AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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.
842.9 Splitting a claim.

Subpart B—Functions and Responsibilities

842.10 Scope of this subpart.
842.11 Air Force claims organization.
842.12 HQ USAF claims responsibility.
842.13 Staff Judge Advocates' responsibility.
842.14 Claims and assistant claims officers.

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

842.15 Scope of this subpart.
842.16 Definitions.
842.17 Claims payable.
842.18 Claims not payable.
842.19 Limiting provisions.
842.20 Filing a claim.

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

842.21 Scope of this subpart.
842.22 Definitions.
842.23 Delegations of authority.
842.24 Filing a claim.
842.25 Partial payments.
842.26 Statute of limitations.
842.27 Who may file a claim.
842.28 Who are proper claimants.
842.29 Who are not proper claimants.
842.30 General provisions.
842.31 Claims payable.
842.32 Claims not payable.
842.33 Reconsideration of a claim.
842.34 Right of subrogation, indemnity, and contribution.
842.35 Depreciation and maximum allowances.

Subpart E—Carrier Recovery Claims

842.36 Scope of this subpart.
842.37 Definitions.
842.38 Delegations of authority.
842.39 Statute of limitations.

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

842.40 Scope of this subpart.
842.41 Definitions.
842.42 Delegations of authority.
842.43 Filing a claim.
842.44 Advance payments.
842.45 Statute of limitations.
842.46 Who may file a claim.
842.47 Who are proper claimants.
842.48 Who are not proper claimants.
842.49 Claims payable.
842.50 Claims not payable.
842.51 Applicable law.
842.52 Appeal of final denials.
842.53 Right of subrogation, indemnity, and contribution.
842.54 Attorney fees.

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

842.55 Scope of this subpart.
842.56 Definitions.
842.57 Delegations of authority.
842.58 Filing a claim.
842.59 Advance payments.
842.60 Statute of limitations.
842.61 Who may file a claim.
842.62 Who are proper claimants.
842.63 Who are not proper claimants.
842.64 Payment criteria.
842.65 Claims not payable.
842.66 Applicable law.
842.67 Reconsideration of final denials.
842.68 Right of subrogation, indemnity, and contribution.

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

842.69 Scope of this subpart.
842.70 Definitions.
842.71 Delegations of authority.
842.72 Filing a claim.

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

842.73 Scope of this subpart.
842.74 Definitions.
842.75 Delegations of authority.
842.76 Filing a claim.
842.77 Statute of limitations.
842.78 Claims payable.
842.79 Claims not payable.
842.80 Reconsideration of final denial.
842.81 Settlement agreement.

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

842.82 Scope of this subpart.
842.83 Definitions.
842.84 Delegations of authority.
842.85 Reconsidering claims against the United States.

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

842.86 Scope of this subpart.
842.87 Definitions.
842.88 Delegations of authority.
842.89 Statute of limitations.
842.90 Reconsideration of final denials.
842.91 Settlement agreements.

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

842.92 Scope of this subpart.
842.93 Delegations of authority.
842.94 Assertable claims.
842.95 Non-assertable claims.
842.96 Asserting the claim.
842.97 Referring a claim to the US Attorney or the Department of Justice.
842.98 Statute of limitations.
842.99 Compromise, termination, and suspension of collection.

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

842.100 Scope of this subpart.
842.101 Definitions.
842.102 Delegations of authority.
842.103 Filing a claim.
842.104 Advance payments.
842.105 Statute of limitations.
842.106 Who may file a claim.
842.107 Who are proper claimants.
842.108 Who are not proper claimants.
842.109 Claims payable.
842.110 Claims not payable.
842.111 Applicable law.
842.112 Appeal of final denials.
842.113 Government's right of subrogation, indemnity, and contribution.
842.114 Attorney fees.

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

842.115 Scope of this subpart.
842.116 Definitions.
842.117 Delegations of authority.
842.118 Assertable claims.
842.119 Nonassertable claims.
842.120 Asserting the claim.
842.121 Referring a claim to the US Attorney.
842.122 Statute of limitations.
842.123 Recovery rates in government facilities.
842.124 Waiver and compromise of United States interest.
842.125 Reconsideration of a waiver for undue hardship.

Subpart O—Nonappropriated Fund Claims

842.126 Scope of this subpart.
842.127 Definitions.
842.128 Delegations of authority.
842.129 Settlement of claims against NAFIs.
842.130 Payment of claims against NAFIs.
842.131 Tort and tort type claims.
842.132 Claims by NAFI employees.
842.133 Claims by customers, members, participants, or authorized users.
842.134 Claims in favor of NAFIs.
842.135 Advance payments.
842.136 Claim payments and deposits.

Subpart P—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)

842.137 Scope of this subpart.
842.138 Definitions.
842.139 Delegations of authority.
842.140 Proper claimants.
842.141 Improper claimants.
842.142 Claims payable.
842.143 Claims not payable.

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

842.144 Scope of this subpart.
842.145 Delegation of authority.
842.146 Who may request.
842.147 When authorized.
842.148 When not authorized.
842.149 Separate advance payment claims.
842.150 Liability for repayment.

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

SOURCE: 55 FR 2809, Jan. 29, 1990, unless otherwise noted.

NOTE: Air Force Regulations are available through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This part is derived from Air Force Regulation 112–1, Claims and Tort Litigation.

§ 842.0 Scope.

This part establishes standard policies and procedures for administratively processing claims resulting from Air Force activities and for which the Air Force has assigned responsibility; tells how to present, process, and settle claims.

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 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 US 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 HQ USAF/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) *HQ USAF/JACC*. Claims and Tort Litigation Staff, Office of The Judge Advocate General, Headquarters, United States Air Force, Building 5683, Bolling AFB, DC 20332–6128.

(g) *HQ 9AF*. Headquarters Ninth Air Force, Shaw AFB, SC 29152–5002.

(h) *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, or someone else other than the owner, who has the title for purposes of security are not owners.

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

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

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

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

(m) *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.

(n) *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.

(o) *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]

§ 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 HQ USAF/JACC thorugh claims channels of action taken and states why the DATT or MAAG was unable to adequately assist the claimant.

§ 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 subroger 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.

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

§ 842.9 Splitting a claim.

(a) A claim includes all damages accruing to a claimant by reason of an accident or incident. For example, when the same claimant has a claim for property damage and personal injury arising out of the same incident, each claim represents only a part of a single claim or cause of action. Even if local law permits filing a separate claim for property damage and for personal injury, do not settle or pay a separate or split claim without the advance approval of HQ USAF/JACC.

(b) Filing for an advance payment, and subsequently filing a claim, does not constitute splitting a claim.

(c) Process the claim of a subrogor (insured) and subrogee (insurer) for damages arising out of the same incident as a single claim where permitted. If either claim or the combined claim exceeds, or is expected to exceed, settlement limits, send it to the next higher settlement authority. Do not split subrogated claims to avoid settlement limits.

Subpart B—Functions and Responsibilities

§ 842.10 Scope of this subpart.

It sets out the claims organization within the US Air Force and describes the functions and responsibilities of the various claims offices.

§ 842.11 Air Force claims organization.

Air Force claims channels are:

(a) Continental United States (CONUS), Azores, Panama and Iceland:

(1) Headquarters US Air Force (HQ USAF).

(2) SJAs of bases, single base GCM authorities, stations and fixed installations, and commanders responsible for investigation and settlement of claims.

(b) Pacific Air Forces (PACAF) and US Air Forces, Europe (USAFE):

(1) HQ USAF.

(2) SJAs of PACAF and USAFE.

(3) SJAs of organizations exercising GCM authority.

(4) SJAs of bases, stations and fixed installations, and commanders responsible for investigating and settling claims.

(c) US Central Command (CENTCOM):

(1) HQ USAF.

(2) SJA of Headquarters Ninth Air Force (HQ 9AF).

(3) SJAs of bases, stations, and fixed installations, and commanders responsible for investigation and settlement of claims.

(d) *Maneuver and disaster claims*. Air Force Judge Advocates designated by The Judge Advocate General (TJAG) to process maneuver and disaster claims. Once appointed, judge advocates must process claims through claims channels.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.12 HQ USAF claims responsibility.

(a) *TJAG, through the Claims and Tort Litigation Staff (HQ USAF/JACC):* (1) Establishes claims and tort litigation policies and supervises and assists all Air Force claims activities.

(2) Trains claims officers and paralegals.

(3) Settles certain claims.

NOTE: The authority specifically delegated to the Deputy Judge Advocate General to settle certain claims in no way limits the Deputy's authority to perform the duties of TJAG when so acting pursuant to 10 U.S.C. 8072.

(4) Monitors tort litigation for and against the United States arising out of Air Force activities.

(b) *HQ USAF/JACC*. (1) Supervises and inspects claims and tort litigation activities through assistance visits, special audits, and Claims Administrative Management Program (CAMP) reviews.

(2) Implements claims and tort litigation policies, issues instructions, and

provides guidance and assistance to subordinate claims offices.

(3) Recommends settlement action on claims and tort litigation to TJAG, the Secretary of the Air Force, and the United States Attorney General.

(4) Maintains liaison with the Department of Defense (DOD), Department of Justice (DOJ), and other government agencies on claims and tort litigation.

(5) Settles certain claims.

(6) Certifies or reports claims to the General Accounting Office (GAO).

(7) Prepares budget estimates for Air Force claims activities.

(8) Monitors the collection, allocation, and expenditure of Air Force claims funds.

(9) Keeps permanent records on all claims and tort litigation for which TJAG is responsible.

(10) Conducts and supervises claims training activities.

§ 842.13 Staff Judge Advocates' responsibility.

(a) *Major Command (MAJCOM).* (1) All MAJCOM SJAs, whether or not exercising claims settlement authority are responsible for the general supervision of claims activities within their commands, including:

(i) Conduct of periodic claims audits.

(ii) Support of claims teams. Members may be detailed from personnel assigned to the command to respond to natural disasters or serious incidents. If resources are not available from within the command, HQ USAF/JACC should be contacted for assistance.

(iii) Apportion claims funds allocated by HQ USAF.

(2) The PACAF, USAFE, and HQ 9AF SJA:

(i) Settles claims.

(ii) At a minimum, through assistance visits and audits, supervises claims activities of those subordinate units and organizations assigned to them for claims purposes.

(iii) Appoints members to foreign claims commissions.

(iv) Monitors international claims.

(v) Establishes and designates geographic areas of claims responsibility within the command, except for DOD designated single-service areas of responsibility.

(b) *GCM:* (1) The GCM SJA, whether or not he or she exercises claims settlement authority, is responsible for the general supervision of claims activities within the subordinate units.

(2) The GCM SJA exercising settlement authority:

(i) Settles certain claims.

(ii) Supervises directly the claims activities of their subordinate units. This includes at least assistance visits and audits for all but single base GCMs.

(c) *Base SJAs:* (1) Settle certain claims.

(2) Have primary investigative responsibility for incidents giving rise to claims that occur in their geographic area of responsibility.

(3) Notify HQ USAF/JACC through claims channels, if there is a question of which base can best investigate and process a particular claim.

§ 842.14 Claims and assistant claims officers.

(a) *Functions and responsibilities:* (1) The claims officer, under the immediate supervision of the SJA, the commander, or other appointing authority, is responsible for all claims activity of the command, organization, or unit. This includes investigating and reporting accidents, incidents, and claims.

(2) The assistant claims officer performs claims duties under the supervision of the claims officer and in the absence of the claims officer.

(b) *Appointment of claims and assistant claims officers:* (1) The Commander of each Air Force base, station, fixed installation, or separate unit appoints a claims officer in writing.

(2) The SJA appoints assistant claims officers in writing.

(c) *Qualifications of claims officers:* Claims officers are commissioned officers, designated as judge advocates of the Air Force, or civilian attorneys employed by the United States in authorized attorney positions at the office of the SJA.

(d) *Qualifications of assistant claims officers:* The assistant claims officer may be an attorney, a senior noncommissioned officer (E–7 through E–9), or a Department of the Air Force civilian employee (GS–7 or above).

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

§ 842.15 Scope of this subpart.

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

§ 842.16 Definitions.

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

(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 comprise a board of officers.

(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 is willful damage.

(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.

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

§ 842.18 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.

§ 842.19 Limiting provisions.

(a) Submit a complaint within 90 days of the date of the incident unless the appointing commander finds good cause for the delay. Command determination of the absence of good cause is final.

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

(c) Payment of indirect, remote, or consequential damages is not authorized.

§ 842.20 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. However, the complainant need not request a sum certain in writing, before settlement is made.

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

§ 842.21 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.

§ 842.22 Definitions.

(a) *Act of God*. An act occasioned exclusively by violence of nature, such as flood, earthquake, tornado, typhoon or hurricane, that is unanticipated and over which no one has any control.

(b) *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.

(c) *Other authorized places:* (1) Any place authorized, or apparently authorized by the government to receive, hold, or store personal property, such as offices, warehouses, baggage holding areas, hospitals.

(2) Any area on a military installation designated for parking or storing vehicles.

(3) A recreation area or any real estate the Air Force or any other DOD element uses or controls.

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

(e) *Quarters:* (1) Housing the government assigns or otherwise provides in kind to the claimant, including substandard housing and trailers, when the claimant pays the government a fixed rental while drawing basic allowance for quarters (BAQ).

(2) Privately owned mobile or manufactured homes parked on base in spaces the government provides.

(3) Transient housing accommodations, wherever located, such as, hotels, motels, guest houses, transient dormitories, or other lodgings the government furnishes or contracts for.

(4) Housing accommodations outside the United States which the claimant occupies according to local policies and procedures which were not assigned by or otherwise provided for by the U.S. Government. Quarters do not include housing occupied by foreign indigenous employees.

(5) Garages, carports, driveways, and parking lots assigned to quarters the government provides for the occupants of the quarters to use.

(6) Street parking:

(i) At quarters.

(ii) In the immediate vicinity of quarters.

(iii) Reserved parking assigned to offbase housing accommodations overseas.

(7) The area immediately adjacent to quarters when used for storage of items not commonly stored in living areas, for example, boats, motorcycles, motorbikes, bicycles, lawn mowers, garden equipment, and outdoor furniture.

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

(g) *Small claim*. A claim for $1,000 or less.

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

§ 842.23 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have been delegated the authority to settle claims payable for $25,000 or less if the claim arose before 31 October 1988, or $40,000 or less if the claim arose on or after 31 October 1988, and to deny claims in any amount:

(i) The Judge Advocate General (TJAG).

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

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

(2) The SJAs of HQ USAFE, HQ PACAF, and 9 AF (for claims arising out of HQ CENTCOM) have delegated authority to settle claims payable, and to deny claims filed for $25,000 or less.

(3) The SJAs of single base GCMs and the SJAs of GCMs within PACAF and USAFE have delegated authority to settle claims payable, and to deny claims filed for $15,000 or less.

(4) SJAs of each Air Force Base, station, and fixed installation have been delegated the authority to settle claims payable, and deny claims filed for $10,000 or less.

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

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

(d) *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, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.24 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 specified 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.

§ 842.25 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. Examples where partial payments are appropriate include fires and sunken transport ships. Partial payments are made in this manner:

(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.

§ 842.26 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.

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

§ 842.27 Who may file a claim.

A claim may be filed by the:

(a) Property owner.

(b) Authorized agent with a power of attorney.

(c) Property owner's survivors, who may file in this order:

(1) Spouse.

(2) Children.

(3) Father or mother, or both.

(4) Brothers or sisters, or both.

§ 842.28 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.

§ 842.29 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.

(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.

§ 842.30 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 collectable from any other source, including insurance and carriers.

(d) Property that is owned by the claimants, their immediate families, or borrowed for their use.

(e) Losses occurring without the claimants' negligence.

§ 842.31 Claims payable.

Claims may be paid for:

(a) *Transportation or storage loss:* (1) Pay for property damage or loss incident to:

(i) Transportation under orders, whether it was in the possession of the government, carrier, storage warehouse, or other government contractor. This includes Do-It-Yourself (DITY) moves.

(ii) Travel under orders, including temporary duty (TDY).

(iii) Travel on a space available basis on a military aircraft, vessel, or vehicle.

(2) Pay for property essential to everyday use, if the claimant has replaced the items that he or she reported as missing. Essential items may be paid for even if someone locates the property before the claimant files the claim.

(b) *Losses at quarters and other authorized places*—(1) *In the United States (including U.S. territories and possessions).* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, typhoon, hurricane, unusual occurrences or power outages which last for an extended period of time. The claimant must be free of negligence.

(i) Claims for damage or loss caused by other acts of god are not paid except in those instances where the geographic area has been declared to be a federal disaster area or HQ USAF/JACC has determined that payment is appropriate because the severity of the act of god was truly extraordinary.

(ii) In some areas, extreme weather, such as severe lightning storms, hail, or high winds, occur routinely. Damage claims from these storms are normally not paid. Failure to take reasonable care in protecting property from such known hazards may be negligence. These types of claims would include pitted windshields, dents, chipped paint on vehicles, and lightning damage to television sets, stereos, computer components, video recorders, and other electrical appliances.

(2) *Outside the United States.* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, acts of god, unusual occurrences, or power outages which last for an extended period of time. The claimant must be free of negligence. The SJA must make an affirmative determination that the act of god or unusual occurrence was truly extraordinary.

(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 abandonmnet 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 US personnel do not generally use such facilities.

§ 842.32 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. When a loss is recovered or is recoverable:

(1) The amount payable by insurance should be deducted if an insurer denied a claim because a claimant failed to report the loss or to file a timely claim under the policy. The claim should be paid if the settlement authority determines the claimant had good cause for not filing with the insurer, or

(2) The amount which the Air Force cannot recover from a carrier because the claimant failed to give timely notice of loss or damage should be subtracted from the settlement unless the claimant shows good cause for failure to give notice.

(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. HQ USAF/JACC must authorize payment for an appraisal fee of more than $100.

(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. This includes an automobile for which a member fails to comply with base registration or insurance regulations. A claim must not be paid if one or more of these factors exist:

(1) The loss was the type the regulation or directive intended to prevent.

(2) The violation was willful or in defiance of authority, rather than minor or technical in nature.

(3) The violation either undermined discipline or adversely affected command welfare.

(n) It is an item fraudulently claimed. Deny payment for an item when investigation shows the claimant has intentionally falsified the value, condition, extent of damage, or repair cost of it. The claim file must show clear intent to defraud. A mere mistake is not a fraud.

(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, such as food, lodging, and transportation costs due to delay in delivery of household goods or travel to port to deliver or pick up a vehicle.

(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. These claims may be payable through Accounting and Finance as a travel expense.

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

The member submits such claims to the commander directing the move for payment from other Operation and Maintenance (O&M) funds.

(aa) It is for damage to or loss of property stored at the owner's expense unless the claimant's duty made storage necessary.

(bb) It is for damage to clothing and accessories caused by routine wrinkles.

(cc) It is hit-and-run damage to POVs.

(dd) It is for damage to clothing and accessories caused by contact with office furniture or getting in or out of a government vehicle unless the damage was caused by an unknown defect.

§ 842.33 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.

§ 842.34 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 US military personnel or civilian employees whose conduct in scope of employment gave rise to government liability.

§ 842.35 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.

Subpart E—Carrier Recovery Claims

§ 842.36 Scope of this subpart.

This subpart explains how to assert and settle claims against carriers, warehousemen, and contractors for loss and damage to personal property.

§ 842.37 Definitions.

(a) *Bill of lading*. A contract for movement and delivery of goods.

(1) Carriers issue commercial bills of lading.

(2) Transportation officers issue government bills of lading (GBL). GBLs include the terms and conditions of commercial bills of lading with certain exceptions.

(3) The GBL is all of the following:

(i) A receipt for goods tendered to a carrier.

(ii) A contract.

(iii) A document authorizing collection of transportation bills the carrier presents.

(b) *Carrier*. Any moving company, personal property forwarder, or freight forwarder holding a certificate or permit issued by a federal or state regulatory agency or approved by the Department of Defense for international shipments.

(c) *Military Traffic Management Command (MTMC)*. The Department of Defense management agency for military traffic, land transportation, and common user ocean terminals. Among other responsibilities, MTMC manages the DOD household goods moving and storage program worldwide. The Army has single service responsibility for MTMC.

(d) *Regional Storage Management Office (RSMO)*. The MTMC office responsible for negotiating and administering all storage contracts within a geographical area. The contracting officer of each RSMO makes involuntary collections of nontemporary storage loss and damage claims.

(e) *Net weight*. The weight of the fully-loaded van or shipping crate (gross weight), less the weight of the empty van or shipping crate (tare weight).

(f) *Nontemporary storage (NTS)*. All authorized storage not in connection with a GBL. NTS usually exceeds 180 days and normally includes packing and shipping of household goods to the warehouse.

(g) *Storage in transit (SIT)*. Storage of a shipment by a carrier at origin, enroute, or at destination. SIT is initially limited to 90 days. The transportation officer may extend it to a maximum of 180 days.

(h) *Tender of service*. A carrier's offer to do business with the Department of Defense, including the terms and conditions of the agreement. The Personal Property Traffic Management Regulation (PPTMR), DOD Regulation 4500.34, appendix A, contains this agreement.

§ 842.38 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 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.

(v) The SJAs of HQ PACAF, HQ USAFE, and HQ 9AF (for HQ CENTCOM).

(2) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim:

(i) SJAs of GCMs in PACAF and USAFE.

(ii) SJAs of single base GCMs.

(3) SJAs of each Air Force base, station, or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(b) *Redelegation of authority*. An individual with settlement authority may redelegate this authority, in writing, to a subordinate judge advocate or civilian attorney.

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

§ 842.39 Statute of limitations.

(a) International commercial air shipments. The government must file suit within 2 years after the delivery date. The period for notifying these carriers of loss or damage is 3 days for luggage, and 7 days for other goods. Setoff is not possible in these cases. Uncollectible claims are sent to HQ USAF/JACC within 6 months from the date of delivery.

(b) *All other CR claims*. The government must file suit within 6 years after the cause of action accrues. It accrues when a responsible US official, service member, or employee knew or reasonably should have known the material facts that caused the claimed loss. The requirement to file a claim within 9 months under commercial bills of lading does not apply to GBLs.

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

§ 842.40 Scope of this subpart.

This subpart explains how to settle claims made against the United States for property damage, personal injury, or death caused by military personnel or civilian employees of the Air Force acting in the scope of their employment or otherwise incident to the Air Force's noncombat activities.

§ 842.41 Definitions.

(a) *Appeal*. A request by the claimant or claimant's authorized agent to reevaluate 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.

(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.

§ 842.42 Delegations of authority.

(a) *Settlement authority:* (1) The Secretary of the Air Force has delegated 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 deny claims 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 SJA of 9AF for CENTCOM, and the SJAs of PACAF and USAFE have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, and GCMs in PACAF and USAFE, and each Air Force base, station, or fixed installation have delegated authority to settle claims payable, or deny claims filed for $15,000 or less.

(b) *Redelegation of authority*. 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.

(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 claims for the following without HQ USAF/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 for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG 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.

(9) 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.

(10) 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.

(11) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.43 Filing a claim.

(a) *How and when filed*. A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed Standard Form 95 or other signed and written demand for money damages in a

sum certain. A claim belonging to another agency is promptly transferred to that agency.

(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.

§ 842.44 Advance payments.

Subpart Q sets forth procedures for advance payments.

§ 842.45 Statute of limitations.

(a) A claim must be filed in writing 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. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the Military Claims Act.

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

(c) Consider claims filed after the statute has run when:

(1) The United States is at war or in an armed conflict when the claim accrues, or

(2) The United States enters a war or armed conflict after the claim accrues, and

(3) Good cause is shown. A claim is barred by the statute of limitations if it is filed more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

§ 842.46 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 present evidence of authority to present the claims.

§ 842.47 Who are proper claimants.

(a) Citizens and inhabitants of the United States.

(b) U.S. military personnel and civilian employees.

NOTE: These personnel are not proper claimants for personal injury or death incident to service.

(c) Persons in foreign countries who are not inhabitants of the foreign country.

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

(e) Prisoners of war or interned enemy aliens.

NOTE: These individuals are proper claimants for personal property damage but not for personal injury.

(f) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(g) Subrogees to the extent they have paid for the claim in question.

§ 842.48 Who are not proper claimants.

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

(b) Agencies and departments of the U.S. Government.

(c) Nonappropriated fund instrumentalities.

(d) Subrogees of § 842.48(a), (b), and (c) of this part.

(e) Inhabitants of foreign countries.

§ 842.49 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.

(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.

(c) Claims for damage to bailed property under § 842.49(a) or (b) of this part, where all of the following are present:

(1) The United States armed forces assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized United States armed forces military or civilian personnel acting in their official capacity properly accepted the property.

(d) Claims for loss or damage to:

(1) Insured or registered mail under § 842.49(a), (b), or (c) while in the possession of the United States armed forces military or civilian personnel.

(2) Minimum fee insured mail, but only if it has an insurance number or requirement for hand-to-hand receipt while in the possession of the United States armed forces military or civilian personnel.

(3) Any mail in the possession of the US Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure conducted in an oversea military postal facility, under orders of armed forces personnel.

(e) Claims for property damage of US 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.

(f) Claims filed by DOD military or civilian health care providers or legal personnel for their personal liability by settlement or judgment, to include reasonable costs of such litigation, for their common law tortious acts committed within the scope of their employment under circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990]

§ 842.50 Claims not payable.

Exclusions listed in § 842.50 (a) through (l) of this part, are based on the wording of 28 U.S.C. 2680. The remainder are based either on statute or court decisions. The interpretation of these exclusions is a Federal question decided under Federal law. Where State law differs with Federal law, Federal law prevails. A claim is not payable under this subpart if it:

(a) 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 HQ USAF/JACC.

(b) Is based on 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, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter, except those claims payable under § 842.49.

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise, or any other law enforcement officer.

(e) Is cognizable under the Suits in Admiralty Act or under the Public Vessels Act.

(f) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act.

(g) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of an assault or battery, unless the assault or battery arises out of the acts or omissions of investigative or law-enforcement officers of the US Government, or arises out of the performance of medical, dental or related health care functions.

(i) Arises out of false imprisonment, false arrest, malicious prosecution or abuse of process, unless such actions were committed by an investigative or

law enforcement officer of the United States who is empowered by law to execute searches, seize evidence, or make arrests for violations of federal law.

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

(k) Arises out of interference with contract rights.

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

(m) Arises out of the combat activities of the military or naval forces, or the Coast Guard, during time of war.

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

(o) Arises from the activities of the Panama Canal Company.

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

(q) Is for the personal injury or death of a member of the Armed Forces of the United States, including the Coast Guard, incurred incident to service.

(r) Is for the personal injury or death of a government employee for whom benefits are provided by the FECA.

(s) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshore and Harbor Workers' Compensation Act (LHWCA).

(t) Is for the personal injury or death of any government contractor employee for whom benefits are provided under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the United States pays them either directly or as part of the consideration under the contract. Only HQ USAF/JACC may settle these claims.

(u) Is for taking of property as by technical trespass or overflight of aircraft and of a type contemplated by the Fifth Amendment to the US Constitution, or otherwise constitutes a taking.

(v) Is for damage from or by flood or flood waters at any place.

(w) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty by any Federal agency or employee of the government to carry out the provisions of the Federal Civil Defense Act of 1950 during the existence of a civil defense emergency.

(x) Is for patent or copyright infringement.

(y) Is for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG 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 unless the express approval for payment is received from HQ USAF/JACC.

(z) Is for damage to property or for any death or personal injury arising out of the activities of any federal agency or employee of the government in carrying out the provisions of the Federal Disaster Relief Act of 1954.

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

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

(cc) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(dd) Arises from contractual transactions, express or implied, including rental agreements, sales agreements, leases and easements, which are payable or enforceable under such contracts or arise out of irregular procurement and implied contract.

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

(ff) Is based solely on compassionate grounds.

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

(hh) 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; for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. Claims

considered not payable under this paragraph are forwarded, with recommendations for disposition, through claims channels to HQ USAF/JACC.

(ii) 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 appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. 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 Government otherwise payable. Claims considered not payable under this paragraph are forwarded with recommendations for disposition, through claims channels, to HQ USAF/JACC.

(jj) Is for personal injury or death of military or civilian personnel of a foreign country, if their personal injury or death was suffered incident to their service.

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

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

(mm) Is for the loss of a rental fee for personal property.

(nn) Arises out of matters which are in litigation against the United States.

(oo) Is payable under any one of the following statutes and implementing regulations:

(1) Federal Tort Claims Act.

(2) Foreign Claims Act.

(3) International Agreements Claims Act.

(4) Air Force Admiralty Claims Act and the Admiralty Extension Act.

(5) National Guard Claims Act.

(6) Military Personnel and Civilian Employees' Claims Act.

§ 842.51 Applicable law.

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

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

(1) When a claim arises in the United States, the law of the place where the act or omission occurred governs liability. The settlement authority considers the local law on such issues as dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence. Absolute liability is never imposed.

(2) *Claims in foreign countries*. (i) 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 general principles of tort law common to the majority of American jurisdictions, as evidenced by Federal case law and standard legal publications, except as to the principle of absolute liability.

(ii) The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, use traditional rules of contributory negligence. 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.

(3) When adjudicating claims based upon negligence, the principle of absolute liability is not applicable, even though otherwise prescribed by applicable local law.

(4) The meaning and construction of the MCA is a Federal question to be determined by Federal law.

(b) *General information:* (1) The measure of daages in claims arising in the United States or its possessions is determined according to the law of the place where the act or omission occurred. The measure of damages in claims arising overseas is determined according to general principles of American tort law.

(2) Apportion damages against the United States in the same manner as they are apportioned in suites against private persons if local law applies comparative negligence.

(3) Do not deduct proceeds from private insurance policies except to the extent allowed by local law. However, proceeds are deducted if the policy was paid for by the United States.

(4) Deduct compensation and benefits from the Department of Veterans Affairs, or monetary value received from any U.S. Government associated source from the damages which may be awarded. Deduct sick and annual leave payments if local law allows.

(5) Do not approve:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

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

(c) *Settlement by insurer or joint tortfeasor*. When settlement is made by an insurer or joint tort-feasor 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.

§ 842.52 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 within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the settlement authority may waive the 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.

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

§ 842.53 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 US military personnel or civilian employees whose conduct gave rise to government liability.

§ 842.54 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 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.

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

§ 842.55 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 US Armed Forces in foreign countries.

§ 842.56 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).

§ 842.57 Delegations of authority.

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

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

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

(iii) Deny claims in any amount.

(2) The Judge Advocate General has delegated authority to:

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

(ii) Deny claims in any amount.

(3) The Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are each a foreign claims commission and have delegated authority to:

(i) Settle claims for payment of $50,000 or less.

(ii) Deny a claim in any amount.

(4) The SJAs of PACAF, USAFE, 9AF (for CENTCOM) and AFSPACECOM (for Greenland and Canada) are each a foreign claims commission and have delegated authority to approve claims for payment arising within their geographic area of responsibility for $50,000 or less, or deny claims of $50,000 or less.

(5) The SJAs of Numbered Air Forces in PACAF and USAFE; the SJA of HQ TUSLOG; the SJA of 12AF (for South America); and the SJAs of Lajes AB, Azores, Patrick AFB, FL, and Howard AFB, Panama are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $25,000 or less.

(iii) Deny claims for $50,000 or less.

(6) The SJAs of each Air Force base, station and fixed installation in PACAF, USAFE, and CENTCOM, are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $10,000 or less.

(iii) Deny claims for $25,000 or less.

(b) *Authority to appoint FCCs.* (1) The Chief, Claims and Tort Litigation Staff, has the delegated authority to appoint a judge advocate or civilian attorney as a FCC and to redelegate all or a part of his or her settlement authority to that FCC.

(2) A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs, and may redelegate all or part of that settlement authority to those FCCs, in writing. Every FCC must have authority to settle claims for at least $10,000.

(c) *Authority to reduce, withdraw, or restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority, in writing, except no one may reduce or withdraw the authority of a FCC to settle claims for $10,000 or less.

(d) *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.

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

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

§ 842.58 Filing a claim.

(a) *How and when filed.* A claim is filed when a federal agency 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 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.

§ 842.59 Advance payments.

Subpart Q outlines procedures for advance payments.

§ 842.60 Statute of limitations.

(a) A claim must be filed in writing 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.

§ 842.61 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.

§ 842.62 Who are proper claimants.

Claimants include inhabitants of a foreign country who are:

(a) Foreign nationals.

(b) US nationals, unless they reside there primarily because they are:

(1) Employed directly by the United States.

(2) Employed by a US civilian contractor to further performance of a contract with the United States.

(3) Sponsored by or accompanying someone employed as described in § 842.62(b) (1) or (2) of this part.

(c) US 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.

§ 842.63 Who are not proper claimants.

Persons who are not proper claimants include:

(a) Insurers and other subrogees.

(b) Dependents accompanying US military and US national civilian employees.

(c) Foreign military personnel suffering property damage, personal injury, or death from a joint military mission with the United States or from conduct of a US military member or employee acting in the scope of employment unless an international agreement specifically provides for recovery.

(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.

(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 determines the claimant is friendly with the United States.

§ 842.64 Payment criteria.

The following criteria is considered before determining liability.

(a) The incident causing the damage or injury must occur outside the United States. It must be caused by noncombatant activities of the US Armed Forces or by civilian employees or military members of the Armed Forces.

(b) Negligence is not a prerequisite.

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

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

(2) It is immaterial when the claim arises from the acts or omissions of

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

§ 842.65 Claims not payable.

A claim is not payable when it:

(a) Has been paid or denied by a competent tribunal under the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), or any similar SOFA or treaty.

(b) Is purely contractual in nature.

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs.

(d) Accrues from a private contractual relationship between US 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 bastardy claim.

(g) Is for patent or copyright infringement.

(h) Is waived under an international agreement.

(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 HQ USAF/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 US 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, HQ USAF/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 armed forces of the United States 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 armed forces of the United States, 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 dependents, guests, servants, or pets of members and employees of the US Armed Forces. (This includes situations where local law imposes strict liability or where the head of a household is held vicariously liable for their negligence.)

(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 court. Claims settlement may be authorized by HQ USAF/JACC in appropriate cases on request.

(q) Is covered under US admiralty 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, HQ USAF/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.

§ 842.66 Applicable law.

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

(a) A claim is settled under the law and standards in effect in the country where the incident occurred. In calculating the amount of any lump sum

award, the present value of any periodic payment upon which the award is based, is computed, unless the law of the place of occurrence prohibits it.

(b) Contributory negligence committed by the claimant, claimant's agent, or employee is not used as a bar to recovery unless local law or custom requires it. If the comparative negligence doctrine is used, the percentage of negligence of each party is reflected in the apportionment of liability. The amount of damage sustained by both parties is apportioned according to local law.

(c) The following principles of the collateral source doctrine are applied in settling a claim except where local law provides otherwise:

(1) Any sums the claimant recovers from collateral sources, including proceeds of property insurance the claimant paid for are not deducted from the claim except when those sums are from:

(i) The US Government.

(ii) A US military member or employee.

(iii) A Joint tort-feasor.

(iv) An Insurer of § 842.66(c)(1)(i), (ii), or (iii), above.

(2) Do not deduct insurance or any other payments where the US military member or employee would have to make reimbursement.

§ 842.67 Reconsideration of final denials.

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

(a) An FCC may reopen, reverse, or reconsider, in whole or in part, any claim it previously decided if the request for reconsideration is received in a reasonable time. Sixty days is considered a reasonable time, but the FCC may waive the time limit for good cause.

(b) An FCC reconsiders the final action on a claim when there is:

(1) New and material evidence concerning the claim.

(2) Obvious error in facts or calculation of the original settlement.

(3) Fraud or collusion in the original submission of the claim.

(c) The FCC must state the reason for reconsideration in its opinion. A court decision is not in itself sufficient basis for reconsidering a claim, but the facts that resulted in the judgment may warrant reconsideration. The amount of a court judgment is not binding on a FCC's determination of damage, but the commission may consider the judgment as evidence of the local law on the subject.

§ 842.68 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 indemnity and contribution permitted by the law of the situs or under contract. Contribution or indemnity should not be sought:

(a) From US military personnel or civilian employees whose conduct gave rise to government liability.

(b) Where recovery action would be harmful to international relations.

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

§ 842.69 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under international agreements.

§ 842.70 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 a force of a contracting party, who are employed by that force. Indigenous 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 consistent with the law of the receiving State. Often these claims are

caused by local inhabitant employees, not part of the civilian component, under a respondeat superior theory.

(e) *Receiving state*. The country where the force or civilian component of another party is located.

(f) *Sending state*. The country sending the force or civilian component to the receiving State.

(g) *Third parties*. Those 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 unless the agreement specifically excludes them.

§ 842.71 Delegations of authority.

(a) *Reimbursement authority*. The following individuals have delegated authority to reimburse or pay a pro rata share of a claim or object to a claim in any amount:

(1) The Secretary of the Air Force.

(2) The Judge Advocate General.

(3) The Deputy Judge Advocate General.

(4) The Chief of Civil Law.

(5) Chief, Deput Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(6) The SJAs and Deputy SJAs of PACAF, USAFE, 5th Air Force, Lajes Field, and 9th Air Force (for CENTCOM).

(b) *Redelegation of authority*. A settlement authority may redelegate his or her authority 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.

§ 842.72 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 US 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 US military installation. The installation receiving the claim either:

(1) Investigates it if the foreign personnel are assigned there.

(2) Sends it to the installation where the foreign personnel are assigned.

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

§ 842.73 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 by Air Force military and civilian personnel which are not payable under any other statute.

§ 842.74 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.

§ 842.75 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 HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE.

(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.

§ 842.76 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.

(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.

§ 842.77 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.

§ 842.78 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 other government property on a government installation, and

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

§ 842.79 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.

§ 842.80 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.

§ 842.81 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.

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

§ 842.82 Scope of this subpart.

It sets forth the procedure for administrative settlement of admiralty and maritime claims in favor of and against the United States.

§ 842.83 Definitions.

(a) *Admiralty contracts.* A contract covering maritime services or a maritime transaction such as vessel procurement and space for commerical 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 overbaord 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)

§ 842.84 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 a claim for payment of more than $500,000 and to certify it to Congress for payment.

(ii) Settle and pay a claim for $500,000 or less.

(iii) Deny a claim in any amount.

(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.

(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) HQ USAF/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 Staff.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

§ 842.85 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.

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

§ 842.86 Scope of this subpart.

This subpart governs claims against the United States for property damage, personal injury, or death, from the negligent or wrongful act or omission of Air Force military or civilian personnel while acting within the scope of their employment. It also covers similar tort claims generated by Air National Guard (ANG) members performing specified duty under 32 U.S.C. on or after 29 December 1981.

§ 842.87 Definitions.

(a) *Compromise.* An agreed settlement based upon the facts, the law, and the application of the law to the facts.

(b) *Final denial.* A letter the settlement authority mails to the claimant or authorized agent advising him or her that the Air Force denies his or her claim.

(c) *Reconsideration.* A request by the claimant or claimant's authorized agent to reevaluate a final decision. A request for reconsideration and an appeal are the same thing.

(d) *Negligence.* A departure from the conduct expected from a reasonably

prudent person under similar circumstances.

(e) *Proximate cause*. The dominant or primary cause involving a natural and continuous sequence unbroken by an effective cause.

§ 842.88 Delegations of authority.

(a) *Settlement authority*. (1) Subject to the prior written, approval of the United States Attorney General or his designee, the following individuals have delegated authority to settle claims in excess of $25,000, to settle claims for $25,000 or less, and to deny a claim in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(2) Subject to the prior written approval of the United States Attorney General or his designee, the Chief, Claims and Tort Litigation Staff has delegated authority to settle claims in excess of $25,000 up to a limit of $50,000, to settle claims for $25,000 or less; and to deny a claim in any amount.

(3) The Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff have delegated authority to settle claims for $25,000 or less and deny a claim in any amount.

(4) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to settle claims payable, and deny claims filed, for $25,000 or less.

(5) The following individuals have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less:

(i) SJAs of single base GCMs.

(ii) SJAs of GCMs in PACAF and USAFE.

(iii) SJAs of each Air Force base, station, or fixed installation.

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

(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.

(e) *Special exceptions*. Do not settle claims for the following without HQ USAF/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) Animal bites.

(5) Personal injury from asbestos or radon.

(6) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.89 Statute of limitations.

A claim must be presented in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim normally accrues at the time of injury when essential operative facts are apparent. However, in other instances, especially in complex medical malpractice cases, a claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

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

(c) The Air Force has 6 months to consider a properly filed claim, after which the claimant may file suit. The claimant's right to sue ends 6 months from the date the final denial is mailed.

(d) Properly asserted third party actions, as permitted under the Federal Rules of Civil Procedure, may be brought against the United States without first filing a claim. In such instances those actions may start more than 2 years after the claim has accrued.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.90 Reconsideration of final denials.

(a) A claimant may request a settlement authority who denied a claim to reconsider that claim. If the settlement authority denies the request, the claim file is sent to the next higher claims settlement authority for action.

(b) A request for reconsideration must be filed in writing within 6 months of the final denial and prior to initiation of a suit. A request for reconsideration starts a new 6-month period for the Air Force to consider the claim. The claimant may not sue during that period.

§ 842.91 Settlement agreements.

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

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

§ 842.92 Scope of this subpart.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of government property through negligence or wrongful act. It does not cover admiralty, hospital recovery, or nonappropriated fund claims.

§ 842.93 Delegations of authority.

(a) *Settlement authority*. (1) The following individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 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) The SJA of HQ 9AF (for CENTCOM), and the SJAs of PACAF and USAFE have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(3) SJAs of GCMs located in PACAF and USAFE and single base GCMs located in CONUS have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(4) SJAs of each Air Force base, station or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(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.

§ 842.94 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 costs are small.

(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. (The two claims should be consolidated and processed under subpart N).

(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 H).

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

§ 842.95 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) For which a person has accountability and responsibility under the Report of Survey system.

(c) Loss or damage to nonappropriated 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. (HQ USAF/JACC may authorize this claim as an exception to the rule).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.96 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.

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

All claims must be authorized for referral by HQ USAF/JACC prior to being sent to either the US Attorney or the Department of Justice. All claims for demands of more than $20,000.00 which are not collected in full by a settlement authority will be referred (with HQ USAF/JACC approval) to DOJ.

§ 842.98 Statute of limitations.

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

§ 842.99 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.

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

§ 842.100 Scope of this subpart.

This subpart explains how to settle claims against the United States arising out of the noncombat activities of the Air National Guard (ANG), when its members are acting within the scope of their employment and performing duty under 32 U.S.C. Contact HQ USAF/JACC for guidance on any claim for property damage, injury or death by the ANG which accrued prior to 29 December 1981.

§ 842.101 Definitions.

(a) *Appeal*. An appeal is a request by the claimant or claimant's authorized agent to reevaluate the final decision made on a claim. A request for reconsideration is considered as an appeal.

(b) *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.

(c) *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.

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

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

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

(e) *Compromise*. A compromise is an agreed settlement based upon the facts, the law, and the application of the law to the facts.

(f) *Final denial*. A final denial is a letter from the settlement authority to the claimant or authorized agent advising of the decision to deny the claim.

(g) *Noncombat activity*. Noncombat activity is an act, other than combat, war or armed conflict, which is particularly military in character and has little parallel in the civilian community.

(h) *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).

§ 842.102 Delegations of authority.

This paragraph outlines the levels of authority authorized to settle claims brought under the National Guard Claims Act (32 U.S.C. 715).

(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 SJA of 9AF for CENTCOM and the SJAs of USAFE and PACAF have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, GCMs in PACAF and USAFE and each Air Force base, station or fixed installation 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.

(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 HQ USAF/JACC may settle claims for:

(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.

§ 842.103 Filing a claim.

This paragraph explains how to file a claim under the National Guard Claims Act.

(a) *How and when filed*. A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed SF 95 or other written and signed demand for money damages in a sum certain. Claims belonging to another agency are promptly transferred to the correct agency.

(b) *Receipt of claims from State National Guard agencies*. The Office of the State Adjutant General promptly sends claims it receives to the appropriate Air Force claims authority in whose geographic area the incident occurred. The report forwarded to the Air Force includes:

(1) The date, place, and nature of the incident.

(2) The names and organizations of ANG members involved, and the statutory duty status of the ANG members at the time of the incident (include copies of orders, if applicable).

(3) A scope of employment statement from the supervisors of the ANG members involved.

(4) The names of the claimants.

(5) A brief description of any damage to private property, personal injuries, or death.

(c) *Claims investigations*. (1) Upon receipt of a claim:

(i) It is investigated by claims office personnel responsible for the geographic area where the incident causing the claim occurred.

(ii) The investigative report includes a scope of employment statement and a copy of the orders authorizing the performance of duty by the ANG member.

(2) The State Adjutants General designate an official or office as point of contact for Air Force claims personnel and furnish necessary personnel to assist the Air Force investigation, subject to the availability of funds and personnel.

(d) *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.

§ 842.104 Advance payments.

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

§ 842.105 Statute of limitations.

A claim must be filed in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim accrues

when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

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

(c) A claim filed after the statute has run is considered if the United States is at war or in an armed conflict when the claim accrues; or if the United States enters a war or armed conflict after the claim accrues, and good cause is shown. No claimant may file a claim more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

§ 842.106 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 a claim for property damage.

(b) Injured persons or their authorized agents may file a claim 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 may file a claim based on:

(i) An individual's death.

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

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

(e) Authorized agents signing a claim must show their title or legal capacity and present evidence of such authority to file the claim.

§ 842.107 Who are proper claimants.

Only certain individuals are proper claimants under this subpart. Proper claimants include:

(a) Citizens and inhabitants of the United States.

(b) States or territories and their agencies, unless it is the state of the ANG member who caused the injury or property damage.

(c) Counties, municipalities, or units of local government, unless they are in the state of the ANG member who caused the injury or property damage.

(d) Persons in foreign countries who are not inhabitants of a foreign country.

(e) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(f) Subrogees, to the extent they have paid the claim.

§ 842.108 Who are not proper claimants.

The following individuals are not proper claimants:

(a) ANG members performing duty under 32 U.S.C. when the personal injury or death claim arises incident to service.

(b) Agencies and departments of the U.S. Government including the District of Columbia government.

(c) Federal nonappropriated fund instrumentalities.

(d) Governments of foreign nations, their agencies, political subdivisions, and municipalities.

(e) The state territory, local government unit, or their agencies, whose ANG member caused the injury or property damage.

(f) Subrogees of all the above.

§ 842.109 Claims payable.

(a) Claims arising from noncombat activities of 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.

(b) Claims are payable if they are for damage to bailed property under § 842.109(a) of this part where:

(1) The ANG assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized ANG members acting in their official capacity properly accepted the property.

(c) Claims are payable if they are for loss or damage to:

(1) Insured or registered mail, under § 842.109 (a) or (b) of this part while in the possession of the ANG.

(2) Minimum fee insured mail but only if it has an insurance number or requirement for hand-to-hand receipt and was lost or damaged while in the possession of the ANG.

(3) Any mail in the possession of the United States Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure in an oversea military postal facility, which was ordered by ANG members.

(d) Claims filed by ANG military or civilian health care providers or legal personnel for their personal liability by settlement or judgement, to include reasonable costs of such litigation, for their common law tortious acts committed on or after 29 Dec 1981 while performing title 32 duty within the scope of their employment under the circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.110 Claims not payable.

The following are not payable:

(a) Claims payable under any one of the following statutes and implementing regulations:

(1) The Federal Tort Claims Act (FTCA).

(2) The Foreign Claims Act (FCA).

(3) The International Agreements Claims Act.

(4) The Air Force Admiralty Claims Act and the Admiralty Extensions Act.

(5) The Military Claims Act (MCA).

(6) The Military Personnel and Civilian Employees' Claims Act.

(b) Claims from the combat activities of the armed forces during war or armed conflict.

(c) Claims for personal injury or death of ANG members performing duty under 32 U.S.C. incident to their service.

(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 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 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.

§ 842.111 Applicable law.

(a) *Extent of liability*. The following rules apply to determine the extent of liability of a claim.

(1) *Claims arising in the United States*. The law of the place where the act or omission occurs governs liability. The local law on dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence are considered. Absolute liability is never imposed.

(2) *Claims arising in foreign countries*. The general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, control liability, except that absolute liability is not imposed. However, the law of the place where the act or omission occurs governs the effect of the claimant's comparative or contributory negligence. Where applicable, rules of the road and similar locally prescribed standards of care are followed to determine fault.

NOTE: ANG personnel ordered to foreign countries proceed under title 10, U.S.C.; consequently, the National Guard Claims Act would not apply. However, there may be cases where ANG personnel are inadvertently in a foreign country while on title 32, U.S.C. orders.

(b) *Measure of damages*. The following rules apply to the measurement of damages.

(1) Normally, the law of the place where the act or omission occurs is applied. In claims arising in foreign countries, the measure of damages is determined in accordance with general principles of American tort law.

(2) Damages in suits against private persons are apportioned if local law applies comparative negligence.

(3) Proceeds from private insurance policies are not deducted except to the extent the policy was paid by the Government or is allowed by local law.

(4) Compensation and benefits from any U.S. Government associated source are deducted. However, sick and annual leave payments are deducted only if allowed by local law.

(5) The following are not payable:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States, any territory or possession, any state, or the District of Columbia.

(c) *Settlement by insurer or joint tortfeasor*. When settlement is made by an insurer or joint tort-feasor and an additional award is warranted, an award is made if:

(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.

§ 842.112 Appeal of final denials.

This paragraph 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 initial settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the time limit may be waived for good cause.

(b) The initial settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement with the claimant on an appealed claim, the entire claim file is sent to the next higher settlement authority, who is the appellate authority for that claim.

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

§ 842.113 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. Contribution or indemnity is not sought from ANG members whose conduct gave rise to Government liability.

§ 842.114 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. For the purposes of this paragraph, an award is deemed to be the cost to the United States at the time of purchase of a structured settlement, and not its future value.

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

§ 842.115 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) and various other laws.

§ 842.116 Definitions.

This paragraph defines terms which are used within this subpart.

(a) *Base Staff Judge Advocate (SJA).* The SJA of the base providing legal services to the Air Force medical facility which furnished initial medical care to the injured party is responsible for processing the hospital recovery claim. If an Air Force facility did not furnish the initial medical care, the SJA of the Air Force base within the claims jurisdiction of the initial treating facility is responsible for processing the claim.

(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 US 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 US 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.

§ 842.117 Delegations of authority.

(a) *Settlement authority:* (1) The following individuals have delegated authority to settle, compromise, or waive claims for $40,000 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) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to compromise or waive claims for $30,000 or less and to accept full payment on any claim.

(3) SJAs of single base GCMs, the SJAs of GMCs 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.

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

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

(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: 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 $40,000.

(2) Settlement previously referred to DOJ.

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

§ 842.118 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.

§ 842.119 Nonassertable claims.

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

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

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

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

(b) Claims should not be asserted without HQ USAF/JACC's approval against:

(1) *Government contractors*. In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, an investigation into the claim is sent to HQ USAF/JACC by the base SJA. The file should contain recommendations regarding assertion and include citations to the specific contract clauses involved.

(2) *Foreign governments*. An investigation is made regarding any claim against foreign governments, their political subdivisions, armed forces members, or civilian employees. The claims files containing the investigation are sent to HQ USAF/JACC along with the base SJA's recommendations regarding assertion.

(3) *US 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 liability insurance will pay the claim.

(4) *Manufacturers of products in products liability cases*.

§ 842.120 Asserting the claim.

When asserting the claim, the base SJA will:

(a) Assert it against the third parties whose liability is based in tort using an SF 96, Notice of Claim. Mail the original and one copy to each of the third parties and a copy to the third parties' insurers, if known.

(b) Assert it against third parties or insurers whose liability is not based in tort using a formal letter written on Air Force stationery. The letter will include the facts and legal basis for liability. Bases for liability could include local foreign law, US status as a third party beneficiary under uninsured or underinsured motorist coverage, workers' compensation laws, and no fault statutes. The specific provision of the injured party's insurance contract should be cited where appropriate.

(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.

(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.

§ 842.121 Referring a claim to the US Attorney.

Only HQ USAF/JACC authorizes referral of a claim to the US Attorney. The base SJA ensures review of all claims not later than 2 years after the date of the incident. These unsettled claims are forwarded, with the base SJA's disposition recommendation, to HQ USAF/JACC.

NOTE: On a case-by-case basis, HQ USAF/JACC will authorize referral of a case to the US Attorney by telephone.

§ 842.122 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.

§ 842.123 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. HQ USAF/JACC can provide certified copies of the FEDERAL REGISTER upon request. Apply the rates in effect at the time of care to claims.

§ 842.124 Waiver and compromise of United States interest.

Waivers and compromises of government claims can be made. This paragraph lists the basic guidance for each action. (See § 842.117(e) for claims involving waiver and compromise of amounts in excess of settlement authorities' delegated amounts.)

(a) Waiver for the convenience of the government can be made when the tort-feasor:

(1) Cannot be located.

(2) Is judgment proof.

(3) Has refused to pay and the case is too weak for litigation.

(b) Waiver can be made when collection causes undue hardhsip to the injured party. Ordinarily, factors such as the following should be considered:

(1) Permanent disability or disfigurement.

(2) Decreased earning power.

(3) Out of pocket losses.

(4) Financial status of injured party.

(5) Pension rights.

(6) Other government benefits to the injured party.

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

(c) A compromise can be made upon written request from the injured party or the injured party's legal representative when liability is questionable, the injured party received excessive treatment, or the litigation risks dictate, and either of the following occurs:

(1) The injured party accepts less than the jury verdict expectancy. When this occurs, the Air Force should consider settling its claim in a ratio similar to that which the total sttlement bears to the jury verdict expectancy.

(2) The government's claim is almost as large as, or is larger than, the assets available for settlement.

§ 842.125 Reconsideration of a waiver for undue hardship.

A settlement authority may reconsider its disapproval of a waiver or compromise, when either:

(a) The injured party submits new evidence.

(b) Errors exist in claim submission or settlement.

Subpart O—Nonappropriated Fund Claims

§ 842.126 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).

§ 842.127 Definitions.

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

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

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

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

§ 842.128 Delegations of authority.

(a) *Settlement authority:* (1) Each individual has the same delegated authority to settle a claim for which NAFs may be liable as that specified for a similar type claim in each subpart of this part. The decision of the settlement authority is binding upon the NAFI.

(2) The Judge Advocate General, in addition, has delegated authority to settle subparts F, G, and J type claims in any amount without referral to the Secretary of the Air Force or the General Accounting Office.

(3) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff, in addition, have delegated authority to settle subparts F, G, and J type claims for $100,000 or less without referral to the Secretary of the Air

Force or the General Accounting Office.

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

(c) *Appellate authority*. Upon appeal, a settlement authority has the same authority specified in § 842.128(a). The Judge Advocate General is the final appellate authority on subpart F type claims without right of further appeal to the Secretary of the Air Force. However, no appellate authority below The Judge Advocate General 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 filed in any amount for a sum within its delegated authority. Send unsettled claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

§ 842.129 Settlement of claims against NAFIs.

(a) This subpart does not establish legal theories for adjudication of claims. Refer to the appropriate subpart to decide whether a claim is payable (e.g., subpart D for personnel claims; subpart K for tort claims), then use the rules in this subpart to decide the appropriate funds for payment of any approved claim.

(b) Claims arising from property damage to or loss from vehicles or loss of personal items stored in base MWR facilities will be evaluated under the normal rules applied by the appropriate subpart of this part, and paid using the rules in those subparts. Examples include recreational vehicles stored in authorized lots and used cars parked in onbase sales lots. One exception to this rule is the exclusion of personal items stolen from onbase gym lockers (discussed below).

(1) If a NAF fee has been charged in connection with the use of the storage location, a determination must be made on the nature of the fee charged. If the fee does no more than reimburse NAF costs in administering or maintaining the storage location, subpart O of this part applies in addition to other appropriate subparts. If the fee is set to generate a profit for the NAFI involved or if it is collected in accordance with the terms of an agreement, express or implied, under which the NAFI represents that it will provide some degree of security or safeguarding of the property, the claim will be paid with NAF funds.

(2) Normally, theft of items from gym lockers will be paid out of appropriated funds providing there is affirmative evidence of theft. Mysterious loss of property will not be paid and, in no case, will a claim be paid in excess of $250.

§ 842.130 Payment of claims against NAFIs.

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

§ 842.131 Tort and tort type claims.

(a) *Claims within the scope of this subpart*. Claims which are within the scope of this subpart are those arising out of the operation of an MWR activity and are caused by:

(1) Civilian employees paid by a NAFI acting in the scope of their employment.

(2) Military personnel or appropriated fund civilian employees performing part-time duties for a NAFI for which a NAFI is paying.

(3) Negligent operation or condition of premises for which a NAFI is responsible.

(4) Members or authorized users of NAFI property. Such claims are subject to this subpart if the individual is a member of an MWR membership association or an authorized user of NAFI property and the use is in accord with applicable rules.

(b) *Claims not within the scope of this subpart*. Claims are not payable within the scope of this subpart if they arise out of the operation of an MWR activity supported by a NAFI and are caused by:

(1) Military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI.

(2) Negligent operation or condition of premises for which a NAFI is not responsible.

§ 842.132 Claims by NAFI employees.

Claims made by NAFI employees should be settled within the guidelines of this paragraph.

(a) *Personal injury in performance of duty and workers' compensation claims*. Claims for injuries arising out of performance of duty and workers' compensation claims are not within the scope of this subpart because the exclusive remedy is one of the following.

(1) Longshore and Harbor Workers' Compensation Act. This Act applies to NAFI civilian employees in the United States, its territories and possessions, and US citizen and resident NAFI civilian employees abroad.

(2) Local benefits for foreign national employees abroad.

(3) Military benefits because the injury is incident to service for offduty military personnel.

(b) *Property loss or damage incident to NAFI employment*. Claims for loss or damage to property incident to NAFI employment are settled under subpart D. Where appropriate, liability is computed, and initial demand is made upon the carrier, warehouse, or insurer, directing them to send further correspondence to the NAFI paying the claim.

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

(a) *Customer complaints*. Do not automatically adjudicate customer complaint claims until a determination is made that a valid claim exists. Complaints and personal property losses suffered by customers of MWR sales or service operations are normally not within the scope of this subpart. Customer complaints may not be claims at all. They may be no more than expressions of customer dissatisfactions. The activity manager is responsible for adjudicating and satisfying or otherwise disposing of a customer's complaint according to applicable NAFI regulations. Where possible, the activity manager resolves them by reimbursement, repair, or replacement in kind. However, if a complaint involving a claim cannot be satisfactorily settled under those procedures or includes a demand for consequential damage (such as for personal injury or property damage to other than the article purchased or serviced), process it as a tort claim.

(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.

§ 842.134 Claims in favor of NAFIs.

(a) *Tort claims*. Use the procedures set forth in subpart J or L, as appropriate.

(b) *Contract claims*. See AFR 176–9 or AFR 147–14, as appropriate.

(c) *Claims involving dishonored checks and debts to NAFIs*. See AFR 176–2 and 176–10 or AFR 147–14, as appropriate.

(d) *Third Party Workers' Compensation Claims*. NAF employees are provided workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901, *et seq.*) as extended by the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171–8173). For injuries suffered by NAFI employees in the course and scope of their employment where third parties are responsible for the injuries, the employing NAFIs are entitled to recover from the responsible third parties for the compensation and medical benefits paid to the injured employees (33 U.S.C. 933). Third party claims are pursued on behalf of employing NAFIs by the servicing staff judge advocate. A NAFI also has the right of offset against an employee's pay amounts recovered directly by the employee from third parties as provided in the LHWCA.

§ 842.135 Advance payments.

The procedures set out in subpart Q should be used for advance payments.

Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFIs. Pay the claim initially from appropriated claim funds and decide the correct funding source later.

§ 842.136 Claim payments and deposits.

Unless otherwise specified in this subpart, claims for payment (in two copies), collected funds for deposit, and international agreement bills for reimbursement should be sent as follows:

(a) *AAFES:* (1) Claims payable for more than $2500: HQ AAFES, Comptroller, Insurance Branch, P.O. Box 660202, Dallas, TX 75266–0202.

(2) Claims payable for $2500 or less: AAFES Operations Center (OSC-AC), 2727 LBJ Highway, Dallas TX 75266–0320.

(b) *Civilian base restaurants and civilian welfare NAFIs:* (1) For more than $100: Army and Air Force Civilian Welfare Fund, Washington, DC 20310.

(2) For $100 or less: The local NAFI giving rise to the claim.

(c) *All other NAFIs:* (1) For more than $50: HQ AFMPC/DPMSCI, Randolph AFB TX 78150–6001.

(2) For $50 or less: The local NAFI giving rise to the claim.

(d) *International agreement claims, all NAFIs.* When a receiving state pays a claim under an international agreement, the NAFI involved, upon receipt of an extract copy of the itemized bill, will forward payment of its pro rata share to the sending State office.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

Subpart P—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)

§ 842.137 Scope of this subpart.

This subpart explains how to process certain administrative claims:

(a) Against the United States for property damage, personal injury, or death, arising out of Air Force 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.

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

§ 842.138 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.

§ 842.139 Delegations of authority.

The appropriate subpart of this part under which the claim is being considered prescribes the authority to settle it.

§ 842.140 Proper claimants.

(a) Anyone suffering property damage, personal injury, or death arising from an Air Force noncombat mission or other specified Air Force authorized mission performed by CAP, who is also a proper claimant under the appropriate subpart of this part.

(b) The United States, for claims arising out of activities of CAP caused by negligent acts or omissions of CAP members or third parties.

§ 842.141 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.

§ 842.142 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 performed by the CAP for which specific coverage under this subpart is granted by HQ USAF/JACC.

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

§ 842.143 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 HQ USAF/JACC.

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

§ 842.144 Scope of this subpart.

It 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.

§ 842.145 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.

(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) SJA of 9AF for CENTCOM, and the SJAs of PACAF and USAFE.

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

§ 842.146 Who may request.

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

§ 842.147 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 backruptcy 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 as advance payment agreement.

§ 842.148 When not authorized.

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

(a) Federal Tort Claims Act.

(b) International Agreement Claims Act.

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

§ 842.149 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.

§ 842.150 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.

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 officer having responsibility in a particular country for personnel subject to foreign criminal jurisdiction.

(b) Notwithstanding the criteria prescribed below, an officer exercising approved authority may, in his discretion, deny a request for the provision of counsel, provision of bail or payment of expenses, where the otherwise eligible requestor is in an absent without leave or deserter status at the time of the request, or otherwise is not then subject to United States military control, and there is no reasonable basis for the belief that the requestor will return to United States military control at the conclusion of the proceedings of service of an adjudged sentence, if any.

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

Requests for the provision of counsel and payment of expenses in criminal cases may be approved in pretrial, trial, appellate and posttrial proceedings in any one of the following criminal cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the sentence which is normally imposed includes confinement, whether or not such sentence is suspended; or

(c) Where capital punishment might be imposed; or

(d) Where an appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused; or

(e) Where conviction of the offense alleged could later form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition; or

(f) Where the case, although not within the criteria established in paragraphs (a), (b), (c), (d), or (e) of this section, is considered to have significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest.

§ 845.5 Provision of bail in criminal cases.

Funds for the posting of bail or bond to secure the release of personnel from confinement by foreign authorities before, during, or after trial may be furnished in all criminal cases. Safeguards should be imposed to assure that at the conclusion of the proceedings or on the appearance of the defendant in court, the bail or bond will be refunded to the military authorities. Bail will be provided only to guarantee the presence of the defendant and will not be provided to guarantee the payment of fines or civil damages. Local US military authorities are expected to provide bail, in any case, only after other reasonable efforts have been made to secure release of pretrial custody to the US.

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

Requests for provision of counsel and payment of expenses in civil cases may be granted in trial and appellate proceedings in either of the following civil cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the case is considered to have a significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest. No funds shall be provided under this part in cases where the United States of America is in legal effect the defendant, without prior authorization of the Judge Advocate General.

§ 845.7 Procedures for hiring counsel and obligating funds.

(a) The selection of individual trial or appellate counsel will be made by the defendant. Such counsel shall represent the individual defendant and not the US Government. Selection shall be made from approved lists of attorneys who are qualified, competent and experienced in trial practice, and admitted for full practice, on their own account, before the courts of the foreign country involved. Normally, these lists will be coordinated with the local court or bar association, if any, and the appropriate US Diplomatic or Consular Mission and should include only those attorneys who are known or reputed, to comply with local attorney fee schedules or guides approved or suggested by local bar associations and should not exceed amounts paid under similar circumstances by nationals of the country where the trial is held. No fee may include any amount in payment for services other than those incident to representation before judicial and administrative agencies of the foreign country in the particular case for which the contract is made, and in no event may any contract include fees for representation in habeas corpus or related proceedings before tribunals of the United States. When appropriate and reasonable in the case, the payment of expenses, in addition to counsel fees, may include court costs, bail costs, charges for obtaining copies of records, printing and filing fees, interpreter fees, witness fees, and other necessary and reasonable expenses. Expenses will not include the payment of fines or civil damages, directly or indirectly.

(b) Whenever possible, the officer responsible under § 845.3 (or his designee), acting on behalf of the United States of America, shall enter into a written contract with the selected counsel. The contract will cover counsel fees, and, when appropriate, may cover other costs arising in defense of the case only in the court of first instance and will not include fees for representation on appeal. If the case is appealed to higher tribunals, supplemental agreements shall be executed for each appeal. A copy of the contractual agreement shall serve as the obligating document.

(c) If, for example, because of unusual circumstances or local customs, it is not practicable to enter into a written contract as in paragraph (b) of this section, action will be taken to record the agreement reached between the officer responsible under § 845.3 (or his designee) and the selected counsel. This requirement may be met by a letter of commission or letter of understanding, executed between the officer responsible under § 845.3 (or his designee) and the selected counsel, or by a written request for legal services expressly or impliedly accepted by the selected counsel. Any such document shall contain, if possible, an agreed estimate of counsel fees and reasonable expenses and a statement that both fees and expenses will conform to those paid by local nationals under similar circumstances and will not exceed local fee schedules, if any. If this document does not include an agreed estimate of counsel fees and other reasonable expenses, an estimate will be provided by the contracting officer. A copy of the document, together with the estimate, will be furnished the accounting component and will serve as the commitment document for the reservation of funds.

(d) The provision of counsel and payment of expenses under this part is not subject to the provisions of the Defense Acquisition Regulation (subchapter A, chapter I of this title). However, the contract clauses set forth in part 5, section VII, Defense Acquisition Regulation, may be used as a guide in contracting.

(e) Because of the desirability of timely procedural action, it is suggested that there be designated, from among the judge advocates on the staffs of officers responsible under § 845.3, contracting officers with contracting authority limited to agreements described in this section. The effect of this designation would be to combine within one office the duties of contracting officer and judge advocate.

(f) Nothing in this part shall be construed as prohibiting the selection of qualified local counsel employed by the United States Government, if the serviceman freely selects such counsel.

§ 845.8 Payment of counsel fees and other expenses.

Payment of bills submitted by the selected counsel and other costs shall be made in accordance with the general provision of AFM 177–102 (Commercial Transactions at Base Level), relating to payment of contractual obligations and pertinent disbursing regulations. All payments under these procedures will be in local currency. Acceptance of services procured under these procedures shall be certified to by the officer responsible under § 845.3 (or his designee). Payments of bail may be made when authorized by such officers. Such authorization shall be in the form of a directing letter or message citing 10 U.S.C. 1037.

§ 845.9 Appropriated funds chargeable.

Authorized expenses incurred incident to implementation of the policies set forth in this part, including transportation and per diem expenses of trial observers, interpreters, and local counsel employees, shall be paid from appropriated funds of the service to which the defendant belongs. Payments shall be made from the appropriation current at time of payment, unless obligations for authorized costs have previously been established. Refunds shall be processed as appropriation refund. Such funds are chargeable to the base for operation and maintenance purposes (O&M or R&D, as applicable).

§ 845.10 Reimbursement.

No reimbursement will ordinarily be required from individuals with respect to payments made in their behalf under this part. However, prior to the posting of bail on behalf of a defendant, a signed agreement shall be secured from him wherein he agrees to remit the amount of such bail or permit the application of so much of his pay as may be necessary to reimburse the Government in the event that he willfully causes forfeiture of bail. In the event of such forfeiture, bail provided under this part shall be recovered from the defendant in accordance with that agreement. The agreement should include a statement that it does not prejudice the defendant's right to appeal to the Comptroller General of the United States and the courts after such payment or deduction has been made, if he considers the amount erroneous.

§ 845.11 Correspondence.

Judge advocates who advise officers responsible under § 845.3 are authorized to correspond directly with each other and with the Judge Advocate General of the service concerned for advice with regard to payment of counsel fees and other expenses.

SUBCHAPTER E—SECURITY [RESERVED]