age or older (there is no maximum age), who meet such prerequisites as the CAP corporation may establish from time to time, and who have not retained cadet status.

(d) *Liaison officers*. Active duty Air Force officers assigned to liaison duty at the national, regional, and wing (state) levels of CAP.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83700, Nov. 22, 2016]

§ 842.120 Improper claimants.

CAP members, 18 years of age or older, whose personal injury or death claim is subject to the Federal Employees' Compensation Act, are improper claimants. FECA is their exclusive remedy.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83700, 83701, Nov. 22, 2016]

§ 842.121 Claims payable.

A claim is payable if all of the following are present:

(a) It is for property damage, personal injury, or death.

(b) It is proximately caused by a CAP member.

(c) It arises from an Air Force noncombat mission performed by the CAP, or arises from an authorized mission

§ 842.122

performed by the CAP for which specific coverage under this subpart is granted by AFLOA/JACC.

(d) It is otherwise payable because it meets the provisions of an appropriate subpart of this part.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83700, 83701, Nov. 22, 2016]

§ 842.122 Claims not payable.

A claim is not payable if it:

(a) Is for use or depreciation of privately owned property, operated by CAP or its members on an Air Force noncombat mission, or other specified Air Force authorized mission.

(b) Is for personal services or expenses incurred by CAP or its members while engaged in an Air Force noncombat mission, or other specified Air Force authorized mission.

(c) Arises out of a CAP incident based solely on government ownership of property on loan to CAP.

(d) Arises from a CAP activity not performed as a noncombat mission of the Air Force or as a specified Air Force authorized mission. These claims are sent to HQ CAP-USAF/JA for referral to CAP's private insurer, with a copy of the transmittal letter to AFLOA/JACC.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83700, 83701, Nov. 22, 2016]

Subpart O—Advance Payments (10 U.S.C. 2736)

SOURCE: 55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83701, Nov. 22, 2016, unless otherwise noted.

§ 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.

[81 FR 83701, Nov. 22, 2016]

§ 842.124 Delegation of authority.

(a) The Secretary of the Air Force has authority to make an advance payment of \$100,000 or less.

(b) The Judge Advocate General has delegated authority to make an advance payment of \$100,000 or less.

32 CFR Ch. VII (7–1–25 Edition)

(c) The following individuals have delegated authority to make an advance payment of \$25,000 or less:

(1) The Deputy Judge Advocate General.

(2) The Director of Civil Law.

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

(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.

(d) This authority may be redelegated either orally or in writing. Oral redelegations should be confirmed in writing as soon as practical.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83701, Nov. 22, 2016]

§ 842.125 Who may request.

A proper claimant or authorized agent may request an advance payment.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83701, Nov. 22, 2016]

§ 842.126 When authorized.

Make advance payments only where all of the following exist:

(a) The potential claimant could file a valid claim for property damage or personal injury under the Military Claims, Foreign Claims, or National Guard Claims Acts.

(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.

(c) Other resources for such needs are not reasonably available.

(d) The potential claim equals or exceeds the amount of the advance payment.

(e) The recipient signs an advance payment agreement.

[55 FR 2809, Jan. 29, 1990. Redesignated and amended at 81 FR 83701, Nov. 22, 2016]

§ 842.127 When not authorized.

Do not make an advance payment if the claim is payable under the:

(a) Federal Tort Claims Act.

Department of the Air Force, DoD

§ 845.3

(b) International Agreement Claims Act.

(c) Military Personnel and Civilian Employees' Claims Act. (Separate regulations issued under the Act provide for partial payments.)

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83701, Nov. 22, 2016]

§ 842.128 Separate advance payment claims.

Every person suffering injury or property loss may submit a separate request for an advance payment. For example, where the Air Force destroys a house containing a family of four, each family member may submit a separate request for and receive an advance payment of \$100,000 or less.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83701, Nov. 22, 2016]

§ 842.129 Liability for repayment.

The claimant is liable for repayment. Deduct the advance payment from any award or judgment given to a claimant. Reimbursement from the claimant will be sought if the claimant does not file a claim or lawsuit.

[55 FR 2809, Jan. 29, 1990. Redesignated at 81 FR 83701, Nov. 22, 2016]

PART 845—COUNSEL FEES AND OTHER EXPENSES IN FOREIGN TRIBUNALS

Sec.

845.1 Purpose.

845.2 Statutory authority.

845.3 Responsibility.

845.4 Criteria for the provision of counsel and payment of expenses in criminal cases.

845.5 Provision of bail in criminal cases.

845.6 Criteria for the provision of counsel and payment of expenses in civil cases.

845.7 Procedures for hiring counsel and obligating funds.

845.8 Payment of counsel fees and other expenses.

845.9 Appropriated funds chargeable.

845.10 Reimbursement.

845.11 Correspondence.

AUTHORITY: Sec. 8012, 70A Stat. 488, sec. 1037, 72 Stat. 1445; 10 U.S.C. 8012, 1037.

SOURCE: 44 FR 75633, Dec. 21, 1979, unless otherwise noted.

NOTE: This part is derived from chapter 2 of Air Force Regulation 110-12, December 1, 1978.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 845.1 Purpose.

This part establishes criteria and assigns responsibility for the provision of counsel, for the provision of bail, and for the payment of court costs and other necessary and reasonable expenses incident to representation in civil and criminal proceedings, including appellate proceedings, before foreign courts and foreign administrative agencies, which involve members of the Armed Forces, civilian personnel and dependents. Payment of fines is not authorized hereunder.

§ 845.2 Statutory authority.

10 U.S.C. 1037 provides authority for employment of counsel, and payment of counsel fees, court costs, bail, and other expenses incident to representation of persons subject to the Uniform Code of Military Justice before foreign tribunals. For personnel not subject to the Uniform Code of Military Justice, funds for similar expenses may be made available in cases of exceptional interest to the service concerned, upon prior application through the Judge Advocate General of the service concerned, to the appropriate service secretary.

§ 845.3 Responsibility.

(a) Requests for provision of counsel, provision of bail, or payment of expenses will ordinarily be made by the defendant or accused through appropriate channels to the officer exercising general court-martial jurisdiction over him. This officer shall determine whether the request meets the criteria prescribed herein and, based upon such determination, shall take final action approving or disapproving the request. Within their geographical areas of responsibility, major commands in the interest of obtaining prompt and effective legal service may appoint as approval authority, instead of the officer exercising general court-martial jurisdiction, any subordinate