

(d) *Carrier* means any payer of benefits for which reimbursement is requested under the Act, and includes insurance carriers, self-insured employers and compensation funds.

(e) *War-risk hazard* means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by the Act is serving; from—

(1) The discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person;

(2) Action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies;

(3) The discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting of munitions, or while stored on the premises of the manufacturer, processor, or transporter);

(4) The collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) The operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(f) *Hostile force or person* means any nation, any subject of a foreign nation, or any other person serving a foreign nation—

(1) Engaged in a war against the United States or any of its allies;

(2) Engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(3) Engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by the Act is serving.

(g) *Allies* means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(h) *War activities* includes activities directly relating to military operations.

(i) *Continental United States* means the States and the District of Columbia.

(j) *Injury* means injury resulting from a war-risk hazard, as defined in this section, whether or not such injury occurred in the course of the person's employment, and includes any disease proximately resulting from a war-risk hazard.

(k) *Death* means death resulting from an injury, as defined in this section.

(l) The terms *compensation, physician, and medical, surgical, and hospital services and supplies* when used in subparts D and E are construed and applied as defined in the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

(m) The terms *disability, wages, child, grandchild, brother, sister, parent, widow, widower, student, adoption or adopted* are construed and applied as defined in the Longshore and Harbor Workers' Compensation Act, as amended (35 U.S.C. 901 *et seq.*).

Subpart B—Reimbursement of Carriers

§ 61.100 General reimbursement provisions.

(a) The Office shall reimburse any carrier that pays benefits under the Defense Base Act or other applicable workers' compensation law due to the injury, disability or death of any person specified in § 61.1(a), if the injury or death for which the benefits are paid arose from a war-risk hazard. The amount to be reimbursed includes disability and death payments, funeral and burial expenses, medical expenses, and the reasonable and necessary claims expense incurred in processing the request.

(b) The Office shall not provide reimbursement in any case in which an additional premium for war-risk hazard was charged, or in which the carrier

has been reimbursed, paid, or compensated for the loss for which reimbursement is requested.

(c) Reimbursement under this section with respect to benefits shall be limited to the amounts which will discharge the liability of the carrier under the applicable workers' compensation law.

§ 61.101 Filing a request for reimbursement.

(a) A carrier or employer may file a request for reimbursement. The request shall be submitted to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013–7117;

(b) Each request for reimbursement shall include documentation itemizing the payments for which reimbursement is claimed. The documentation shall be sufficient to establish the purpose of the payment, the name of the payee, the date(s) for which payment was made, and the amount of the payment. Copies of any medical reports and bills related to medical examination or treatment for which reimbursement is claimed shall also be submitted. If the carrier cannot provide copies of the payment drafts or receipts, the Office may accept a certified listing of payments which includes payee name, description of services rendered, date of services rendered, amount paid, date paid check or draft number, and signature of certifier.

(c) When filing an initial request for reimbursement under the Act, the carrier shall submit copies of all available documents related to the workers' compensation case, including—

- (1) Notice and claim forms;
- (2) Statements of the employee or employer;
- (3) Medical reports;
- (4) Compensation orders; and
- (5) Proof of liability (e.g., insurance policy or other documentation).

§ 61.102 Disposition of reimbursement requests.

(a) If the Office finds that insufficient or inadequate information has been submitted with the claim, the carrier shall be asked to submit further information. Failure to supply the re-

quested information may result in disallowance of items not adequately supported as properly reimbursable.

(b) The Office shall not withhold payment of an approved part of a reimbursement request because of denial of another part of the reimbursement request.

(c) The Office shall regard awards, decisions and approved settlement agreements under the Defense Base Act or other applicable workers' compensation law, that have become final, as establishing prima facie, the right of the beneficiary to the payment awarded or provided for.

(d) The Office shall advise the carrier of the amount approved for reimbursement. If the reimbursement request has been denied in whole or in part, the Office shall provide the carrier an explanation of the action taken and the reasons for the action. A carrier within the United States may file objections with the Associate Director for Federal Employees' Compensation to the disallowance or reduction of a claim within 60 days of the Office's decision. A carrier outside the United States has six months within which to file objections with the Associate Director. The Office may consider objections filed beyond the time limits under unusual circumstances or when reasonable cause has been shown for the delay. A determination by the Office is final.

(e) In determining whether a claim is reimbursable, the Office shall hold the carrier to the same degree of care and prudence as any individual or corporation in the protection of its interests or the handling of its affairs would be expected to exercise under similar circumstances. A part or an item of a claim may be disapproved if the Office finds that the carrier—

- (1) Failed to take advantage of any right accruing by assignment or subrogation (except against the United States, directly or indirectly, its employees, or members of its armed forces) due to the liability of a third party, unless the financial condition of the third party or the facts and circumstances surrounding the liability justify the failure;
- (2) Failed to take reasonable measures to contest, reduce, or terminate its liability by appropriate available

procedure under workers' compensation law or otherwise; or

(3) Failed to make reasonable and adequate investigation or injury as to the right of any person to any benefit or payment; or

(4) Failed to avoid augmentation of liability by reason of delay in recognizing or discharging a compensation claimant's right to benefits.

§ 61.103 Examination of records of carrier.

Whenever it is deemed necessary, the Office may request submission of case records or may inspect the records and accounts of a carrier for the purpose of verifying any allegation, fact or payment stated in the claim. The carrier shall furnish the records and permit or authorize their inspection as requested. The right of inspection shall also relate to records and data necessary for the determination of whether any premium or other charge was made with respect to the reimbursement claimed.

§ 61.104 Reimbursement of claims expense.

(a) A carrier may claim reimbursement for reasonable and necessary claims expense incurred in connection with a case for which reimbursement is claimed under the Act. Reimbursement may be claimed for allocated and unallocated claims expense.

(b) The term "allocated claims expense" includes payments made for reasonable attorneys' fees, court and litigation costs, expenses of witnesses and expert testimony, examinations, autopsies and other items of expense that were reasonably incurred in determining liability under the Defense Base Act or other workers' compensation law. Allocated claims expense must be itemized and documented as described in § 61.101.

(c) The term "unallocated claims expense" means costs that are incurred in processing a claim, but cannot be specifically itemized or documented. A carrier may receive reimbursement of unallocated claims expense in an amount of to 15% of the sum of the reimbursable payments made under the Defense Base Act or other workers' compensation law. If this method of computing unallocated claims expense

would not result in reimbursement of reasonable and necessary claims expense, the Office may, in its discretion, determine an amount that fairly represents the expenses incurred.

(d) The Office shall not consider as a claims expense any general administrative costs, general office maintenance costs, rent, insurance, taxes, or other similar general expenses. Nor shall expenses incurred in establishing or documenting entitlement to reimbursement under the Act be considered.

§ 61.105 Direct payment of benefits.

(a) The Office may pay benefits, as they accrue, directly to any entitled beneficiary in lieu of reimbursement of a carrier.

(b) The Office will not accept a case for direct payment until the right of the person or persons entitled to benefits has been established and the Office finds that the carrier would be entitled to reimbursement for continuing benefits.

(c) The Office will not accept a case for direct payment until the rate of compensation or benefit and the period of payment have become relatively fixed and known. The Office may accept a case for direct payment before this condition has been satisfied, if the Office determines that direct payment is advisable due to the circumstances in that particular case.

(d) In cases transferred to the Office for direct payment, medical care for the effects of a war-risk injury may be furnished in a manner consistent with the regulations governing the furnishing of medical care under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, *et seq.*).

(e) The transfer of a case to the Office for direct payment does not affect the hearing or adjudicatory rights of a beneficiary or carrier as established under the Defense Base Act or other applicable workers' compensation law.

(f) The Office may retransfer any case to a carrier either for the purpose of completion of adjudicatory processes or for continuation of payment of benefits.