

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.

### **Subpart C—Compensation for Injury, Disability or Death**

#### **§ 61.200 Entitlement to benefits.**

(a) Compensation under section 101(a) of the Act is payable for injury or death due to a war-risk hazard of an employee listed in § 61.1(a), whether or not the person was engaged in the course of his or her employment at the time of the injury.

(b) Compensation under this subpart is paid under the provisions of the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), except that the determination of beneficiaries and the computation of compensation are made in accordance with sections 6, 8, 9, and 10 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*).

(c) The Office may not approve a claim for compensation if any of the following conditions are met:

(1) The employee resides at or in the vicinity of the place of employment, does not live there solely due to the exigencies of the employment, and is injured outside the course of the employment.

(2) The claim is filed due to the injury or death of a prisoner of war detained or utilized by the United States.

(3) The person seeking benefits recovers or receives workers' compensation benefits from any other source for the same injury or death.

(4) The person seeking benefits is a national of a foreign country and is entitled to compensation benefits from that or any other foreign country on account of the same injury or death.

(5) The employee is convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies.

#### **§ 61.201 Filing of notice and claim.**

An employee or his or her survivors may file a claim under section 101(a) of the Act only after a determination has been made that no benefits are payable under the Defense Base Act administered by the Office's Division of Longshore and Harbor Workers' Com-

pensation. Notice and claim may be filed on standard Longshore or Federal Employees' Compensation Act forms. The claimant shall submit notice and claim, along with any supporting documentation, to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013-7117.

#### **§ 61.202 Time limitations for filing notice and claim.**

The time limitation provisions found in 5 U.S.C. 8119 apply to the filing of claims under section 101(a) of the War Hazards Compensation Act. The Office may waive the time limitations if it finds that circumstances beyond the claimant's control prevented the filing of a timely claim.

#### **§ 61.203 Limitations on and deductions from benefits.**

(a) Compensation payable for injury, disability or death may not exceed the maximum limitations specified in section 6(b) of the Longshore and Harbor Workers' Compensation Act, as amended.

(b) In determining benefits for disability or death, the Office shall not apply the minimum limits found in sections 6(b) and 9(e) of the Longshore and Harbor Workers' Compensation Act.

(c) Compensation for death or permanent disability payable to persons who are not citizens of the United States and who are not residents of the United States or Canada is in the same amount as provided for residents, except that dependents in a foreign country are limited to the employee's spouse and children, or if there be no spouse or children, to the employee's father or mother whom the employee supported, either wholly or in part, for the period of one year immediately prior to the date of the injury. The Office may discharge its liability for all future payments of compensation to a noncitizen/nonresident by paying a lump sum representing one-half the commuted value of all future compensation as determined by the Office.

(d) If any employee or beneficiary receives or claims wages, payments in lieu of wages, or insurance benefits for