

**Army Regulation 27-20**

**Legal Services**

# **Claims**

**Headquarters  
Department of the Army  
Washington, DC  
8 February 2008**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 27-20

Claims

This major revision dated 8 February 2008--

- o Clarifies authority and responsibility requirements (chapters 1, 2, 3, 4, 5, 6, 7, 8, and 14).
- o Removes reference and resource materials relevant to claims policy and procedures previously included as figures in DA Pam 27-162 (the companion to this publication) and places them on the U.S. Army Claims Service Web site hosted by the Army's Judge Advocate General Corps (para 1-2).
- o Clarifies provisions as to which claims statutes apply, in what order, and the proper identification of related remedies (para 1-4).
- o Clarifies and reemphasizes the role of unit claims officers (para 1-12).
- o Provides for use of military medical treatment facilities for examining civilian claimants even though they may not be otherwise eligible (para 1-14).
- o Requires major Army commands and the Chief of Engineers to provide expertise on a nonreimbursable basis, except as to temporary duty expenses, and in the case of the Corps of Engineers, additionally excludes specialized lab service expenses (paras 1-13 and 1-16).
- o Clarifies policies related to claims acknowledgement and revisions of filed claims (paras 2-7 and 2-8).
- o Clarifies requirements related to the mirror file system (para 2-12).
- o Reorganizes and clarifies policy and procedure information about settlement agreements (para 2-51).
- o Redefines criteria related to emotional distress under the Military Claims Act (para 3-5).
- o Reemphasizes the exclusivity of a Status of Forces Agreement remedy (para 7-13).
- o Bars paying incident-to-service claims of foreign military members on joint exercises in foreign countries (para 10-4).
- o Mandates the production of management reports and claims identification and tracking using automated procedures incorporating both database and Web technology (chap 13).
- o Mandates items that must be contained in the file of every claim filed against the United States (para 13-3).

- o Mandates that responsibility for retiring the claim file is to be placed on the office taking final action on the claim, for all claims files other than medical malpractice claims (para 13-4b).
- o Expands the types of correspondence that require the use of certified mail (para 13-5).
- o Permits the use of private mail carriers, such as Federal Express, for correspondence with claimants in addition to certified or registered mail (para 13-5a).
- o Revises affirmative claims procedures towards the goal of more participation by recovery judge advocates in developing the facts of the incident giving rise to the claim and more participation by U.S. Army Claims Service through the mirror file system (chap 14).
- o Restructures by grouping to the extent possible all information on a single topic in one place, and adds cross-referencing where it is not. Separates, to the extent possible, policy and procedural guidance, retaining policy information in this publication and moving procedural guidance to DA Pam 27-162. These changes have occurred throughout the publication but special attention was given to chapters 1 and 2 (throughout).
- o Updates and corrects all references to United States Code cites, regulatory, and administrative materials throughout the publication (throughout).
- o Examines thoroughly the impact of the Health Insurance Portability and Accountability Act on claims processing policies and adds text references to and discussion of the Health Insurance Portability and Accountability Act, where deemed necessary (throughout).
- o Rescinds DA Form 1667, Claims Journal for (Personnel) (Tort) (Affirmative) Claims.




## Legal Services

### Claims

By Order of the Secretary of the Army:

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*General, United States Army*  
*Chief of Staff*

Official:

  
JOYCE E. MORROW  
*Administrative Assistant to the*  
*Secretary of the Army*

**History.** This publication is a major revision.

**Summary.** This regulation sets forth guiding policies and legal principles for investigating, processing, and settling claims against, and in favor of, the United States. This publication is intended to be used as guiding policy for the procedures in DA Pam 27–162.

**Applicability.** This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve. Under certain circumstances, it applies to Department of Defense civilian employees. In countries where the U.S. Army has

been assigned single-service claims responsibility, this regulation applies to claims generated by the other Armed Services. During mobilization, chapters and policies contained in this regulation may be modified by the proponent.

**Proponent and exception authority.** The proponent of this regulation is The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

**Army management control process.**

This regulation contains management control provisions and identifies key management controls that must be evaluated (see appendix B).

**Supplementation.** Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from The Judge Advocate General, ATTN: DAJA-ZA, 2200 Army Pentagon, Washington, DC 20310–2200.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

**Distribution.** This publication is available in electronic media only and is intended for command levels B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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\*This publication supersedes AR 27–20, dated 1 July 2003, and it rescinds DA Form 1667, dated April 1988.

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## **Glossary**

# Chapter 1 The Army Claims System

## Section I Introduction

### 1-1. Purpose

*a.* This regulation sets forth policies and procedures that govern the investigating, processing, and settling of claims against, and in favor of, the United States under the authority conferred by statutes, regulations, international and interagency agreements, and Department of Defense Directives (DODDs). It is intended to ensure that claims are investigated properly and adjudicated according to applicable law, and valid recoveries and affirmative claims are pursued against carriers, third-party insurers, and tortfeasors.

*b.* For ease of reference, the chapter and paragraph numbers in this publication correspond as closely as possible with the chapter and paragraph numbers in DA Pam 27-162, with similar paragraph numbers containing information on the same topic. Since DA Pam 27-162 is a much lengthier publication and contains more information, not all paragraphs correspond exactly, but information has been grouped as closely as possible into similar sequences, chapters, and sections.

### 1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

### 1-4. Claims authorities

*a. General.* Claims cognizable under the following list of statutes and authorities are processed and settled under DA Pam 27-162 and this publication.

(1) *Tort claims.*

*(a)* Military Claims Act (MCA), 10 United States Code § 2733 (10 U.S.C. § 2733) (see chap 3 of this publication). The “incident-to-service” provision, applicable to both military and civilian personnel of the Department of Defense (DOD) is contained in the MCA.

*(b)* Gonzales Act, 10 U.S.C. § 1089. This act permits individual suits against health care providers for certain torts (see para 3-8).

*(c)* Certain suits arising out of legal malpractice, 10 U.S.C. § 1054, discussed at paragraph 3-9 and at DA Pam 27-162, paragraph 2-62*f*.

*(d)* Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1291, 1402, 2401-2402, 2411-2412, and 2671-2680 (see chap 4). The Westfall Act, 28 U.S.C. § 2679, an integral part of the FTCA, provides absolute immunity from individual suit for common law torts for employees of the United States acting within the scope of their employment.

*(e)* Non-Scope Claims Act (NSCA), 10 U.S.C. § 2737 (see chap 5).

*(f)* National Guard Claims Act (NGCA), 32 U.S.C. § 715 (see chap 6).

*(g)* International Agreements Claims Act (IACA), 10 U.S.C. §§ 2734a and 2734b (see chap 7), and the Foreign Claims Act (FCA), 10 U.S.C. § 2734 (see chap 10). A list of known international claims agreements in force is maintained on the U.S. Army Claims Service (USARCS) Web site at “Claims Resources,” Ia,8(k).

*(h)* Army Maritime Claims Settlement Act (AMCSA), 10 U.S.C. §§ 4801, 4802, and 4806. Affirmative claims under the AMCSA are processed under 10 U.S.C. §§ 4803 and 4804 (see chap 8).

*(i)* Admiralty Extension Act (AEA), 46 U.S.C. § 30101 (see chap 8).

*(j)* Claims against nonappropriated fund (NAF) activities and the Risk Management Program (RIMP) (see chap 12), processed under AR 215-1 and AR 608-10.

*(k)* Claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 U.S.C. § 411 and DOD Manual 4525.6-M) (see paras 1-8*i* and 2-15*i* of this publication, as well as DA Pam 27-162, paras 2-15*i* and 2-39*c*).

(2) *Personnel claims (chapters 9 and 11).*

*(a)* The Personnel Claims Act (PCA), 31 U.S.C. § 3721 (see chap 11).

*(b)* Redress of injuries to personal property, Uniform Code of Military Justice (UCMJ), Article 139, 10 U.S.C. § 939 (see chap 9).

(3) *Affirmative claims (chapter 14).*

*(a)* The Federal Claims Collection Act (FCCA), 31 U.S.C. §§ 3711-3720E (see chap 14).

*(b)* The Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. §§ 2651-2653 (see chap 14).

*(c)* Collection from third-party payers of reasonable costs of health care services, 10 U.S.C. § 1095 (see chap 14).

*b. Fund source authority for claims under Title 10 statutes.* 10 U.S.C. § 2736 provides advance payments for certain property claims (see para 2–71).

*c. Fund source authority for tort claims paid by Financial Management Service.* 31 U.S.C. § 1304 provide authority for judgments, awards, and compromise settlements.

*d. Additional authorities under Title 10.*

(1) 10 U.S.C. § 2735 establishes that settlements (or “actions”) under the Title 10 claims processing statutes are final and conclusive.

(2) 10 U.S.C. § 2731 provides a definition of the word “settle.”

*e. Related remedies statutes.* The Army frequently receives claims or inquiries that are not cognizable under the statutory and other authorities administered by the U.S. Army under this publication and DA Pam 27–162. Every effort should be made to refer the claim or inquiry to the proper authority following the guidance in paragraph 2–15 (determining the correct statute) or paragraph 2–17 (related remedies) (see these paragraphs in both AR 27–20 and DA Pam 27–162). Some authorities for related remedies are used more frequently than others. Where an authority for a related remedy is frequently used, it is listed below.

(1) Tucker Act, 28 U.S.C. § 1346, provides exclusive jurisdiction in the Court of Federal Claims over causes of actions alleging property loss caused by a Fifth Amendment “taking.”

(2) Maritime authority statutes, Public Vessels Act (PVA), 46 U.S.C. §§ 31101–31113, Suits in Admiralty Act (SIAA), 46 U.S.C. §§ 30901–30918, and the Rivers and Harbors Act, 33 U.S.C. §§ 408 & 412.

(3) Federal Employees Compensation Act (FECA), two excerpts— 5 U.S.C. §§ 8116 and 8140, provides guidance on personal injury and death claims by civilian employees arising within the scope of their employment (see DA Pam 27–162, para 2–15*b*) and information on certain claims by Reserve Officers Training Corps (ROTC) cadets, respectively (see DA Pam 27–162, para 2–17*d*(2)).

(4) Longshore and Harbor Workers’ Compensation Act (LSHWCA), 33 U.S.C. §§ 901–950.

(5) Claims for consequential property damage by civilian employees may only be considered in the Court of Federal Claims pursuant to 28 U.S.C. § 1491.

*f. Additional materials.* There are some additional authoritative materials for the processing of claims, mostly of an administrative nature. For a complete listing of all of the supplementary materials relevant to claims processing under this publication see DA Pam 27–162, appendix B.

*g. Conflict of authorities.* Where a conflict exists between a general provision of this publication and a specific provision found in one of this publication’s chapters implementing a specific statute, the specific provision, as set forth in the statute, will control.

## **1–5. Command and organizational relationships**

*a. The Secretary of the Army.* The Secretary of the Army (SA) heads the Army Claims System and acts on certain claims appeals directly or through a designee.

*b. The Judge Advocate General.* The SA has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, USARCS to carry out the responsibilities assigned in paragraph 1–9 and as otherwise lawfully delegable.

*c. U.S. Army Claims Service.* The USARCS, a command and component of the Office of TJAG, is the agency through which the SA and TJAG discharge their responsibilities for the administrative settlement of claims worldwide (see AR 10–72). The USARCS’s mailing address is: U.S. Army Claims Service, 4411 Llewellyn Ave., Fort George G. Meade, MD 20755–5360.

*d. Command claims services.*

(1) Command claims services exercise general supervisory authority over claims matters arising within their assigned areas of operation. Command claims services will—

(a) Effectively control and supervise the investigation of potentially compensable events (PCEs) occurring within the command’s geographic area of responsibility, in other areas for which the command is assigned claims responsibility, and during the course of the command’s operations.

(b) Provide services for the processing and settlement of claims for and against the United States.

(2) The Commander, USARCS may delegate authority to establish a Command Claims Service (CCS) to the commander of a major overseas command or other commands that include areas outside the United States, its territories and possessions.

(a) When a large deployment occurs, the Commander, USARCS may designate a CCS for a limited time or purpose, such as for the duration of an operation and for the time necessary to accomplish the mission. The appropriate reporting unit of the Army Command (ACOM) or Army Service Component Command (ASCC) will assist the Commander, USARCS in obtaining resources and personnel for the mission.

(b) In coordination with the Commander, USARCS, the ACOM or ASCC will designate the area of responsibility for each new CCS.

(3) A CCS may be a separate organization with a designated commander or chief. If it is part of the command’s

Office of the Staff Judge Advocate (SJA), the SJA will also be the chief of the CCS, however, the SJA may designate a field grade officer as chief of the service.

*e. Area claims office.* The following may be designated an area claims office (ACO):

(1) An office under the supervision of the senior judge advocate (JA) of each command or organization so designated by the Commander, USARCS. The senior JA is the head of the ACO.

(2) An office under supervision of the senior JA of each command in the area of responsibility of a CCS so designated by the chief of that service after coordination with the Commander, USARCS. The senior JA is the head of the ACO.

(3) The office of counsel of each U.S. Army Corps of Engineers (COE) district within the United States and such other COE commands or agencies as designated by the Commander, USARCS, with concurrence of the Chief Counsel, Office of the Chief of Engineers, for all claims generated within such districts, commands or agencies. The district counsel or the attorney in charge of the command's or agency's legal office is the head of the ACO.

*f. Claims processing office.* Claims processing offices (CPOs) are normally small legal offices or ACO subordinate elements, designated by the Commander, USARCS, a CCS or an ACO. These offices are established for the investigation of all actual and potential claims arising within their jurisdiction, on either an area, command or agency basis. There are four types of CPOs (see para 1-12)—

(1) Claims processing offices without approval authority.

(2) Claims processing offices with approval authority.

(3) Medical claims processing offices.

(4) Special claims processing offices.

*g. Limitations on delegation of authority under any chapter.*

(1) The Commander, USARCS, commanders or chiefs of command claims services, or the heads of ACOs or CPOs with approval authority may delegate, in writing, all or any portion of their monetary approval authority to subordinate JAs or claims attorneys in their services or offices.

(2) The authority to act upon appeals or requests for reconsideration, to deny claims (including disapprovals based on substantial fraud), to grant waivers of maximum amounts allowable, or to make final offers will not be delegated except that the Commander, USARCS may delegate this authority to USARCS Division Chiefs.

(3) The CPOs will provide copies of all delegations affecting them to the ACO and, if so directed, to command claims services.

## **1-6. Designation of claims attorneys**

*a. Who may designate.* The Commander, USARCS, the senior JA of a command having a CCS, the chief of a CCS, the head of an ACO, or the Chief Counsel of a COE District, may designate a qualified attorney other than a JA as a claims attorney. The head of an ACO may designate a claims attorney to act as a CPO with approval authority.

*b. Eligibility.* To qualify as a claims attorney, an individual must be a civilian employee of the Department of the Army (DA) or DOD, a member of the bar of a state, the District of Columbia, or a jurisdiction where U.S. Federal law applies, serving in the grade of GS-11 or above, and performing primary duties as a legal adviser.

## **1-7. The Judge Advocate General**

The Judge Advocate General has worldwide Army Staff responsibility for administrative settlement of claims by and against the U.S. Government, generated by employees of the U.S. Army and DOD components other than the Departments of the Navy and Air Force. Where the Army has single-service responsibility, TJAG has responsibility for the Army (see DODD 5515.9). Certain claims responsibilities of TJAG are exercised by the Deputy Judge Advocate General (DJAG) as set forth in this regulation and directed by TJAG.

## **1-8. Army claims mission**

The Army claims mission is to—

*a.* Promptly investigate potential claims incidents with a view to determining the degree of the Army's exposure to liability, the damage potential, and when a third party is at fault, whether the Army should take action to collect for medical expenses, lost wages, and property damage.

*b.* Efficiently and expeditiously dispose of claims against the U.S. by fairly settling meritorious claims at the lowest level within the claims system commensurate with monetary jurisdiction delegated, or by denying non-meritorious claims.

*c.* Develop a system that has a high level of proficiency, so that litigation and appeals can be avoided or kept to a minimum.

## Section II Responsibilities

### 1–9. Commander, U.S. Army Claims Service

The Commander, USARCS will—

- a. Supervise and inspect claims activities worldwide.
- b. Formulate and implement claims policies and uniform standards for claims office operations.
- c. Investigate, process and settle claims beyond field office monetary authority and consider appeals and requests for reconsideration on claims denied by the field offices.
- d. Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under the statutes and regulations listed in paragraph 1–4, and pursuant to other appropriate statutes, regulations, and authorizations.
- e. Designate ACOs, CPOs, and claims attorneys within DA and DOD components other than the Departments of the Navy and Air Force, subject to concurrence of the commander concerned.
- f. Designate continental United States (CONUS) geographic areas of claims responsibility.
- g. Recommend action to be taken by the SA, TJAG, or the U.S. Attorney General, as appropriate, on claims in excess of \$25,000 or the threshold amount then current under the FTCA, the FCA, the MCA, the NGCA, AMCSA, FCCA and FMRCAs and on other claims that have been appealed. Direct communication with Department of Justice (DOJ) and the SA's designee is authorized.
- h. Operate the "receiving State office" for claims arising in the United States, its territories, commonwealths, and possessions cognizable under Article VIII of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), Partnership for Peace (PFP) SOFA, Article XVI of the Singapore SOFA, and other SOFAs which have reciprocal claims provisions, as implemented by 10 U.S.C. §§ 2734a and 2734b (chap 7).
- i. Settle claims of the U.S. Postal Service for reimbursement under 39 U.S.C. § 411 (see DOD Manual 4525.6–M).
- j. Settle claims against carriers, warehouse firms, insurers, and other third parties for loss of, or damage to, personal property of DA or DOD Soldiers or civilians incurred while the goods are in storage or in transit at Government expense (chap 11).
- k. Formulate and recommend legislation for Congressional enactment of new statutes and the amendment of existing statutes considered essential for the orderly and expeditious administrative settlement of noncontractual claims.
- l. Perform post-settlement review of claims.
- m. Prepare, justify, and defend estimates of budgetary requirements and administer the Army claims budget.
- n. Maintain permanent records of claims for which TJAG is responsible.
- o. Assist in developing disaster and maneuver claims plans designed to implement the responsibilities set forth in paragraph 1–11a(12).
- p. Develop and maintain plans for a disaster or civil disturbance in those geographic areas that are not under the jurisdiction of an area claims authority and in which the Army has single-service responsibility or in which the Army is likely to be the predominant Armed Force.
- q. Take initial action, as appropriate, on claims arising in emergency situations.
- r. Provide assistance as available or take appropriate action to ensure that command claims services and ACOs are carrying out their responsibilities as set forth in paragraphs 1–10 and 1–11, including claims assistance visits.
- s. Serve as proponent for the database management systems for torts, personnel and affirmative claims and provide standard automated claims data management programs for worldwide use.
- t. Ensure proper training of claims personnel.
- u. Coordinate claims activities with the Air Force, Navy, Marine Corps, and other DOD agencies to ensure a consistent and efficient joint service claims program.
- v. Investigate, process and settle, and supervise the field office investigation and processing of, medical malpractice claims arising in Army medical centers within the United States; provide medical claims judge advocates (MCJAs), medical claims attorneys, and medical claims investigators assigned to such medical centers with technical guidance and direction on such claims.
- w. Coordinate support with the U.S. Army Medical Command (MEDCOM) on matters relating to medical malpractice claims.
- x. Issue an accounting classification to all properly designated claims settlement and approval authorities.
- y. Perform the investigation, processing, and settlement of claims arising in areas outside CCS areas of operation.
- z. Maintain continuous worldwide deployment and operational capability to furnish claims advice to any legal office or command throughout the world. When authorized by the chain of command or competent authority, issue such claims advice or services, including establishing a claims system within a foreign country, interpreting claims aspects of international agreements, and processing claims arising from Army involvement in civil disturbances, chemical accidents under the Chemical Energy Stockpile Program, other man-made or natural disasters, and other claims designated by competent authority.



*aa.* Upon receiving both the appropriate authority's directive or order and full fiscal authorization, disburse the funds necessary to administer civilian evacuation, relocation, and similar initial response efforts in response to a chemical disaster arising at an Army facility.

*ab.* Respond to all inquiries from the President, members of Congress, military officials, and the general public on claims within USARCS' responsibility.

*ac.* Serve as the proponent for this publication and DA Pam 27-162, both of which set forth guidance on personnel, tort, disaster and affirmative claims, as well as claims management and administration.

*ad.* Provide supervision for the Army's affirmative claims and carrier recovery programs, as well as other methods for recovering legal debts.

*ae.* Provide support for the overseas environmental claims program as designated by the DA.

*af.* Execute other claims missions as designated by DOD, DA, TJAG and other competent authority.

*ag.* Appoint Foreign Claims Commissions (FCCs) outside command claims services' geographic areas of responsibility.

*ah.* Budget for and fund claims investigations and activities; such as per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations (IMEs); appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

### **1-10. Responsibilities and operations of command claims services**

*a. Chiefs of command claims services.* Chiefs of command claims services will—

(1) Exercise claims settlement authority as specified in this regulation, including appellate authority where so delegated.

(2) Supervise the investigation, processing, and settlement of claims against, and in favor of the United States under the statutes and regulations listed in paragraph 1-4, and pursuant to other appropriate statutes, regulations, and authorizations.

(3) Designate and grant claims settlement authority to ACOs. A grant of such authority will not be effective until coordinated with the Commander, USARCS, and assigned an office code. However, the chief of a CCS may redesignate a CPO that already has an assigned office code as an ACO without coordination with the Commander, USARCS. The Commander, USARCS will be informed of such a designation.

(4) Designate and grant claims approval authority to CPOs. Only CPOs staffed with a claims judge advocate (CJA) or claims attorney may be granted approval authority. A grant of such authority will not be effective until coordinated with the Commander, USARCS and assigned an office code.

(5) Train claims personnel and monitor their operations and ongoing claims administration. Conduct a training course annually.

(6) Implement pertinent claims policies.

(7) Prepare and publish command claims directives.

(8) Administer the command claims expenditure allowance, providing necessary data, estimates, and reports to USARCS on a regular basis.

(9) Perform the responsibilities of an ACO (see para 1-11), as applicable, ensure that SOFA claims are investigated properly and timely filed with the receiving State and adequately funded.

(10) Serve as the U.S. "sending State office," if so designated, when operating in an area covered by a SOFA.

(11) Supervise and provide technical assistance to subordinate ACOs within the command claims service's geographic area of responsibility.

(12) Appoint FCCs.

*b. Operations of command claims services.* The SJA of the command will supervise the CCS. The command SJA may designate a field grade JA as the chief of the service. An adequate number of qualified claims personnel will be assigned to ensure that claims are promptly investigated and acted upon. With the concurrence of the Commander, USARCS, a CCS may designate ACOs within its area of operations to carry out claims responsibilities within specified geographic areas subject to agreement by the commander concerned.

### **1-11. Responsibilities and operations of area claims offices**

*a. Heads of area claims offices.* Heads of ACOs, including COE offices (see para 1-5e(3)) will—

(1) Ensure that claims and potential claims incidents in their area of responsibility are promptly investigated in accordance with this regulation.

(2) Ensure that each organization or activity (for example, U.S. Army Reserve (USAR) or Army National Guard of the United States (ARNGUS) unit, ROTC detachment, recruiting company or station, or DOD agency) within the area appoints a claims officer to investigate claims incidents not requiring investigation by a JA (see para 2-2), and ensure that this officer is adequately trained.

(3) Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under

the statutes and regulations listed in paragraph 1–4, and pursuant to other appropriate statutes, regulations, and authorizations.

(4) Act as a claims settlement authority on claims that fall within the appropriate monetary jurisdictions set forth in this regulation and forward claims exceeding such jurisdictions to the Commander, USARCS, or to the chief of a CCS, as appropriate, for action.

(5) Designate CPOs and request that the Commander, USARCS, or the chief of a CCS, as appropriate, grant claims approval authority to a CPO for claims that fall within the jurisdiction of that office.

(6) Supervise the operations of CPOs within their area.

(7) Implement claims policies and guidance furnished by the Commander, USARCS.

(8) Ensure that there are adequate numbers of qualified and adequately trained CJAs or claims attorneys, recovery judge advocates (RCJAs), or attorneys, recovery claims clerks, claims examiners, claims adjudicators and claims clerks in all claims offices within their areas to act promptly on claims.

(9) Budget for and fund claims investigations and activities, such as: per diem and transportation of claims personnel, claimants and witnesses; IMEs; appraisals and independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(10) Within the United States and its territories, commonwealths and possessions, procure and disseminate, within their areas of jurisdiction, appropriate legal publications on state or territorial law and precedent relating to tort claims.

(11) Notify the Commander, USARCS, of all claims and potentially compensable events (PCEs) as required by paragraphs 2–1c and 2–12; notify the chief of a CCS of all claims and PCEs.

(12) Develop and maintain written plans for a disaster or civil disturbance. These plans may be internal SJA office plans or an annex to an installation or an agency disaster response plan.

(13) Implement the Army's Article 139 claims program (see chap 9).

(14) Notify USARCS of possible deployments and ensure adequate FCCs are appointed by USARCS and are trained.

*b. Operations of area claims offices.*

(1) The ACO is the principal office for the investigation and adjudication or settlement of claims, and will be staffed with qualified legal personnel under the supervision of the SJA, command JA, or COE district or command legal counsel.

(2) In addition to the utilization of unit claims officers required by paragraph 1–12a, if indicated, the full-time responsibility for investigating and processing claims arising within or related to the activities of a unit or organization located within a section of the designated area may be delegated to another command, unit, or activity by establishing a CPO at the command, unit, or activity (see para 1–12b(4)). Normally, all CPOs will operate under the supervision of the ACO in whose area the CPO is located. Where a proposed CPO is not under the command of the ACO parent organization, this designation may be achieved by a support agreement or memorandum of understanding between the affected commands.

(3) Normally, claims that cannot be settled by a COE ACO will be forwarded directly to the Commander, USARCS, with notice of referral to the Chief Counsel, COE. However, as part of his or her responsibility for litigating suits that involve civil works and military construction activities, the Chief Counsel, COE, may require that a COE ACO forward claims through COE channels, provided that such requirement does not preclude the Commander, USARCS from taking final action within the time limitations set forth in chapters 4 and 8.

## **1–12. Responsibilities and operations of claims processing offices**

*a. Heads of claims processing offices.* Heads of CPOs will—

(1) Investigate all potential and actual claims arising within their assigned jurisdiction, on either an area, command, or agency basis. Only a CPO that has approval authority may adjudicate and pay presented claims within its monetary jurisdiction.

(2) Ensure that units and organizations within their jurisdiction have appointed claims officers for the investigation of claims not requiring a JA's investigation (see para 2–1).

(3) Budget for and fund claims investigations and activities; including, per diem and transportation of claims personnel, claimants and witnesses; IMEs; appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(4) Within CONUS, procure and maintain legal publications on local law relating to tort claims pertaining to their jurisdiction.

(5) Notify the Commander, USARCS of all claims and claims incidents, as required by paragraphs 2–1c and 2–12 of this publication.

(6) Implement the Army's Article 139 claims program (see chap 9).

*b. Operations of claims processing offices.*

(1) *Claims processing office with approval authority.* A CPO that has been granted approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, on an area, command, or

agency basis, and for the adjudication and payment of all claims presented within its monetary jurisdiction. If the estimated value of a claim, after investigation, exceeds the CPO's payment authority, or if disapproval is the appropriate action, the claim file will be forwarded to the ACO unless otherwise specified in this regulation, or forwarded to USARCS or the CCS, if directed by such service.

(2) *Claims processing offices without approval authority.* A CPO that has not been granted claims approval authority will provide for the investigation of all potential and actual claims arising within its assigned jurisdiction on an area, command, or agency basis. Once the investigation has been completed, the claim file will be forwarded to the appropriate ACO for action. Alternatively, an ACO may direct the transfer of a claim investigation from a CPO without approval authority to another CPO with approval authority, located within the ACO's jurisdiction.

(3) *Medical claims processing offices.* The MCJAs or medical claims attorneys at Army medical centers, other than Walter Reed Army Medical Center, may be designated by the SJA or head of the ACO for the installation on which the center is located as CPOs with approval authority for medical malpractice claims only. Claims for amounts exceeding a medical CPO's approval authority will be investigated and forwarded to the Commander, USARCS.

(4) *Special claims processing offices.*

(a) *Designation and authority.* The Commander, USARCS, the chief of a CCS, or the head of an ACO may designate special CPOs within his or her command for specific, short-term purposes (for example, maneuvers, civil disturbances and emergencies). These special CPOs may be delegated the approval authority necessary to effect the purpose of their creation, but in no case will this delegation exceed the maximum monetary approval authority set forth in other chapters of this publication for regular CPOs. All claims will be processed under the claims expenditure allowance and claims command and office code of the authority that established the office or under a code assigned by USARCS. The existence of any special CPO must be reported to the Commander, USARCS, and the chief of a CCS, as appropriate.

(b) *Maneuver damage and claims office jurisdiction.* A special CPO is the proper organization to process and approve maneuver damage claims, except when a foreign government is responsible for adjudication pursuant to an international agreement (see chap 7). Personnel from the maneuvering command should be used to investigate claims and, at the ACO's discretion, may be assigned to the special CPO. The ACO will process claims filed after the maneuver terminates. The special CPO will investigate claims arising while units are traveling to or from the maneuver within the jurisdiction of other ACOs, and forward such claims for action to the ACO in whose area the claims arose. Claims for damage to real or personal property arising on private land that the Army has used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405-15.

(c) *Disaster claims and civil disturbance.* A special CPO provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, including damage assessment and finance and accounting support. It will not be dispatched prior to notification of the Commander, USARCS, whose concurrence must be obtained before the first claim is paid.

(5) *Supervisory requirements.* The CPOs discussed in (2) through (4), above, must be supervised by an assigned CJA or claims attorney in order to exercise delegated approval authority.

### **1-13. Chief of Engineers**

The Chief of Engineers, through the Chief Counsel, will—

- a. Provide general supervision of the claims activities of COE ACOs.
- b. Ensure that each COE ACO has a claims attorney designated in accordance with paragraph 1-6.
- c. Ensure that claims personnel are adequately trained, and monitor their ongoing claims administration.
- d. Implement pertinent claims policies.
- e. Provide for sufficient funding in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance telephone calls, recording equipment, cameras, and other expenses for investigating and processing claims.
- f. Procure and maintain adequate legal publications on local law relating to claims arising within the United States, its territories, commonwealths, and possessions.
- g. Assist USARCS in evaluation of claims by furnishing qualified expert and technical advice from COE resources, on a non-reimbursable basis except for TDY and specialized lab services expenses.

### **1-14. Commanding General, U.S. Army Medical Command**

a. After consulting with the Commander, USARCS on the selection of medical claims attorneys, the Commander of the U.S. Army MEDCOM, the European Medical Command, or other regional medical command, through his or her SJA/Center Judge Advocate, will ensure that an adequate number of qualified MCJAs or medical claims attorneys and medical claims investigators are assigned to investigate and process medical malpractice claims arising at Army medical centers under the commander's control. In accordance with an agreement between TJAG and The Surgeon General, such personnel will be used primarily to investigate and process medical malpractice claims and affirmative claims and will be provided with the necessary funding and research materials to carry out this function.

b. Upon request of a CJA or claims officer, the Commander of the U.S. Army MEDCOM will provide a qualified

health care provider at a medical treatment facility (MTF) to examine a claimant for his injuries even if the claimant is not otherwise entitled to care at an MTF (see AR 40–400, para 3–47).

#### **1–15. Chief, National Guard Bureau**

The Chief, National Guard Bureau (NGB), will—

- a. Ensure the designation of a point of contact for claims matters in each State Adjutant General's office.
- b. Provide the name, address, and telephone number of these points of contact to the Commander, USARCS.
- c. Designate claims officers to investigate claims generated by Army National Guard (ARNG) personnel and forward investigations to the Active Army ACO that has jurisdiction over the area in which the claims incident occurred.

#### **1–16. Commanders of Army Commands and Army Service Component Commands**

Commanders of ACOMs and ASCCs, through their SJAs, will—

- a. Assist USARCS in monitoring ACOs and CPOs under their respective commands for compliance with the responsibilities assigned in paragraphs 1–11 and 1–12 of this regulation.
- b. Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).
- c. Assist TJAG, through the Commander, USARCS, in implementing the functions set forth in paragraph 1–9.
- d. Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

### **Section III Policies**

#### **1–17. Claims policies**

a. *General.* The following policies will be adhered to in processing and adjudicating claims falling within this regulation. The Commander, USARCS is authorized to publish new policies or rescind existing policies from time to time as the need arises.

(1) *Notification.* The Commander, USARCS must be notified as soon as possible of both potential and actual claims which are serious incidents that cannot be settled within the monetary jurisdiction of a CCS or an ACO, including those which occur in the area of responsibility of a CPO. On such claims, the USARCS area action officer (AAO) must coordinate with the field office in regard to all aspects of the investigation, evaluation, and determination of liability. An offer of settlement or the assertion of an affirmative claim must be the result of a discussion between the AAO and the field office. Payment of a subrogated claim may commit the United States to liability as to larger claims. On the other hand, where all claims out of an incident can be paid within field authority, they should be paid promptly with maximum use of small claims procedures.

(2) *Consideration under all chapters.* Prior to denial, a claim will be considered under all chapters of this regulation, regardless of the form on which the claim is presented. A claim presented as a personnel claim will be considered as a tort prior to denial. A claim presented as a tort will first be considered as a personnel claim, and if not payable, then considered as a tort. If deniable, the claim will be denied both as a personnel claim and as a tort.

(3) *Compromise.* Department of the Army policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small non-meritous claims be paid. Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims. For example, a property damage claim may be compromised by deducting the cost of collection, that is, attorney fees and costs, even where liability is certain.

(4) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO, that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this publication.

(5) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

b. *Cooperative investigative environment.* Any person who indicates a desire to file a claim against the United States cognizable under one of the chapters of this regulation will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. During

claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

*c. Claims directives and plans.*

(1) *Directives.* Two copies of command claims directives will be furnished to the Commander, USARCS. ACO directives will be distributed to all DA and DOD commands, installations, and activities within the ACO's area of responsibility, with an information copy to the Commander, USARCS.

(2) *Disaster and civil preparedness plan.* One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander, USARCS.

*d. Interpretations.* The Commander, USARCS will publish written interpretations of this regulation. Interpretations will have the same force and effect as this publication.

*e. Authority to grant exceptions to and deviations from this publication.* If, in particular instances, it is considered to be in the best interests of the Government, the Commander, USARCS may authorize deviations from this publication's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

*f. Guidance.* The Commander, USARCS may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this regulation. These will be binding on all Army claims personnel.

*g. Communication.* All claims personnel are authorized to communicate directly with USARCS personnel for guidance on matters of policy or on matters relating to the implementation of this regulation.

*h. Private relief bills.* The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel will remain neutral in all private relief matters and will not make any statement that purports to reflect the DA's position on a private relief bill.

## **1-18. Release of information policies**

*a. Conflict of interest.* Except as part of their official duties, Government personnel are forbidden from advising or representing claimants or from receiving any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. §§ 203 and 205).

*b. Release of information.*

(1) Relevant statutes pertinent to the release of information include the Privacy Act of 1974, 5 U.S.C. §§ 552a and 552b, the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d through 1320d-8.

(2) It is the policy of USARCS that unclassified attorney work product may be released with or without a request from the claimant or attorney, whenever such release may help settle the claim or avoid unnecessary litigation.

(3) A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the Government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.

(4) All requests for records and information made pursuant to the FOIA, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, or HIPAA, 42 U.S.C. § 1320d, will be processed in accordance with the procedures set forth in AR 25-55 and AR 340-21, respectively as well as 45 C.F.R. Parts 160 and 164, DODD 6025.18-R, this regulation, and DA Pam 27-162.

(a) Any request for DOD records that either explicitly or implicitly cites the FOIA will be processed under the provisions of AR 25-55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the Privacy Act when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the Privacy Act fee provisions. Withheld information must be exempt from disclosure under both Acts.

(b) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the Privacy Act fee provisions (for further guidance, see AR 25-55, paras 1-301 and 1-503).

(5) The following records may not be disclosed:

(a) Medical quality assurance records exempt from disclosure pursuant to 10 U.S.C. § 1102(a).

(b) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy), and law enforcement records (5 U.S.C. §552 (b)) unless requested by the subject of the record.

(c) Records protected by the Privacy Act.

(d) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 U.S.C. §552 (b)), unless such records have been properly declassified.

(e) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) at (5 U.S.C. §552(b)), unless the client consents to the disclosure.

(6) Records within a category for which withholding of the record is discretionary (AR 25–55, para 3–101), such as exemptions under the deliberative process or attorney work product privileges (exemption (5) at 5 U.S.C. §552(b)) may be released when there is no foreseeable harm to Government interests in the judgment of the releasing authority.

(7) When it is determined that exempt information should not be released, or a question as to its releaseability exists, forward the request and two copies of the responsive documents to the Commander, USARCS. The Commander, USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander, USARCS, will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the denial authority for Privacy Act requests (AR 340–21, para 1–7i).

c. *Claims assistance.* In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the COE repair teams. When the government of a foreign country in which Armed Forces of the United States are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished as much pertinent information and evidence as security considerations permit.

### **1–19. Single-service claims responsibility (DODI 5515.08 and DODD 5515.9)**

See also paragraph 2–13 for information on transferring claims among Armed Services branches.

a. *Assignment for Department of Defense claims.* The army is responsible for processing DOD claims pursuant to DODD 5515.9.

b. *Statutes and agreements.* Department of Defense has assigned single-service responsibility for the settlement of certain claims in certain countries, pursuant to DODI 5515.08 under the following statutes and agreements:

(1) FCA (10 U.S.C. § 2734).

(2) MCA (10 U.S.C. § 2733).

(3) Status of Forces Agreements (10 U.S.C. §§ 2734a and 2734b).

(4) NATO SOFA (4 United States Treaties and Other International Agreements (U.S.T.) 1792, Treaties and International Acts Series (T.I.A.S.) 2846) and other similar agreements.

(5) FCCA (31 U.S.C. §§ 3711–3720E) and FMCRA (42 U.S.C. §§ 2651–2653).

(6) Claims not cognizable under any other provision of law, 10 U.S.C. § 2737.

(7) Advance payments, 10 U.S.C. § 2736.

c. *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above has been assigned to military departments pursuant to DODI 5515.08, as supplemented by executive agreement and other competent directives.

d. *When claims responsibility has not been assigned.* When necessary to implement contingency plans, the unified or specified commander with authority over the geographic area in question may, on an interim basis before receiving confirmation and approval from the General Counsel, DOD, assign single-service responsibility for processing claims in countries where such assignment has not already been made

### **1–20. Cross-servicing of claims**

Also see paragraph 2–13 for information on transferring claims among Armed Services branches.

a. *Where claims responsibility has not been assigned.* Claims cognizable under the FCA or the MCA that are generated by another military department within a foreign country for which single-service claims responsibility has not been assigned, may be settled by the Army upon request of the military department concerned. Conversely, Army claims may in appropriate cases be referred to another military department for settlement, DODI 5515.08, E1.2. Tables listing claims offices worldwide are posted to the USARCS Web site at “Claims Resources,” VI.

b. *Claims generated by the Coast Guard.* Claims resulting from the activities of, or generated by, Coast Guardsmen or civilian employees of the Coast Guard, while it is operating as a service of the U.S. Department of Homeland Security, may upon request be settled under this regulation by an FCC appointed as authorized herein, but they will be paid from Coast Guard appropriations, 10 U.S.C. § 2734.

c. *Status of Forces Agreement claims within the United States.* Claims cognizable under the NATO PFP or Singaporean SOFAs arising out of the activities of aircraft within the United States may be investigated and adjudicated by the U.S. Air Force under a delegation from the Commander, USARCS. Claims exceeding the delegated amount will be adjudicated by the USARCS.

d. *Claims generated by the American Battle Monuments Commission.* Claims arising out of the activities of or in cemeteries outside the United States managed by the American Battle Monuments Commission (36 U.S.C. § 2110) will be investigated and adjudicated by the U.S. Army.

### **1-21. Disaster claims planning**

All ACOs will prepare a disaster claims plan and furnish a copy to USARCS (see DA Pam 27-162, para 1-21 for specific requirements related to disaster claims planning).

### **1-22. Claims assistance visits**

Members of USARCS and command claims services will make claims assistance visits to field offices on a periodic basis (see DA Pam 27-162, para 1-22 for specific requirements related to claims assistance visits).

### **1-23. Annual claims award**

The Commander, USARCS will make an annual claims award to outstanding field offices (see DA Pam 27-162, para 1-23 for more information on annual claims awards).

## **Chapter 2 Investigation and Processing of Claims**

### **Section I Claims Investigative Responsibility**

#### **2-1. General**

See the parallel discussion at DA Pam 27-162 paragraph 2-1.

*a. Scope.* This chapter addresses the investigation, processing, evaluation, and settlement of tort and tort-related claims for and against the United States. The provisions of this chapter do not apply to personnel claims (chap 11), or to claims under chapter 7, section III (international agreements, claims arising overseas).

*b. Cooperation.* Claims investigation requires team effort between the USARCS, command claims services, and ACOs, including U.S. Army Corps of Engineers (COE) district offices, CPOs, and unit claims officers. Essential to this effort is the immediate investigation of claims incidents. Prompt investigation depends on the timely reporting of claims incidents as well as continuous communication between all commands or echelons bearing claims responsibility.

*c. Notification to USARCS.* A CPO or an ACO receiving notice of a potentially compensable event (PCE) that requires investigation will immediately refer it to the appropriate claims office. The Commander, USARCS will be notified of all major incidents involving serious injury or death or those in which property damage exceeds \$50,000. A CCS may delegate to an ACO the responsibility for advising USARCS of serious incidents and complying with mirror file requirements. A copy of the written delegation and any changes made thereafter will be forwarded to the Commander, USARCS.

*d. Geographic concept of responsibility.* A CCS or an ACO in whose geographic area a claims incident occurs is primarily responsible for initiating investigation and processing of any claim filed in the absence of a formal transfer of responsibility (see chap 2, sect III, processing of claims, below). Department of Defense and Army organizations whose personnel are involved in the incident will cooperate with and assist the ACO, regardless of where the former may be located.

#### **2-2. Identifying claims incidents both for and against the Government**

See the parallel discussion at DA Pam 27-162, paragraph 2-2.

*a.* Investigation is required when—

(1) There is property loss or damage.

*(a)* Property other than that belonging to the Government is damaged, lost, or destroyed by an act or omission of a Government employee or a member of North Atlantic Treaty Association (NATO), Australian, or Singaporean forces stationed or on temporary duty within the United States.

*(b)* Property belonging to the Government is damaged or lost by a tortious act or omission not covered by the report of survey system or by a carrier's bill of lading.

(2) There is personal injury or death.

*(a)* A civilian other than an employee of the U.S. Government is injured or killed by an act or omission of a Government employee or by a member of a NATO, Australian, or Singaporean force stationed or on temporary duty within the United States. (This category includes patients injured during treatment by a health care provider.)

*(b)* Service members, active or retired, Family members of either, or U.S. employees, are injured or killed by a third party and receive medical care at Government expense.

(3) A claim is filed.

(4) A competent authority or another Armed Service or Federal agency requires investigation.

*b.* Determining who is a Government employee is a matter of Federal, not local, law. Categories of Government employees usually accepted as tortfeasors under Federal law are—

(1) Military personnel (Soldiers of the Army, or members of other Services where the Army exercises single-service jurisdiction on foreign soil; and Soldiers or employees within the United States who are members of NATO or of other foreign military forces with whom the United States has a reciprocal claims agreement and whose sending States have certified that they were acting within the scope of their duty) who are serving on full-time active duty in a pay status, including Soldiers—

(a) Assigned to units performing active or inactive duty.

(b) Serving on active duty as Reserve Officer Training Corps (ROTC) instructors.

(c) Serving as ARNG instructors or advisors.

(d) On duty or training with other Federal agencies, for example: the National Aeronautics and Space Administration, the Department of State, the Navy, the Air Force, or DOD. (Federal agencies other than the Armed Service to which the Soldier is attached may also provide a remedy.)

(e) Assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other facility (excluding Soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

(f) Serving on full-time duty at NAF activities.

(g) Serving in the USAR and ARNG on active duty under Title 10 of the United States Code.

(2) Military personnel who are USAR Soldiers, including ROTC cadets who are Army Reserve Soldiers while at annual training and during periods of active duty and inactive duty training.

(3) Military personnel who are Soldiers of the ARNG while engaged in training or duty under 32 U.S.C. §§ 316, 502, 503, 504, 505, or engaged in properly authorized community action projects under the FTCA, the NSCA, or the NGCA, unless performing duties in furtherance of a mission for a state, commonwealth, territory, or possession.

(4) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms “official” and “employee”), including but not limited to the following:

(a) Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds (APF).

(b) Persons providing direct health care services pursuant to personal service contracts under 10 U.S.C. § 1089 or 1091 or where another person exercised control over the health care provider’s day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, MCJA, or claims attorney should consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

(c) Employees of a non-appropriated fund instrumentality (NAFI) if it is an instrumentality of the United States and thus a Federal agency. To determine whether a NAFI is a “Federal agency,” consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFIs, are not considered Government employees; the same is true of Family child care providers. However, claims arising out of the use of some NAFI property or from the acts or omissions of Family child care providers may be payable from such funds under chapter 12 as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this regulation.

(5) Prisoners of war and interned enemy aliens.

(6) Civilian employees of the District of Columbia ARNG, including those paid under “service contracts” from District of Columbia funds.

(7) Civilians serving as ROTC instructors paid from Federal funds.

(8) The ARNG technicians employed under 32 U.S.C. § 709(a) for claims accruing on or after 1 January 1969 (Pub. L. No. 90–486, 13 August 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a state, commonwealth, territory, or possession.

(9) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

(a) Dollar-a-year personnel.

(b) Members of advisory committees, commissions, or boards.

(c) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45.

## **2–3. Delegation of investigative responsibility.**

See the parallel discussion at DA Pam 27–162, paragraph 2–3.

*a. Area claims offices.* An ACO is authorized to carry out its investigative responsibility as follows:

(1) On the request of the area claims authority, commanders and heads of Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27–162 and this publication. An ACO will direct such investigation to the extent deemed necessary.



(2) The CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area (see para 1-5f).

(3) Claims incidents involving patients arising from treatment by a health care provider in an Army MTF, including providers defined in paragraph 2-2b(4)(b), will be investigated by a CJA, a MCJA, or a claims attorney rather than by a unit claims officer.

(4) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including Active Army, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installation's and activity's claims responsibilities, and it will institute a serious claims incident reporting system.

*b. Command claims service responsibility.* A CCS is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or for any incidents within the authority of any FCC it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A CCS will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander, USARCS.

*c. U.S. Army Claims Service responsibility.* The USARCS exercises technical supervision over all claims offices, providing guidance on specific cases throughout the claims process, including the method of investigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims services', an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs, or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories, and possessions, where there is no CCS or ACO, USARCS is responsible for investigation and for appointment of FCCs.

## **Section II**

### **Filing and Receipt of Claims**

#### **2-4. Procedures for accepting claims**

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in DA Pam 27-162, paragraph 2-4. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27-162, paragraphs 2-15 and 2-17.

#### **2-5. Identification of a proper claim**

See parallel discussion at DA Pam 27-162, paragraph 2-5.

*a.* A claim is a writing that contains a sum certain for each claimant and that is signed by each claimant, or by an authorized representative who must furnish written authority to sign on a claimant's behalf. The writing must contain enough information to permit investigation. The writing must be received not later than 2 years from the date the claim accrues. A claim under the FCA may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within 2 years, provided that it is reduced to writing not later than 3 years from the date of accrual. A claim may be transmitted by facsimile or telegram. However, a copy of an original claim must be submitted as soon as possible. (See also para 2-30.)

*b.* Where a claim is only for property damage, and it is filed under circumstances where there might be injuries, the CJA should inquire if the claimant desires to split the claim, as discussed in paragraph 2-48.

*c.* Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury or Death). When the claim is not presented on an SF 95, the claimant will be requested to complete an SF Form 95 to ease investigation and processing.

*d.* If a claim names two claimants and states only one sum certain, the claimants will be requested to furnish a sum certain for each. A separate sum certain must be obtained prior to payment under the FTCA, MCA, NGCA, or the FCA. The Financial Management Service (FMS) will only pay an amount above the threshold amount of \$2,500 for the FTCA, or \$100,000 for the other statutes.

*e.* A properly filed claim meeting the definition of "claim" in paragraph 2-5a tolls the 2-year SOL even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF 95 or in the Attorney General's regulations implementing the FTCA, 28 C.F.R. §§ 14.1-14.11. However, refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other chapters of this regulation.

*f.* Receipt of a claim by another Federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

g. The guidelines set forth in FTCA case law will apply to other chapters of this regulation in determining whether a proper claim was filed.

## **2-6. Identification of a proper claimant**

See the parallel discussion at DA Pam 27-162, para 2-6. The following are proper claimants:

*a. Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. As used in this regulation, the term "owner" includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property, is a proper claimant. When notice of divided interests in real property is received, the claim, if feasible, should be treated as a single claim, and a release from all interests must be obtained. This includes both the owner and tenant where both claim.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable chapter. When notice of divided interests in personal property is received, the claim, if feasible, should be treated as a single claim; a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

*b. Claims for personal injury or wrongful death.*

(1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative, or, where the claimant is a minor, by a parent or a person in loco parentis. However, one must determine whether the claimant is a proper claimant under applicable state law or, if considered under the MCA, paragraph 3-5. If not, the claimant should be so informed in the acknowledgment letter and requested to withdraw the claim. If not withdrawn, one must deny the claim without delay. An example is a claim filed on behalf of a minor for loss of consortium for injury to a parent where not permitted by state law. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by a "volunteer," meaning one who has no legal or contractual obligation, yet who voluntarily pays damages on behalf of an injured party and then seeks reimbursement for their economic damages by filing a claim (see *f(3)*, below).

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled under applicable local law. The amount allowed will be apportioned, to the extent practicable, among the beneficiaries in accordance with the law applicable to the incident. Under the MCA (chap 3), only one wrongful death claim is authorized (see para 3-5c(1)(a)). Under chapters 4 and 8, a claim by the insured for property damage may be considered as a claim by the insurer as the real party in interest provided the insured has been reimbursed by the insurer and the insurance information is listed on the SF 95. The insurer should be required to file a separate SF 95 for payment purposes even though the SOL has expired. Where the insurance information is not listed on the SF 95 and the insured is paid by the United States, the payment of the insurer is the responsibility of the insured even though the insurer subsequently files a timely claim. To avoid this situation, always inquire as to the status of any insurance prior to payment of a property damage claim.

*c. By an agent or legal representative.* A claimant's agent or legal representative who presents a claim will do so in the claimant's name and sign the form in such a way that indicates the agent's or legal representative's title or capacity. When a claim is presented by an agent or legal representative:

(1) It must contain written evidence of the agent's or legal representative's authority to sign, such as a power of attorney, or

(2) It must refer to or cite the statute granting authority.

*d. Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, under chapters 4 or 8 only. A lienholder is not a proper claimant and should be distinguished from a subrogee to avoid violation of the Antiassignment Act (see para *f*, below). However, liens arising under Medicare will be processed directly with the Center for Medicare and Medicaid Systems (see DA Pam 27-162, paras 2-57g and *h*, and 2-58).

*e. Contribution or indemnity.* A claim may be filed for contribution or indemnification by the party who was held liable as a joint tortfeasor where authorized by state law. Such a claim is not perfected until payment has been made by the claimant/joint tortfeasor. A claim filed for contribution prior to payment being made should be considered as an opportunity to share a settlement where the United States is liable.

*f. Transfer or assignments.*

(1) Under the Antiassignment Act (31 U.S.C. § 3727) and Defense Finance and Accounting Service Regulation (DFAS-IN) 37-1, a transfer or assignment is null and void except where it occurs by operation of law or after a voucher for the payment has been issued. The following are null and void:

(a) Every purported transfer or assignment of a claim against the United States, or any interest, in whole or in part, on a claim, whether absolute or conditional; and

(b) Every power of attorney or other purported authority to receive payment for all or part of any such claim.

(2) The Antiassignment Act was enacted to eliminate multiple payment of claims, to cause the United States to deal only with original parties and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims, with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations, or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workers' compensation claims are cognizable when presented by the insurer under chapters 4 or 8, but not other chapters.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee, if the legal basis for the subrogated claim is recognized by state statute or case law, only under chapters 4 or 8. For example, an insurer that issues an insurance policy becomes subrogated to the rights of a claimant who receives payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under a Federal or state statute or a subrogation contract held valid by state law.

*g. Interdepartmental waiver rule.* Neither the U.S. Government nor any of its instrumentalities are proper claimants owing to the interdepartmental waiver rule. This rule bars claims by any organization or activity of the Army, whether or not the organization or activity is funded with appropriated or nonappropriated funds. Certain Federal agencies are authorized by statute to file claims, for example, Medicare and the Railroad Retirement Commission (see DA Pam 27-162, para 2-17f).

*h. States are excluded.* If a state, U.S. commonwealth, territory, or the District of Columbia maintains a unit to which ARNG personnel causing the injury or damage are assigned, such governmental entity is not a proper claimant for loss or damage to its property. A unit of local government other than a state, commonwealth, or territory is a proper claimant.

## **2-7. Claims acknowledgment**

See the parallel discussion at DA Pam 27-162, paragraph 2-7. Claims personnel will acknowledge all claims immediately upon receipt, in writing, by telephone, or in person. A defective claim will be acknowledged in writing, pointing out its defects. Where the defects render the submission jurisdictionally deficient based on the requirements discussed in DA Pam 27-162, paragraphs 2-5 and 2-6, the claimant or attorney will be informed in writing of the need to present a proper claim no later than 2 years from the date of accrual. Suit must be filed in maritime claims not later than 2 years from the date of accrual (see para 8-6). In any claim for personal injury or wrongful death, an authorization signed by the patient, natural or legal guardian, or estate representative will be obtained authorizing the use of medical information, including medical records, in order to use sources other than claims personnel to evaluate the claim as required by HIPAA, 42 U.S.C. §§ 1320d-1320d-8.

## **2-8. Revision of filed claims**

See parallel discussion at DA Pam 27-162, paragraph 2-8. See also, paragraph 13-4, which provides instructions for how to handle withdrawn or abandoned claims.

*a. General.* A revision or change of a previously filed claim may constitute an amendment or a new claim. Upon receipt, the CJA must determine whether a new claim has been filed. If so, the claim must be logged with a new number and acknowledged in accordance with paragraph 2-7.

*b. New claim.* A new claim is filed whenever the writing alleges a new theory of liability, a new tortfeasor, a new party claimant, a different date or location for the claims incident, or other basic element that constitutes an allegation of a different tort not originally alleged. If the allegation is made verbally or by e-mail, the claimant will be informed in writing that a new SF 95 must be filed. A new claim must be filed not later than 2 years from the accrual date under the FTCA. Filing a new claim creates an additional 6-month period during which suit may not be filed.

*c. Amendment.* An increase or decrease in the amount claimed constitutes an amendment, not a new claim. Similarly, the addition of required information not on the original claim constitutes an amendment. Examples are date of birth, marital status, military status, names of witnesses, claimant's address, description, or location of property or insurance information. An amendment may be filed before or after the 2-year SOL has run unless final action has been taken. A new number will not be assigned to an amended claim; however, a change in the amount will be annotated in the database.

## **Section III Processing of Claims**

### **2-9. Action upon receipt of claim**

See the parallel discussion at DA Pam 27-162, paragraph 2-9.

*a.* A properly filed claim stops the running of the SOL when it is received by any organization or activity of the

DOD or the U.S. Armed Services. Placing a claim in the mail does not constitute filing. The first Army claims office that receives the claim will date, time stamp, and initial the claim as of the date the claim was initially received “on post,” not by the claims office. If initially received close to the SOL’s expiration date by an organization or activity that does not have a claims office, claims personnel will discover and record in the file the date of original receipt.

*b.* The ACO or CPO that first receives the claim will enter the claim into the Tort and Special Claims Application (TSCA) database and let the system assign a number to the claim. The claim, whether on an SF 95 or in any other format, will be scanned into a computer and uploaded onto the TSCA database so that it will become a permanent part of the electronic record. A joint claim will be given a claim number for each claimant (for example, a husband and wife, or an injured parent and each child). The claims will keep their numbers throughout the claims process. If only one sum is filed for all claimants, the same sum will be assigned for each claim. However, the claimants should be requested to name a sum for each claimant. Upon transfer, a new number will not be assigned by the receiving office. If a claim does not meet the definition of a proper claim under paragraphs 2–5 and 2–6, it will be date-stamped and logged as a potentially compensable event (PCE).

*c.* The claim will be transferred if the claim incident arose in another ACO’s geographic area; the receiving ACO will use the claims number originally assigned.

*d.* Non-appropriated fund instrumentality claims that relate to claims determined cognizable under chapter 12 will be marked with the symbol “NAFI” immediately following the claimant’s name, to preclude erroneous payment from APF. This symbol will also be included in the subject line of all correspondence.

*e.* Upon receipt, copies of the claims will be furnished as follows (when a current e-mail address is available and it is agreeable with the receiving party, providing copies by e-mail is acceptable):

(1) To USARCS, if the amount claimed exceeds \$25,000, or \$50,000 per incident. However, if the claim arises under the FTCA or AMCSA, only furnish copies if the amount claimed exceeds \$50,000, or \$100,000 per incident.

(2) For medical malpractice claims, to the appropriate MTF commanders through MEDCOM headquarters, and to the Armed Forces Institute of Pathology at the addresses listed below—

(a) MEDCOM, ATTN: MCHO–CL–Q, 2050 Worth Road, Suite 26, Fort Sam Houston, TX 78234–5026.

(b) Department of Legal Medicine, Armed Forces Institute of Pathology, 1335 E. West Highway, #6–100, Silver Spring, MD 20910–6254, Phone: 301–295–8115, e-mail: casha@afip.osd.mil.

(3) If the claim is against AAFES, forward a copy to: HQ Army and Air Force Exchange Service (AAFES), ATTN: Office of the General Counsel (GC–Z), P.O. Box 650062, Dallas, TX 75265–0062, e-mail: blanchp@aafes.com.

(4) If the claim involves a NAFL, including a recreational user or Family child care provider, forward a copy to: Army Central Insurance Fund, ATTN: CFSC–FM–I, 4700 King Street, Alexandria, VA 22302–4406, e-mail: riskmanagement@cfsc.army.mil.

*f.* The ACOs or CPOs will furnish a copy of any medical or dental malpractice claim to the MTF or dental treatment facility commander and advise the commander of all subsequent actions. The commander will be assisted in his or her responsibility to complete DD Form 2526 (Case Abstract for Malpractice Claims).

## **2–10. Opening claim files**

See the parallel discussion at DA Pam 27–162, paragraph 2–10. A claim file will be opened when—

*a.* Information that requires investigation under paragraph 2–2 is received.

*b.* Records or other documents are requested by a potential claimant or legal representative.

*c.* A claim is filed.

## **2–11. Arrangement of files**

See the parallel discussion at DA Pam 27–162, paragraph 2–11. All claim files will be maintained in a standard order. When documents exceed one-half inch in thickness, claims office personnel will use a six-sided folder in the manner set forth in DA Pam 27–162, paragraph 2–14.

## **2–12. Mirror file system**

See paragraph 13–4 of this publication and parallel discussion at DA Pam 27–162, paragraph 2–12. When a CCS, an ACO, or a CPO receives a claim or claims for or against the United States stating amounts within USARCS’ monetary authority or involving the following: a new precedent or a new point of law; a question of policy; a situation in which the United States is or may be entitled to indemnity or contribution; or a situation in which litigation exists involving the incident, it should label each document in the claim file with the assigned claim number and furnish an “original” of the claim, be it in an SF 95 or in any other format. Additionally, the office should provide a duplicate claim file to the USARCS AAO, either in hard copy or via the TSCA database. Duplicates of all documents will suffice, except for the claim itself. At least once weekly, all additional documents received will be labeled with the assigned claim number and a copy forwarded to the USARCS AAO either by U.S. mail or by uploading them onto the database. Furthermore, all SF 95s, denial letters, settlement agreements with signatures, and other final documents must be scanned into the database. This allows for continuous monitoring and discussion between the CCS, ACO, or CPO and the USARCS

AAO, and results in earlier disposition. Tables listing claims offices worldwide are posted to the USARCS Web site at "Claims Resources," VI.

### **2-13. Transfer of claims among Armed Services branches**

See also paragraphs 1-19, 1-20, and 13-2 of this publication and the parallel and related discussion of this topic at DA Pam 27-162, paragraphs 1-19, 1-20, 2-13, and 13-2.

*a.* Claims filed with the wrong Federal agency, or claims that should be adjudicated by receiving State offices under NATO or other SOFA, will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple Federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.

*b.* If another agency has taken denial action on a claim that involves the DA, without informing the DA, and in which the DA desires to make a payment, the denial action may be reconsidered by the DA not later than 6 months from the date of mailing and payment made thereafter.

### **2-14. Use of small claims procedures**

Small claims procedures are authorized for use whenever a claim may be settled for \$5,000 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27-162, paragraphs 2-14 and 2-26.

### **2-15. Determination of correct statute**

See the parallel discussion at DA Pam 27-162, paragraph 2-15.

*a. Consideration under more than one statute.* When Congress enacted the various claims statutes, it intended to allow Federal agencies to settle meritorious claims. A claim must be considered under other statutes in this regulation unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF 95. Prior to denial of a chapter 11 claim, consider whether it may fall within the scope of chapters 3, 4 or 6, and where indicated, question the claimant to determine whether the claim sounds in tort.

*b. Exclusiveness of certain remedies.* Certain remedies exclude all others. For example, the Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied-in-fact, as well as Governmental contract losses, or intangible property losses. Claims of this nature for \$10,000 or less may be filed in a U.S. District Court. There is no administrative remedy. The FTCA is the preemptive tort remedy in the United States, its commonwealths, territories, and possessions; nevertheless, other remedies must be exhausted prior to favorable consideration under the FTCA. The FTCA does not preclude use of the MCA or the NGCA for claims arising out of noncombat activities or brought by Soldiers for incident-to-service property losses sustained within the United States (see DA Pam 27-162, paras 2-15*a* and *b* for a more detailed discussion of determining the correct statute for property claims versus personal injury and death claims). In addition, it is important to consider the nature of the claim (for example, whether the claim may be medical malpractice in nature, related to postal matter, or an automobile accident). Discussions of these and many other different types of claims are also provided herein as well as in the corresponding paragraph of DA Pam 27-162. It is also very important to consider when a claim may fall outside the jurisdiction of the Army claims system. Some of these instances are alluded to immediately above, but for a detailed discussion of related remedies, see paragraph 2-17 of this publication and DA Pam 27-162.

*c. Status of Forces Agreement claims.*

(1) Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27-162, paragraph 2-15*c* sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in paragraph 3-4*h* of this regulation.

(2) Single-service jurisdiction is established for all foreign countries in which a SOFA is in effect and for certain other countries. A list of these countries is posted on the USARCS Web site at "Claims Resources," VI, h. Claims will be processed by the service exercising single-service responsibility. In the United States, USARCS is the receiving State office, and all SOFA claims should be forwarded immediately to USARCS for action. Appropriate investigation under chapter 2 procedures is required of an ACO or a CPO under the direction of USARCS.

*d. Foreign Claims Act claims.*

(1) Claims by foreign inhabitants, arising in a foreign country, which are not cognizable under a SOFA, fall exclusively under the FCA. The determination as to whether a claimant is a foreign inhabitant is governed by the rules set out in chapters 3 and 10. In case of doubt, this determination must be based on information obtained from the claimant and others, particularly where the claimant is a former U.S. Service member or a U.S. citizen residing in a foreign country.

(2) Tort claims will be processed by the Armed Service that exercises single-service responsibility. When requested,

the Commander, USARCS may furnish a judge advocate or civilian attorney to serve as a FCC for another service. With the concurrence of the Commander, USARCS, Army JAs may be appointed as members of another department's FCCs (see chap 10). The FCA permits compensation for damages caused by "out-of-scope" tortious conduct of Soldier and civilian employees. Many of these claims are also compensable under Article 139, UCMJ (see DA Pam 27-162, chap 9). To avoid the double payment of claims, ACOs and CPOs must promptly notify the CCS of each approved Article 139 claim involving a claimant who could also file under an applicable SOFA.

*e. National Guard Claims Act claims.*

(1) Claims attributed to the acts or omissions of ARNG personnel in the course of employment fall into the categories set forth in chapter 6 of this publication.

(2) An ACO will establish with a state claims office routine procedures for the disposition of claims, designed to ensure that the United States and state authorities do not issue conflicting instructions for processing claims. The procedures will require personnel to advise the claimant of any remedy against the state or its insurer.

(a) Where the claim arises out of the act or omission of a member of the ARNG or a person employed under 32 U.S.C. § 709, it must be determined whether the employee is acting on behalf of the state or the United States. For example, an ARNG pilot employed under § 709 may be flying on a state mission, Federal mission, or both, on the same trip. This determination will control the disposition of the claim. If agreement with the concerned state cannot be reached and the claim is otherwise payable, efforts may be made to enter into a sharing agreement with the state concerned. The following procedures are required in the event there is a remedy against the state and the state refuses to pay or the state maintains insurance coverage and the claimant has filed an administrative claim against the United States. First, the file and the tort claim memorandum, including information on the status of any judicial or administrative action the claimant has taken against the state or its insurer, will be forwarded to the Commander, USARCS. Upon receipt, the Commander, USARCS will determine whether to require the claimant to exhaust his or her remedy against the state or its insurer or whether the claim against the United States can be settled without requiring such exhaustion. If the Commander, USARCS decides to follow the latter course of action, he or she will also determine whether to obtain an assignment of the claim against the state or its insurer and whether to initiate recovery action to obtain contribution or indemnification. The state or its insurer will be given appropriate notification in accordance with state law.

(b) If an administrative claim remedy exists under state law or the state maintains liability insurance, the Commander, USARCS or an ACO acting upon the approval of the Commander, USARCS' approval, may enter into a sharing agreement covering payment of future claims. The purpose of such an agreement is to determine in advance whether the state or the DA is responsible for processing a claim (Did the claim arise from a Federal or state mission?), to expedite payment in meritorious claims, and to preclude double recovery by a claimant.

*f. Third-party claims involving an independent contractor.*

(1) *Generally.*

(a) Upon receipt, all claims will be examined to determine whether a contractor of the United States is the tortfeasor. If so, the claimant or legal representative will be notified of the name and address of the contractor and further advised that the United States is not responsible for the acts or omissions of an independent contractor. This will be done prior to any determination as to the contractor's degree of culpability as compared to that of the United States.

(b) If, upon investigation, the damage is considered to be primarily due to the contractor's fault or negligence, the claim will be referred to the contractor or the contractor's insurance carrier for settlement and the claimant will be so advised.

(c) Health care providers hired under personal services contracts under the provisions of 10 U.S.C. § 1089 are not considered to be independent contractors but employees of the United States for tort claims purposes.

(2) *Claims for injury or death of contractor employees.* Upon receipt of a claim for injury or death of a contractor employee, a copy of the portions of the contract applicable to claims and workers' compensation will be obtained, either through the contracting office or from the contractor. Claims personnel must find out the status of any claim for workers' compensation benefits as well as whether the United States paid the premiums. The goal is to involve the contractor in any settlement, where indicated, in the manner set forth in DA Pam 27-162, paragraphs 2-15f and 2-61. In claims arising in foreign countries, consider whether the claim is covered by the Defense Bases Act, 42 U.S.C. §§ 1651-1654.

*g. Claims by contractors for damage to or loss of their property during the performance of their contracts.* Claims by contractors for property damage or loss should be referred to the contracting officer for determination as to whether the claim is payable under the contract. Such a claim is not payable under the FTCA where the damage results from an in-scope act or omission. Contract appeal procedures must be exhausted prior to consideration as a bailment under the MCA or FCA.

*h. Maritime claims.* Maritime torts are excluded from consideration under the FTCA. The various maritime statutes are exclusive remedies within the United States and its territorial waters. Maritime statutes include the AMCSA, 10 U.S.C. §§ 4801, 4802 and 4806, the SIAA, 46 U.S.C. §§ 30901-30908, the PVA, 46 U.S.C. §§ 31101-31113, and the AEA, 46 U.S.C. § 30101. Within the United States and its territorial waters, maritime suits may be filed under the

SIAA or the PVA without first filing an administrative claim, except where administrative filing is required by the AEA. Administrative claims may also be filed under the AMCSA. In any administrative claim brought under the AMCSA, all action must be completed not later than 2 years from its accrual date, or the SOL will expire. Outside the United States, a maritime tort may be brought under the MCA or FCA as well as the AMCSA. The body of water on which it occurs must be navigable and a maritime nexus must exist. Once a maritime claim is identified, the claimant will be given written notice of the 2-year filing requirement. In case of doubt, the ACO or CPO should discuss the matter with the appropriate AAO. Even when the claimant does not believe that a maritime claim is involved, the claimant should be provided with precautionary notice (see DA Pam 27-162, paras 2-7e and 8-6).

*i. Postal claims.* See also DA Pam 27-162, paragraphs 2-15i, 2-30, and 2-56g, which discuss postal claims.

(1) Claims by the U.S. Postal Service for funds and stock are adjudicated by USARCS, with assistance from the Military Postal Service Agency and the ACO or CPO having jurisdiction over the particular Army post office, when directed by USARCS to assist in the investigation of the claim.

(2) Claims for loss of registered and insured mail are processed under chapter 3 by the ACO or CPO having jurisdiction over the particular Army post office.

(3) Claims for loss of, or damage to, parcels delivered by United Parcel Service (UPS) are the responsibility of UPS.

*j. Blast damage claims.* After completing an investigation and prior to final action, all blast damage claims resulting from Army firing and demolition activities must be forwarded to the Commander, USARCS for technical review. The sole exception to this rule is when a similar claim is filed citing the same time, place, and type of damage as one which has already received technical review. (See also DA Pam 27-162, para 2-28.)

*k. Motor vehicle damage claims arising from the use of non-governmental vehicles.* See also paragraph 2-48 (splitting personal injury and property damage claims), and DA Pam 27-162, paragraphs 2-15k (determining the correct statute), 2-61 (joint tortfeasors), and 2-62e (indemnity or contribution).

(1) *Government tortfeasors.* A Soldier or U.S. Government civilian employee who negligently damages his or her personal property while acting within the scope of employment is not a proper claimant for damage to that property.

(2) *Claims by lessors for damage to rental vehicles.* Third-party claims arising from the use of rental vehicles will be processed in the same manner as NAFI commercially insured activities after exhaustion of any other remedy under the Government Travel Card Program or the Surface Deployment and Distribution Command Car Rental Agreement.

(3) *Third-party damages arising from the use of privately owned vehicles.* Third-party tort claims arising within the United States from a Soldier's use of a privately owned vehicle (POV) while allegedly within the scope of employment must be forwarded to the Commander, USARCS for review and consultation before final action. The claim will be investigated and any authorization for use ascertained including payment for mileage. A copy of the Soldier's POV insurance policy will be obtained prior to forwarding. If the DA is an additional insurer under applicable state law, the claim will be forwarded to the Soldier's liability carrier for payment. When the tort claim arises in a foreign country, follow the provisions of chapter 10.

*l. Claims arising from gratuitous use of Department of Defense or Army vehicles, equipment, or facilities.*

(1) Before the commencement of any event that involves the use of DOD or Army land, vehicles, equipment, or Army personnel for community activities, the command involved should be advised to first determine and weigh the risk to potential third-party claimants against the benefits to the DOD or the Army. Where such risk is excessive, try to obtain an agreement from the sponsoring civilian organization holding the Army harmless. When feasible, third-party liability insurance may be required from the sponsor and the United States added to the policy as a third-party insured.

(2) When Army equipment and personnel are used for debris removal relief pursuant to the Federal Disaster Relief Act, 42 U.S.C. § 5173, the state is required to assume responsibility for third-party claims. The senior judge advocate for a task force engaged in such relief should obtain an agreement requiring the state to hold the Army harmless and establish a procedure for payment by the state. Claims will be received, entered into the TSCA database, investigated and forwarded to state authorities for action.

*m. Real estate claims.* Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein, are generally payable under AR 405-15. These claims are handled by the Real Estate Claims Office in the appropriate COE District or a special office created for a deployment. Directorate of Real Estate, Office of the Chief of Engineers, has supervisory authority. Claims for damage to real property and incidental personal property, but not for rent (for example, claims arising during a maneuver or deployment) may be payable under chapters 3 or 10. However, priority should be given to the use of AR 405-15, because it is more flexible and expeditious. (See DA Pam 27-162, paras 2-15m and 3-3, for methods and procedures.) In contingency operations and deployments, there is a large potential for overlap between contractual property damage claims and noncombat activity/maneuver claims. Investigate carefully to ensure the claim is in the proper channel (claims or real estate), that it is fairly settled, and that the claimant does not receive a double payment. For additional guidance, see chapter 10 and U.S. Army Claims Service, Europe (USACSEUR) Real Estate/Office of the Judge Advocate Standard Operating Procedures for Processing Claims Involving Real Estate During Contingency Operations (20 August 2002).

*n. Claims generated by civil works projects.* Civil works projects claims arising from tortious activities are defined by whether the negligent or wrongful act or omission arising from a project or activity is funded by a civil works appropriation. Civil works claims are those noncontractual claims that arise from a negligent or wrongful act or

omission during the performance of a project or activity funded by civil works appropriations, as distinguished from a project or activity funded by Army operation and maintenance funds. Civil works claims are paid out of civil works appropriations to the extent set forth in paragraph 2–60*f*. A civil works claim can also arise out of a noncombat activity, for example, an inverse condemnation claim in which flooding exceeds the high water mark. Maritime claims under chapter 8 are civil works claims when they arise out of the operation of a dam, locks, or navigational aid.

## **2–16. Unique issues related to environmental claims**

Claims for property damage, personal injury, or death arising in the United States based on contamination by toxic substances found in the air or the ground must be reported by USARCS to the Environmental Law Division of the Army Litigation Center and the Environmental Torts Branch of the Department of Justice (DOJ). Such claims arising overseas must be reported to the CCS with geographical jurisdiction over the claim and USARCS. Claims for personal injury from contamination frequently arise at an area that is the subject of claims for cleanup of the contamination site. The cleanup claims involve other Army agencies, use of separate funds, and prolonged investigation. Administrative settlement is not usually feasible because settlement of property damage claims must cover all damages, including personal injury. Payment by Defense Environmental Rehabilitation Funds should be considered initially and any such payment should be deducted from any settlement under AR 27–20.

## **2–17. Related remedies**

An ACO or a CPO routinely receives claims or inquiries about claims that clearly are not cognizable under this regulation. It is DA policy that every effort be made to discover another remedy and inform the inquirer as to its nature. Claims personnel will familiarize themselves with the remedies set forth in DA Pam 27–162, paragraph 2–17, to carry out this policy. If no appropriate remedy can be discovered, the file will be forwarded to the Commander, USARCS, with recommendations.

## **Section IV**

### **Investigative Methods and Techniques**

## **2–18. Introductory note to investigative methods and techniques**

See parallel discussion on investigations at DA Pam 27–162, paragraphs 2–18 through 2–34.

## **2–19. Importance of the claims investigation**

Prompt and thorough investigation will be conducted on all potential and actual claims for and against the Government. Evidence developed during an investigation provides the basis for every subsequent step in the administrative settlement of a claim or in the pursuit of a lawsuit. Claims personnel must gather and record adverse as well as favorable information. The CJA, claims attorney, or unit claims officer must preserve their legal and factual findings.

## **2–20. Elements of the investigation**

This paragraph corresponds to DA Pam 27–162, paragraphs 2–20 through 2–24. Those paragraphs detail the elements common to most investigations.

*a.* The investigation is conducted to ascertain the facts of an incident. Which facts are relevant often depends on the law and regulations applicable to the conduct of the parties involved but generally the investigation should develop definitive answers to such questions as “When?” “Where?” “Who?” “What?” and “How?” Typically, the time, place, persons, and circumstances involved in an incident may be established by a simple report, but its cause and the resulting damage may require extensive effort to obtain all the pertinent facts.

*b.* The object of the investigation is to gather, with the least possible delay, the best available evidence without accumulating excessive evidence concerning any particular fact. The claimant is often an excellent source of such information and should be contacted early in the investigation, particularly when there is a question as to whether the claim was filed in a timely manner.

## **2–21. Use of experts, consultants, and appraisers**

(This paragraph corresponds to DA Pam 27–162, para 2–24.)

*a.* The ACOs or CPOs will budget operation and maintenance (O&M) funds for the costs of hiring property appraisers, accident reconstructionists, expert consultants to furnish opinions, and medical specialists to conduct IMEs. Other expenses to be provided for from O&M funds include the purchase of documents, such as medical records, and the hiring of mediators (see para 2–38*b*). Where the cost exceeds \$750 or local funds are exhausted, a request for funding should be directed to the Commander, USARCS, with appropriate justification. The USARCS AAO must be notified as soon as possible when an accident reconstruction is indicated.

*b.* Where the claim arises from treatment at an Army MTF, the MEDDAC commander should be requested to fund the cost of an independent consultant’s opinion or an IME.

*c.* The use of outside consultants and appraisers should be limited to claims in which liability or damages cannot be determined otherwise, and in which the use of such sources is economically feasible—for instance, where property



damage is high in amount and not determinable by a Government appraiser or where the extent of personal injury is serious and a Government IME is neither available nor acceptable to a claimant. Prior to such an examination at an MTF, ensure that the necessary specialists are available and a prompt written report may be obtained.

*d.* Either an IME or an expert opinion is procured by means of a personal services contract under the Federal Acquisition Regulation (FAR), Part 37, 48 C.F.R. § 37.000 et. seq., through the local contracting office. The contract must be in effect prior to commencement of the records review. Payment is authorized only upon receipt of a written report responsive to the questions asked by the CJA or claims attorney.

*e.* Whenever a source other than claims personnel is used to assist in the evaluation of a claim in which medical information protected by HIPAA is involved, the source must sign an agreement designed to protect the patient's privacy rights.

## **2-22. Conducting the investigation**

*a.* The methods and techniques for investigating specific categories of claims are set forth in DA Pam 27-162, paragraphs 2-25 through 2-34. The investigation of medical malpractice claims should be conducted by a CJA or claims attorney, using a medical claims investigator.

*b.* A properly filed claim must contain enough information to permit investigation. For example, if the claim does not specify the date, location, or details of every incident complained of, the claimant or legal representative should be required to furnish the information.

*c.* The claimant or legal representative will be requested to specify a theory of liability. However, the investigation should not be limited to the theories specified, particularly where the claimant is unrepresented. All logical theories should be investigated.

## **Section V**

### **Determination of Liability**

#### **2-23. Introductory note to determination of liability**

See the parallel discussion on determining liability at DA Pam 27-162, paragraphs 2-35 through 2-50.

#### **2-24. General**

See the parallel discussion at DA Pam 27-162, paragraph 2-35.

*a.* Under the FTCA, the United States is liable in the same manner and to the same extent as a private individual under like circumstances in accordance with the law of the place where the act or omission giving rise to the tort occurred (28 U.S.C. §§ 2673 and 2674). This means that liability must rest on the existence of a tort cognizable under state law, hereinafter referred to as a state tort. A finding of state tort liability requires the litigating attorney to prove the elements of duty, breach of duty, causation, and damages as interpreted by Federal case law.

*b.* The foregoing principles and requirements will be followed in regard to tort claims against the United States under other chapters, with certain exceptions noted within the individual chapters or particular tort statutes.

*c.* Interpretation will be made in accordance with FTCA case law, and also maritime case law where applicable. Additionally, a noncombat activity can furnish the basis for a claim under chapters 3, 6, and 10. Noncombat activities include claims arising out of civil works, such as inverse condemnation.

*d.* Federal, not state or local, law applies to a determination as to who is a Federal employee or a member of the Armed Forces. Under all chapters, the designation "Federal employee" excludes a contractor of the United States. (See 28 U.S.C. § 2671; also see, however, 2-2b(4)(b) concerning personal services contractors.) For employment identification purposes apply FTCA case law in making a determination.

*e.* Federal, not state or local, law applies to an interpretation of the SOL under all chapters. Minority or incompetence does not toll the SOL. Case law developed under the FTCA will be used in other chapters in interpreting SOL questions.

*f.* Under the FTCA state or local law is used to determine scope of employment and under other chapters for guidance.

#### **2-25. Constitutional torts**

A claim for violation of the U.S. Constitution does not constitute a state tort and is not cognizable under any chapter. A constitutional claim will be scrutinized in order to determine whether it is totally or partially payable as a state tort. For example, a Fifth Amendment taking may be payable in an altered form as a real estate claim (for further discussion see DA Pam 27-162, para 2-36).

#### **2-26. Incident to service**

For further discussion see DA Pam 27-162, paragraph 2-37.

*a.* A member of the Armed Forces of the United States' claim for personal injury or wrongful death arising incident to service is not payable under any chapter except to the extent permitted by the receiving state under chapter 7, section

III (claims arising overseas); however, a claim by a member of the Armed Forces for property loss or damage may be payable under chapter 11; or, if not, under chapters 3, 5, 6, or 7. Derivative claims and claims for indemnity are also excluded.

*b.* Claims for personal injury or wrongful death by members of a foreign military force participating in a joint military exercise or operation arising incident to service are not payable under any chapter. Claims for property loss or damage, but not subrogated claims, may be payable under chapter 3. Derivative claims and claims for indemnity or contribution are not payable under any chapter.

## **2–27. Federal Employees Compensation Act and Longshore and Harbor Workers’ Compensation Act claims exclusions**

A Federal or NAFI employee’s personal injury or wrongful death claim payable under the FECA or the LSHWCA is not payable under any chapter. Derivative claims are also excluded but a claim for indemnity may be payable under certain circumstances. A Federal or NAFI employee’s claim for an incident-to-service property loss or damage may be payable under chapter 11 or, if not, under chapters 3, 4, 6, 7, 8, or 10 of this publication. (For further discussion, see DA Pam 27–162, para 2–38.)

## **2–28. Statutory exceptions**

This topic is more fully discussed in DA Pam 27–162, paragraph 2–39. The exclusions listed below are found at 28 U.S.C. § 2680 and apply to chapters 3, 4, 6 and 8, and chapter 7, section II (claims arising in the United States), except as noted therein, and not to chapters 5, 10 or chapter 7, section III (claims arising overseas). A claim is not payable if it—

*a.* Is based upon an act or omission of an employee of the U.S. Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. This exclusion does not apply to a noncombat activity claim.

*b.* Is 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, whether or not the discretion is abused. This exclusion does not apply to a noncombat activity claim.

*c.* Arises out of the loss, miscarriage, or negligent transmission of letters or postal matters. This exclusion is not applicable to registered or certified mail claims under chapter 3 (see para 2–15*i*).

*d.* Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law enforcement officer. (See 28 U.S.C. § 2680(c).)

*e.* Is cognizable under the SIAA (46 U.S.C. §§ 30901–30918), the PVA (46 U.S.C. §§ 31101–31113), or the AEA (46 U.S.C. § 30101). This exclusion does not apply to chapters 3, 6, 8, or 10.

*f.* Arises out of an act or omission of any Federal employee in administering the provisions of the Trading with the Enemy Act, 50 U.S.C. app. §§ 1–44.

*g.* Is for damage caused by the imposition or establishment of a quarantine by the United States.

*h.* Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, except for acts or omissions of investigation of law enforcement officers of the U.S. Government with regard to assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. This exclusion also does not apply to a health care provider as defined in 10 U.S.C. §1089 and paragraph 3–8 of this regulation, under the conditions listed therein.

*i.* Arises from the fiscal operations of the U.S. Department of Treasury or from the regulation of the monetary system.

*j.* Arises out of the combatant activities of U.S. military or naval forces, or the Coast Guard during time of war.

*k.* Arises in a foreign country. This exclusion does not apply to chapters 3, 5, 6, 8, 10 or chapter 7, section III (claims arising overseas).

*l.* Arises from the activities of the Tennessee Valley Authority, 28 U.S.C. § 2680(l).

*m.* Arises from the activities of the Panama Canal Commission, 28 U.S.C. § 2680(m).

*n.* Arises from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives, 28 U.S.C. § 2680(n).

## **2–29. Other exclusions**

See parallel discussion at DA Pam 27–162, paragraphs 2–40 through 2–43.

*a. Statutory employer.* A claim is not payable under any chapter if it is for personal injury or death of any contract employee for whom benefits are provided under any workers’ compensation law, if the provisions of the workers’ compensation insurance are retrospective and charge an allowable expense to a cost-type contract, or if precluded by state law (see Federal Tort Claims Handbook (FTCH) § II, D7). The statutory employer exclusion also applies to claims that may be covered by the Defense Bases Act, 42 U.S.C. §§ 1651–1654.

*b. Flood exclusion.* Within the United States, a claim is not payable if it arises from damage caused by flood or

flood waters associated with the construction or operation of a COE flood control project, 33 U.S.C. § 702(c). (See DA Pam 27-162, para 2-40.)

*c. ARNG property.* A claim is not payable under any chapter if it is for damage to, or loss of, property of a state, commonwealth, territory, or the District of Columbia caused by ARNG 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 (see DA Pam 27-162, para 2-41).

*d. Federal Disaster Relief Act.* Within the United States, a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a Federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. §5173. (See DA Pam 27-162, para 2-42.)

*e. Non-justiciability doctrine.* A claim is not payable under any chapter if it arises from activities that present a nonjusticiable political question (See DA Pam 27-162, para 2-43).

*f. National Vaccine Act.* (42 U.S.C. §§ 300aa-1 through 300aa-7). A claim is not payable under any chapter if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. §§ 300aa-9 through 300aa-19) have been met (see DA Pam 27-162, para 2-17c(6)(a)).

*g. Defense Mapping Agency.* A claim is not payable under any chapter if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. § 456 (see FTCH § II, B4s).

*h. Quiet Title Act.* Within the United States, a claim is not payable if it falls under the Quiet Title Act 28 U.S.C. § 2409a.

*i. Defense Bases Act.* A claim arising outside the United States is not payable if it is covered by the Defense Bases Act, 42 U.S.C. §§ 1651-1654.

## **2-30. Statute of limitations**

To be payable, a claim against the United States under any chapter, except chapter 7, section III (claims arising overseas), must be filed no later than 2 years from the date of accrual, as determined by Federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate Federal agency, not the date of mailing. (See also, para 2-5a herein and the parallel discussion at DA Pam 27-162, para 2-44.)

## **2-31. Federal employee requirement**

To be payable, a claim under any chapter except chapter 12, section II (claims involving persons other than NAF employees), must be based on the acts or omissions of a member of the Armed Forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a Federal civilian employee. This does not include a contractor of the United States. Apply Federal case law for interpretation. (See also, para 2-2b herein and parallel discussion at DA Pam 27-162, para 2-45.)

## **2-32. Scope of employment requirement**

To be payable, a claim must be based on acts or omissions of a member of the Armed Forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a Federal employee acting within the scope of employment, except for chapters 5, 10, or 12, section II (claims involving persons other than NAF employees). A claim arising from noncombat activities must be based on the Armed Service's official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was (see parallel discussion at DA Pam 27-162, para 2-46).

## **Section VI**

### **Determination of Damages**

## **2-33. Introductory note to determination of damages**

See parallel discussion on determining damages at DA Pam 27-162, paragraphs 2-51 through 2-58.

## **2-34. Applicable law**

For further discussion, see DA Pam 27-162, paragraph 2-51.

*a. The Federal Tort Claims Act.* The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

*b. The Military Claims Act or National Guard Claims Act.* (See chaps 3 and 6.) The law set forth in paragraph 3-8 applies only to claims accruing on or after 1 September 1995. The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories, and possessions prior to 1 September 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside

the United States prior to 1 September 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to 1 September 1995 (see *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970) and Federal case law). Where general maritime law provides no guidance, the general principles of U.S. tort law will apply.

*c. The Foreign Claims Act.* (See chapter 10 of this regulation.) The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in paragraph 10–5 will serve as a guide.

*d. The Army Maritime Claims Settlement Act.* Maritime law applies.

*e. Damages not payable.* Under all chapters, property loss or damage refers to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs, are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited (see DA Pam 27–162, paras 2–56 and 3–4*b*).

*f. Source of attorney’s fees.* Attorney’s fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any chapter.

## **2–35. Collateral source rule**

Where permitted by applicable state or maritime law, damages recovered from collateral sources are payable under chapters 4 and 8, but not under chapters 3, 5, 6, and 10. (See DA Pam 27–162, para 2–57 for further discussion.)

## **2–36. Subrogation**

Subrogation is the substitution of one person in place of another with regard to a claim, demand, or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable state law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under chapters 4 and 8, but not under chapters 3, 5, 6, or 10. (See DA Pam 27–162, para 2–58 for further discussion.)

## **Section VII Evaluation**

### **2–37. Introductory note to evaluation**

See the parallel discussion on evaluation of claims at DA Pam 27–162, paragraphs 2–59 through 2–63.

### **2–38. General rules and guidelines**

For further discussion, see DA Pam 27–162, paragraph 2–59.

*a. Before claims personnel evaluate a claim—*

(1) A claimant or claimant’s legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim’s nature including, but not instead of, the following: medical records and reports, witness statements, itemized bills and paid receipts, estimates, Federal tax returns, W–2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, permission will be requested, through the legal representative, to interview the claimant, the claimant’s family, proposed witnesses, and treating health care providers (HCPs). In a professional negligence claim, the claimant will submit an expert opinion when requested. State law concerning the requirement for an affidavit of merit should be cited.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence, interviews, or an IME, a written request will be made. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the Government’s request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it. Failure to submit to an IME or sign an authorization to use medical information protected by HIPAA, for review or evaluation by a source other than claims personnel, are both grounds for denial for failure to document, provided such evaluation is essential to the determination of liability or damages. A time limit will be set, for example, 30 or 60 days, to furnish the substantiation or expert opinion required in a medical malpractice claim.

(3) If, in exchange for complying with the Government’s request for the foregoing information, the claimant or the legal representative requests similar information from the file, the claimant may be provided such information and documentation as is releasable under the Federal Rules of Civil Procedure (FRCP). Additionally, work product may be released if such release will help settle the claim (see para 1–18).

*b. An evaluation should be viewed from the claimant’s perspective.* In other words, before denying a claim, first determine whether there is any reasonable basis for compromise. Certain jurisdictional issues and statutory bases may not be open for compromise. The incident-to-service and FECA exclusions are rarely subject to compromise, whereas the SOL is more subject to compromise. Factual and legal disputes are compromisable, frequently providing a basis for limiting damages, not necessarily grounds for denial. Where a precise issue of dispute is identified and is otherwise

unresolvable, mediation by a disinterested qualified person, such as a Federal judge, or foreign equivalent for claims arising under the FCA, should be obtained upon agreement with the claimant or the claimant's legal representative. Contributory negligence has given way to comparative negligence in most United States jurisdictions. In most foreign countries, comparative negligence is the rule of law.

### **2-39. Joint tortfeasors**

When joint tortfeasors are liable, it is DA policy to pay only the fair share of a claim attributable to the fault of the United States rather than pay the claim in full and then bring suit against the joint tortfeasor for contribution. If payment from a joint tortfeasor is not forthcoming after the CJA's demand, the United States should settle for its fair share, provided the claimant is willing to hold the United States harmless. Where a joint tortfeasor's liability greatly outweighs that of the United States, the claim should be referred to the joint tortfeasor for action (see para 2-15*f* of this publication and DA Pam 27-162, paras 2-15*f* and 2-61).

### **2-40. Structured settlements**

For further discussion, see DA Pam 27-162, paragraph 2-63.

*a.* The use of future periodic payments, including reversionary medical trusts, is encouraged to ensure that the injured party is adequately compensated and able to meet future needs.

(1) It is necessary to ensure adequate care and compensation for a minor or other incompetent claimant or unemployed survivor over a period of years.

(2) A medical trust is necessary to ensure the long-term availability of funds for anticipated future medical care, the cost of which is difficult to predict.

(3) The injured party's life expectancy cannot be reasonably determined or is likely to be shortened.

*b.* Under chapter 4, structured settlements cannot be required but are encouraged in situations listed above or where state law permits them. In case of a minor, every effort should be made to insure that the minor, and not the parents, receives the benefit of the settlement. Annuity payments at the age of majority should be considered. If rejected, a blocked bank account may be used.

*c.* It is the policy of the Department of Justice never to discuss the tax-free nature of a structured settlement.

## **Section VIII Negotiations**

### **2-41. Introductory note to negotiations**

See parallel discussion on negotiations at DA Pam 27-162, paragraphs 2-64 through 2-68.

### **2-42. Purpose and extent**

It is DA policy to settle meritorious claims promptly and fairly through direct negotiation at the lowest possible level. The Army's negotiator should not admit liability, as such is not necessary. However, the settlement should reflect diminished value where contributory negligence or other value-diminishing factors exist. The negotiator should be thoroughly familiar with all aspects of the case, including the claimant's background, the key witnesses, the anticipated testimony and the appearance of the scene. There is no substitute for the claims negotiator's personal study of, and participation in, the case before settlement negotiations begin. If settlement is not possible due to the divergence in the offers, refine the issues as much as possible in order to expedite any subsequent suit. Mediation should be used if the divergence is due to an issue of law affecting either liability or damages (for further discussion, see DA Pam 27-162, para 2-64).

### **2-43. Who should negotiate**

An AAO or, when delegated additional authority, an ACO or a CPO, has authority to settle claims in an amount exceeding the monetary authority delegated by regulation. It is DA policy to delegate USARCS authority, on a case-by-case basis, to an ACO or a CPO possessing the appropriate ability and experience. Only an attorney should negotiate with a claimant's attorney. Negotiations with unrepresented claimants may be conducted by a non-attorney, under the supervision of an attorney (see DA Pam 27-162, para 2-65 for further discussion).

### **2-44. How to negotiate**

Claims within the monetary authority of USARCS should be negotiated in person, at least initially. If telephonic negotiations are conducted, they should be memorialized with a written record furnished to the claimant. Avoid using correspondence as the sole means of communicating an offer. However, when corresponding, break down any offer by elements of recoverable damage and explain any diminished valuation due to contributory negligence or other factors. An offer should not be increased in the absence of a reasonable counter-offer. At the commencement of negotiations, ensure that the claimant's attorney has obtained authority from the claimant to settle and that any offer made will be passed on to the claimant (for further discussion, see DA Pam 27-162, para 67).

## **2-45. Settlement negotiations with unrepresented claimants**

All aspects of the applicable law and procedure, except the amount to be claimed, should be explained to both potential and actual claimants. The negotiator will ensure that the claimant is aware of whether the negotiator is an attorney or a non-attorney, and that the negotiator represents the United States. As to claims within USARCS' monetary authority, the chronology and details of negotiations should be memorialized with a written record furnished to the claimant. The claimant should understand that it is not necessary to hire an attorney, but when an attorney is needed, the negotiator should recommend hiring one. In a claim where liability is not an issue, the claimant should be informed that if an attorney is retained, the claimant should attempt to negotiate an hourly fee for determination of damages only (for further discussion, see DA Pam 27-162, para 2-68).

## **Section IX Settlement Procedures**

### **2-46. Introductory note to settlement procedures**

See parallel discussion on settlement procedures at DA Pam 27-162, paragraphs 2-69 through 2-79.

### **2-47. Settlement or approval authority**

"Settlement authority" is a statutory term (10 U.S.C. § 2735) meaning that officer authorized to approve, deny or compromise a claim, or make final action. "Approval authority" means the officer empowered to settle, pay, or compromise a claim in full or in part, provided the claimant agrees. "Final action authority" means the officer empowered to deny or make a final offer on a claim. Determining the proper officer empowered to approve or make final action on a claim depends on the claims statute involved and any limitations that apply under that statute. DA Pam 27-162, paragraph 2-69, outlines how various authority is delegated among offices.

### **2-48. Splitting property damage and personal injury claims**

Normally, a claim will include all damages that accrue by reason of the incident. Where a claimant has a claim for property damage and personal injury arising from the same incident, the property damage claim may be paid, under certain circumstances, prior to the filing of the personal injury claim. The personal injury claim may be filed later, provided it is filed within the applicable SOL. When both property damage and personal injury arise from the same incident, the property damage claim may be paid to either the claimant or, under chapters 4 or 8, the insurer, and the same claimant may receive a subsequent payment for personal injury. Only under chapters 4 or 8 may the insurer receive subsequent payment for subrogated medical bills and lost earnings when the personal injury claim is settled. The primary purpose of settling an injured claimant's property damage claim before settling the personal injury claim is to pay the claimant for vehicle damage expeditiously and avoid costs associated with delay such as loss of use, loss of business, or storage charges. The approval of the Commander, USARCS must be obtained whenever the estimated value of any one claim exceeds \$25,000, or the value of all claims, actual or potential, arising from the incident exceeds \$50,000; however, if the claim arises under the FTCA or AMCSA, the Commander's approval must be obtained only if the amount claimed exceeds \$50,000, or \$100,000 per incident (for further discussion, see DA Pam 27-162, para 2-70).

### **2-49. Advance payments**

For further discussion, see DA Pam 27-162, paragraph 2-71.

*a.* This paragraph implements 10 U.S.C. § 2736 (Act of 8 September 1961 (75 Stat. 488)) as amended by Pub. L. No. 90-521 (82 Stat. 874); Pub. L. No. 98-564 (90 Stat. 2919); and Pub. L. No. 100-465 (102 Stat. 2005)). No new liability is created by 10 U.S.C. § 2736, which merely permits partial advance payments, only under chapters 3, 6 or 10, on claims not yet filed. (See para 11-18 for information on emergency partial payments in personnel claims, which are not governed by 10 U.S.C. § 2736.)

*b.* The Judge Advocate General and DJAG may make advance payments in amounts not exceeding \$100,000; the Commander, USARCS, in amounts not exceeding \$25,000, and the authorities designated in paragraphs 3-6b(4), 3-6b(5), and 6-6, in amounts not exceeding \$10,000, subject to advance coordination with USARCS, if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of \$10,000 will be forwarded to USARCS for processing.

*c.* Under chapter 10 of this regulation, three-member FCCs may make advance payments under the FCA in amounts not exceeding \$10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

*d.* An advance payment, not exceeding \$100,000, is authorized in the limited category of claims or potential claims considered meritorious under chapters 3, 6, or 10, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of chapters 3, 6, or 10.

(2) An immediate need for food, clothing, shelter, medical, or burial expenses, or other necessities exists.

(3) The payee, so far as can be determined, would be a proper claimant, including an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

e. There is no statutory authority for making advance payments for claims payable under chapters 4 or 8.

## **2-50. Action memorandums**

For further discussion, see DA Pam 27-162, paragraph 2-72.

### *a. When required.*

(1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action, see paragraph 2-54. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction.

(2) In any claim that must be supported by an expert opinion as to duty, negligence, causation or damages, an expert opinion must be submitted upon request. All opinions must meet the standards set forth in Federal Rule of Evidence 702.

(3) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law, or damages to justify the action being taken. Model actions are posted on the USARCS Web site at "Claims Resources," II, a, nos. 25 and 26.

b. *Memorandum of opinion.* Upon completion of the investigation, the ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27-162, paragraph 2-60, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

c. *Claim brought by a claims authority or superior.* A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a Family member of either will be investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a CCS) or to USARCS.

## **2-51. Settlement agreements**

For further discussion see DA Pam 27-162, paragraph 2-73. Sample settlement agreements, payment reports, and vouchers are posted on the "Claims Resources" page of the USARCS Web site.

### *a. When required.*

(1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under paragraphs 2-48 and 2-49. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of COE claims of \$2,500 or less or all Army Central Insurance Fund and Army and Air Force Exchange Service claims.

(3) DA Form 7500 (Tort Claim Payment Report) will be used for all payments from the Defense Finance and Accounting Service (DFAS) (for example, FTCA claims of \$2,500 or less, FCA and MCA claims of \$100,000 or less and all maritime claims regardless of amount).

(4) FMS Form 194 (Judgment Fund Transmittal), FMS Form 196 (Judgment Fund Award Data Sheet), and FMS Form 197 (Judgment Fund Voucher for Payment) will be used for all payments from the Judgment Fund (for example, FTCA claims exceeding \$2,500, MCA and FCA claims exceeding \$100,000).

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement) (for further examples, see DA Pam 27-162, para 2-73c).

b. *Unconditional settlement.* The settlement agreement must be unconditional. The settlement agreement represents a meeting of the minds. Any changes to the agreement must be agreed upon by all parties. The return of a proffered settlement agreement with changes written thereon or on an accompanying document represents, in effect, a counteroffer and must be resolved. Even if the claimant signs the agreement and objects to its terms, either in writing or verbally, the settlement is defective and the objection must be resolved. Otherwise a final offer should be made.

### *c. Court approval.*

(1) *When required.* Court approval is required in a wrongful death claim, or where the claimant is a minor or incompetent. The claimant is responsible to obtain court approval in a jurisdiction that is locus of the act or omission giving rise to the claim or in which the claimant resides. The court must be a state or local court, including a probate court. If the claimant can show that court approval is not required under the law of the jurisdiction where the incident

occurred or where the claimant resides, the citation of the statute will be provided and accompany the payment documents.

(2) *Attorney representation.* If the claimant is a minor or incompetent, the claimant must be represented by a lawyer. If not already represented, the claimant should be informed that the requirement is mandatory unless state or local law expressly authorizes the parents or a person in loco parentis to settle the claim.

(3) *Costs.* The cost of obtaining court approval will be factored into the amount of the settlement; however, the amount of the costs and other costs will not be written into the settlement—only the 20 percent limitation on attorney fees will be included.

(4) *Claims involving an estate or personal representative of an estate.* On claims presented on behalf of a decedent's estate, the law of the state having jurisdiction should be reviewed to determine who may bring a claim on behalf of the estate, if court appointment of an estate representative is required, and if court approval of the settlement is required.

*d. Signature requirements.*

(1) Except as noted below, all settlement agreements will be signed individually by each claimant. A limited power of attorney signed by the claimant specifically stating the amount being accepted and authorizing an attorney at law or in fact to sign is acceptable when the claimant is unavailable to sign. The signatures of the administrator or executor of the estate, appointed by a court of competent jurisdiction or authorized by local law, are required. The signatures of all adult beneficiaries, acknowledging the settlement, should be obtained unless permission is given by the Commander, USARCS. Court approval must be obtained where required by state law. If not required by state law, the citation of the state statute will accompany the payment document. Additionally, all adult heirs will sign as acknowledging the settlement. In lieu thereof, where the adult heirs are not available, the estate representative will acknowledge that all heirs have been informed of the settlement.

(2) Generally, only a court-appointed guardian of a minor's estate, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's claim. In the United States, the law of the state where the minor resides or is domiciled will determine the age of majority and the nature and type of court approval that is needed, if any. The age of majority is determined by the age at the time of settlement, not the date of filing.

(3) For claims arising in foreign countries where the amount agreed upon does not exceed \$2,500, the requirement to obtain a guardian may be eliminated. For settlements over \$2,500, whether or not the claim arose in the United States, refer to applicable local law, including the law of the foreign country where the minor resides.

(4) In claims where the claimant is an incompetent, and for whom a guardian has been appointed by a court of competent jurisdiction, the signature of the guardian must be obtained. In cases in which competence of the claimant appears doubtful, a written statement by the plaintiff's attorney and a member of the immediate Family should be obtained.

(5) Settlement agreements involving subrogated claims must be executed by a person authorized by the corporation or company to act in its behalf and accompanied by a document signed by a person authorized by the corporation or company to delegate execution authority.

(6) If it is believed that the foregoing requirements are materially impeding settlement of the claim, the matter should be brought to the attention of the Commander, USARCS for appropriate resolution.

*e. Attorneys' fees and costs.* See also DA Pam 27-162, para 2-73f.

(1) Attorneys' fees for all chapters fall under the American Rule and are payable only out of the up front cash in any settlement. Attorneys' fees will be stated separately in the settlement agreement as a sum not to exceed 20 percent of the award.

(2) Costs are a matter to be determined solely between the attorney and the claimant and will not be set forth or otherwise enumerated in the settlement agreement.

*f. Claims involving workers' compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workers' compensation benefits under local law may require the consent of the workers' compensation insurance carrier, and in certain jurisdictions, the state agency that has authority over workers' compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

*g. Claims involving multiple interests.* Where two or more parties have an interest in the claim, obtain signatures on the settlement agreement from all parties. Examples are where both the subrogee and subrogor file a single claim for property damage, where both landlord and tenant file a claim for damage to real property, or when a POV is leased, both the lessor and lessee.

*h. Claims involving structured settlements.* All settlement agreements involving structured settlements will be prepared by the Tort Claims Division, USARCS, and approved by the Chief or Deputy Chief, Tort Claims Division.

## **2-52. Final offers**

For further discussion, see DA Pam 27-162, para 2-74.

*a.* When claims personnel believe that a claim should be compromised, and after every reasonable effort has been made to settle at less than the amount claimed, a settlement authority will make a written final offer within his or her



monetary jurisdiction or forward the claim to the authority having sufficient monetary jurisdiction, recommending a final offer under the applicable statute. The final offer notice will contain sufficient detail to outline each element of damages as well as discuss contributory negligence, the SOL or other reasons justifying a compromise offer. The offer letter should include language indicating that if the offer is not accepted within a named time period, for example, 30 or 60 days, the offer is withdrawn and the claim is denied.

*b.* A final offer under chapter 4 will notify the claimant of the right to sue, not later than 6 months from the notice's date of mailing, and of the right to request reconsideration. The procedures for processing a request for reconsideration are set forth in paragraph 4–7.

*c.* Under chapters 3 or 6, the notice will contain an appeal paragraph. A similar procedure will be followed in chapters 5 and 8. Chapter 10 sets forth its own procedures for FCA final offers. The procedures for processing an appeal are set forth in paragraph 3–7 of this publication. The letter must inform claimants of the following:

- (1) They must accept the offer within 60 days or appeal, and the appeal should state a counter-offer.
- (2) The official who will act on the appeal will be identified, and the requirement that the appeal will be addressed to the settlement authority who last acted on the claim will be announced.
- (3) No form is prescribed for the appeal, but the notice of appeal must fully set forth the grounds for appeal or state that it is based on the record as it exists at the time of denial or final offer.
- (4) The appeal must be postmarked not later than 60 days after the date of mailing of the final notice of action. If the last day of the appeal period falls on a Saturday, Sunday, or legal holiday, as specified in Rule 6a of the Federal Rules of Civil Procedure, the following day will be considered the final day of the appeal period.

*d.* Where a claim for the same injury falls under both chapters 3 and 4 (the MCA and the FTCA), and the denial or final offer applies equally to each such claim, the letter of notification must advise the claimant that any suit brought on any portion of the claim filed under the FTCA must be brought not later than 6 months from the date of mailing of the notice of final offer and any appeal under chapter 3 must be made as stated in paragraph *c*, above. Further, the claimant must be advised that if suit is brought, action on any appeal under chapter 3 will be held in abeyance pending final determination of such suit.

*e.* Upon request, the settlement authority may extend the 6-month reconsideration or 60-day appeal period provided good cause is shown. The claimant will be notified as to whether the request is granted under the FTCA and that the request precludes the filing of suit under the FTCA for 6 months. Only one reconsideration is authorized. Accordingly, that claimant should be informed of the need to make all submissions timely.

## **2–53. Denial notice**

See paragraph 2–38, on denying a claim for failure to substantiate. In addition, the procedures and rules in DA Pam 27–162, paragraph 2–69, settlement and approval authority, apply equally to the denial of claims. Also see DA Pam 27–162, paragraph 2–75.

*a.* Where there is no reasonable basis for compromise, a settlement authority will deny a claim within his or her monetary jurisdiction or forward the claim recommending denial to the settlement authority that has jurisdiction. The denial notice will contain instructions on the right to sue or request reconsideration. The notice will state the basis for denial. No admission of liability will be made. A notice to an unrepresented claimant should detail the basis for denial in lay language sufficient to permit an informed decision as to whether to request appeal or reconsideration. In the interest of deterring reconsideration, appeal or suit, a denial notice may be releasable under the Federal Rules of Civil Procedure or by the work product documents doctrine.

*b.* Regardless of the claim's nature or the statute under which it may be considered, letters denying claims on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim was conducted), must state that denial on such grounds is not to be construed as an opinion on the merits of the claim or an admission of liability. In medical malpractice claims, the denial should state that the file is being referred to U.S. Army Medical Command for review. If sufficient factual information exists to make a tentative ruling on the merits of the claim, liability may be expressly denied.

## **2–54. The “Parker” denial**

For further discussion see DA Pam 27–162, paragraph 2–76.

*a.* When suit is filed before final action is taken on a chapter 4 claim, a denial letter will be issued only upon request of DOJ or the trial attorney. If suit is filed prematurely or in error, the claimant may be requested to withdraw the suit without prejudice. Such a request must be coordinated with the trial attorney.

*b.* Claimants who have filed companion claims should be notified that, due to suit being filed, no action can be taken pending the outcome of suit and they may file suit if they wish.

## **2–55. Mailing procedures**

Thirty- or sixty-day letters seeking information from claimants, final offers, and denial notices are time-sensitive; they require a claimant to take additional action within certain time limits. Accordingly, follow procedures to ensure that the date of mailing and receipt of a request for reconsideration are documented. Use certified mail with return receipt

requested (or registered mail, if the letter is being sent to a foreign country other than by the military postal system) to mail such notices. Upon receipt, an appeal or request for reconsideration will be date-time stamped, logged in, and acknowledged as set forth below. (See also para 13–5 of this publication, and DA Pam 27–162, para 2–77.)

## **2–56. Appeal or reconsideration**

For further discussion, see DA Pam 27–162, paragraph 2–78.

*a.* An appeal or a request for reconsideration will be acknowledged in writing. A request for reconsideration under chapter 4 invokes the 6–month period during which suit cannot be filed (see 28 C.F.R. § 14.9(b)). The acknowledgment letter will underscore this restriction.

*b.* Where the contents of the appeal or request for reconsideration indicate, additional investigation will be conducted and the original action changed if warranted. With the exception of chapter 10, which sets forth separate rules for FCCs, if the relief requested is not warranted, the settlement authority will forward the claim to a higher settlement authority with a claims memorandum of opinion (see para 2–50) stating the reasons why the request is invalid.

## **2–57. Retention of file**

After final action has been taken, the settlement authority will retain the file until at least one month after either the period of filing suit or the appeal has expired and until all data has been entered into the database. A paid claim file will be retained until final action has been taken on all other claims arising out of the same incident. If any single claim arising out of the same incident must be forwarded to higher authority for final action, all claims files for that incident will be forwarded at the same time (for further discussion see DA Pam 27–162, para 2–79).

## **Section X**

### **Payment Procedures**

#### **2–58. Introductory note to payment procedures**

See parallel discussion on payment procedures at DA Pam 27–162, paragraphs 2–80 through 2–82.

#### **2–59. Preparation and forwarding of payment vouchers**

See also paragraph 2–51 and DA Pam 27–162, paragraphs 2–73 and 2–81.

*a.* An unrepresented claimant will be listed as the sole payee. Joint claimants will not be listed since settlement agreements must specify the amount payable to each claimant individually and each must be issued a separate check.

*b.* When a claimant is represented by an attorney, only one payment voucher will be issued with the claimant and the attorney as joint payees. The payment will be sent to the office of the claimant’s attorney. The attorney of record, either an individual or firm designated by the claimant, will be the co-payee. If claimant has been represented by other attorneys in the same claim, such attorneys will not be listed as payees, even if they have a lien. Satisfaction of any such fee will be a matter between the claimant and such attorney. If payment is made by electronic transfer, the funds will be paid into the account of the claimant. However, if requested, the payment may be made into the attorney’s escrow account, provided the claimant has provided written authorization.

*c.* In a structured settlement the structured settlement broker will be the sole payee, who is authorized to issue checks for the amounts set forth in the settlement agreement. The up-front cash payment may be deposited into an escrow account established for the benefit of the claimant.

*d.* If a claimant is a minor or has been declared incompetent by a court or other authority authorized to do so, payment will be made to the court-appointed guardian of the minor or incompetent, at a financial institution approved by the court approving the settlement.

*e.* If the claimant is representing a deceased’s estate on a wrongful death claim, or a survival action on behalf of the deceased, the payment will be made to the court-appointed representative of the estate. No payment will be made directly to the estate.

#### **2–60. Fund sources**

For further discussion, see DA Pam 27–162, paragraph 2–80.

*a.* 31 U.S.C. § 1304 sets forth the type and limits of claims payable out of the Judgment Fund. Only final payments that are not payable out of agency funds are allowable, in accordance with the Treasury Financial Manual, Volume I, Part 6, Chapter 3110, at Section 3115, September 2000. Threshold amounts for payment from the judgment fund vary according to the chapter and statutes under which a claim is processed. To determine the threshold amount for any given payment procedure, one must arrive at a sum of all awards for all claims arising out of that incident, including derivative claims. A joint amount is not acceptable. A claim for injury to a spouse or a child is a separate claim from one for loss of consortium or services by a spouse or parent. The monetary limits of \$2,500 set forth in chapter 4 and \$100,000 set forth in chapters 3, 6, and 10, apply to each separate claim.

*b.* A chapter 4, 5, or chapter 7, section II (claims arising in the United States) claim for \$2,500 or less is paid from the open claims allotment (see para 13–6b(1)) or, if arising from a project funded by a civil works appropriation, from

COE civil works funds. The Department of the Treasury pays any settlement exceeding \$2,500 in its entirety, from the Judgment Fund. However, if a chapter 7, section II (claims arising in the United States) claim is treated as a noncombat activity claim, payment is made as set forth in paragraph *c*, below.

*c.* The first \$100,000 for each claimant on a claim settled under chapters 3, 6, or 10, is paid from the open claims allotment. Any amount over \$100,000 is paid out of the Judgment Fund.

*d.* If not over \$500,000, a claim arising under chapter 8 is paid from the open claims allotment or civil works project funds as appropriate. A claim exceeding \$500,000 is paid entirely by a deficiency appropriation.

*e.* Army and Air Force Exchange Service (AAFES) or NAFI claims are paid from NAF, except when such claims are subject to apportionment between appropriated and nonappropriated funds (see DA Pam 27-162, para 2-80*i*).

*f.* The COE claims arising out of projects not funded out of civil works project funds are payable from the open claims allotment in an amount not to exceed \$2,500 for chapter 4 claims; in an amount not to exceed \$100,000 for claims arising from chapters 3, 6 or 10; and from the Judgment Fund if over such amounts.

## **2-61. Finality of settlement**

A claimant's acceptance of an award, except for an advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should include the state ARNG or the sending State (for further discussion, see DA Pam 27-162, para 2-82).

## **Chapter 3 Military Claims Act**

### **3-1. Statutory authority**

The statutory authority for this chapter is contained in the Act of 10 August 1956 (70A Stat. 153, 10 U.S.C. § 2733), commonly referred to as the Military Claims Act (MCA), as amended by Pub. L. No. 90-521, 26 September 1968 (82 Stat. 874); Pub. L. No. 90-522, 26 September 1968 (82 Stat. 875); Pub. L. No. 90-525, 26 September 1968 (82 Stat. 877); Pub. L. No. 93-336, 8 July 1974 (88 Stat. 291); Pub. L. No. 98-564, 30 October 1984, (98 Stat. 2918); and Pub. L. No. 103-337, 5 October 1994 (108 Stat. 2664).

### **3-2. Scope**

*a.* The guidance set forth in this chapter applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in para 2-2*b*) acting within the scope of their employment, except for non-federalized ARNG Soldiers as explained in chapter 6; or

(2) Incident to the noncombat activities of the Armed Services (see the glossary).

*b.* A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this chapter if the FTCA does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. For example, a claim by a Service member for property loss or damage incident to service may be settled if the loss arises from a tort and is not payable under chapter 11.

*c.* A tort claim arising outside the United States may be settled under this chapter only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim (see para 10-2*b*).

### **3-3. Claims payable**

*a. General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this chapter when—

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the Armed Services.

*b. Property.* Property that may be the subject of claims for loss or damage under this chapter includes:

(1) Real property used and occupied under lease (express, implied, or otherwise) (see paras 2-15*m* of both this publication and of DA Pam 27-162).

(2) Personal property bailed to the Government under an agreement (express or implied), unless the owner has expressly assumed the risk of damage or loss

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act

(4) Property of a member of the Armed Forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under chapter 11.

*c. Maritime claims.* Claims that arise on the high seas or within the territorial waters of a foreign country are payable unless settled under chapter 8.

### **3-4. Claims not payable**

*a.* Those resulting wholly from the claimant's or agent's negligent or wrongful act (see para 3-5a(1)(a) on contributory negligence).

*b.* Claims arising from private or domestic obligations rather than from Government transactions.

*c.* Claims based solely on compassionate grounds.

*d.* Claims for any item, the acquisition, possession, or transportation of which was in violation of DA directives, such as illegal war trophies.

*e.* Claims for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for DA or DOD (see paras 2-15m, both of this publication and DA Pam 27-162).

*f.* Claims not in the best interests of the United States, contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. § 2733); for example, claims for property damage or loss or personal injury or death of inhabitants of unfriendly foreign countries or individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS with the recommendations of the responsible claims office.

*g.* 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 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 from bringing an otherwise payable claim for damage, loss, or destruction of personal property in the custody of the Government.

*h.* Claims for damages or injury, which a receiving State should adjudicate and pay under an international agreement, unless a consistent and widespread alternative process of adjudicating and paying such claims has been established within the receiving State (see DA Pam 27-162, para 3-4a, for further discussion of the conditions of waiver).

*i.* Claims listed in paragraphs 2-25, 2-26, 2-27, 2-28, 2-29 of this publication, except for the exclusion listed in paragraph 2-28k. Additionally, the exclusions in paragraphs 2-28a, b, e, and k do not apply to a claim arising incident to noncombat activities.

*j.* Claims based on strict or absolute liability and similar theories.

*k.* Claims payable under chapters 4, 10, or 11.

*l.* Claims involving DA vehicles covered by insurance in accordance with requirements of a foreign country unless coverage is exceeded or the insurer is bankrupt. When an award is otherwise payable and an insurance settlement is not reasonably available, a field claims office should request permission from the Commander, USARCS to pay the award, provided that an assignment of benefits is obtained.

### **3-5. Applicable law**

*a. General principles.*

(1) *Tort claims excluding claims arising out of noncombat activities.*

(a) In determining liability, such claims will be evaluated under general principles of law applicable to a private individual in the majority of American jurisdictions, except where the doctrine of contributory negligence applies. The MCA requires that contributory negligence be interpreted and applied according to the law of the place of the occurrence, including foreign (local) law for claims arising in foreign countries (see 10 U.S.C. § 2733(b)(4)).

(b) Claims are cognizable when based on those acts or omissions recognized as tortious by a majority of jurisdictions that require proof of duty, negligence, and proximate cause resulting in compensable injury or loss subject to the exclusions set forth at paragraph 3-4. Strict or absolute liability and similar theories are not grounds for liability under this chapter.

(2) *Tort claims arising out of noncombat activities.* Claims arising out of noncombat activities under paragraphs 3-3a(2) and 3-3b are not tort claims and require only proof of causation. However, the doctrine of contributory negligence will apply, to the extent set forth in 10 U.S.C. § 2733(b)(4) and paragraph (1)(a), above.

(3) *Principles applicable to all chapter 3 claims.*

(a) Interpretation of meanings and construction of questions of law under the MCA will be determined in accordance with Federal law. The formulation of binding interpretations is delegated to the Commander, USARCS, provided that the statutory provisions of the MCA are followed.

(b) Scope of employment will be determined in accordance with Federal law. Follow guidance from reported FTCA cases. The formulation of a binding interpretation is delegated to the Commander, USARCS, provided the statutory provisions of the MCA are followed.

(c) The collateral source doctrine is not applicable.

(d) The United States will only be liable for the portion of loss or damage attributable to the fault of the United States or its employees. Joint and several liability is inapplicable.

(e) No allowance will be made for court costs, bail, interest, inconvenience or expenses incurred in connection with the preparation and presentation of the claim.

(f) Punitive or exemplary damages are not payable.

(g) Claims for negligent infliction of emotional distress may only be entertained when the claimant suffered physical injury arising from the same incident as the claim for emotional distress, or the claimant is the immediate Family member of an injured party/decedent, was in the zone of danger and manifests physical injury for the emotional distress. Claims for intentional infliction of emotional distress will be evaluated under general principles of American law as set forth in paragraph 3-5a(1)(a) and will be considered as an element of damages under paragraph 3-5b(3)(b). Claims for either negligent or intentional infliction of emotional distress are excluded when they arise out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, or slander, as defined in paragraph 2-28h.

(h) In a claim for personal injury or wrongful death, the total award for non-economic damages to any direct victim and all persons, including those derivative to the claim, who claim injury by or through that victim will not exceed \$500,000. However, separate claims for emotional distress considered under paragraph 3-5b(1) are not subject to the \$500,000 cap for the wrongful death claim, because they are not included in the wrongful death claim; rather, each is a separate claim with its own \$500,000 cap under paragraph 3-5b(3)(b). Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for the purposes of determining the extent of liability. If the claim accrued prior to 1 September 1995, these limitations do not apply. Any such limitation in the law of the place of occurrence will apply.

b. *Personal injury claims.*

(1) *Eligible claimants.* Only the following may claim:

(a) Persons who suffer physical injuries or intentional emotional distress, but not subrogees (when claiming property loss or damage, medical expenses, or lost earnings) (see para a(3)(c), above).

(b) Spouses for loss of consortium, but not parent-child or child-parent loss of consortium;

(c) Members of the immediate Family who were in the zone of danger of the injured person as defined in paragraph a(3)(g), above.

(2) *Economic damages.* Elements of economic damage are limited to the following:

(a) Past expenses, including medical, hospital, and related expenses actually incurred. Nursing and similar services furnished gratuitously by a Family member are compensable. Itemized bills or other suitable proof must be furnished. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(b) Future medical, hospital, and related expenses. When requested, a medical examination is required.

(c) Past lost earnings, as substantiated by documentation from both the employer and a physician.

(d) Loss of earning capacity and ability to perform services, as substantiated by acceptable medical proof. When requested, past Federal income tax forms must be submitted for the previous 5 years, and the injured person must undergo an IME. Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses.

(e) Compensation paid to a person for essential household services that the injured person can no longer provide for himself or herself. These costs are recoverable only to the extent that they neither have been paid by, nor are recoverable from, insurance.

(3) *Non-economic damages.* Elements of non-economic damages are limited to the following:

(a) *Past and future conscious pain and suffering.* This element is defined as physical discomfort and distress as well as mental and emotional trauma. Loss of enjoyment of life, whether or not it is discernible by the injured party, is compensable. The inability to perform daily activities that one performed prior to injury, such as recreational activities, is included in this element. Supportive medical records and statements by health care personnel and acquaintances are required. When requested, the claimant must submit to an interview.

(b) *Emotional distress.* Emotional distress under the conditions set forth in paragraph a(3)(g), above.

(c) *Physical disfigurement.* This element is defined as impairment resulting from an injury to a person that causes diminishment of beauty or symmetry of appearance rendering the person unsightly, misshapen, imperfect, or deformed. A medical statement and photographs, documenting the claimant's condition, may be required.

(d) *Loss of consortium.* This element is defined as conjugal fellowship of husband and wife and the right of each to the company, society, cooperation, and affection of the other in every conjugal relation.

c. *Wrongful death claims.* The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories, or possessions. General maritime law will apply to claims arising outside the United States.

(1) *Claimant.*

(a) Only one claim may be presented for a wrongful death. It will be presented by the decedent's personal

representative on behalf of all parties in interest. The personal representative must be appointed by a court of competent jurisdiction prior to any settlement and must agree to make distribution to the parties in interest under court jurisdiction, if required.

(b) Parties in interest are the surviving spouse, children, or dependent parents to the exclusion of all other parties. If there is no surviving spouse, children, or dependent parents, the next of kin will be considered a party or parties in interest. A dependent parent is one who meets the criteria set forth by the Internal Revenue Service to establish eligibility for a DOD identification card.

(2) *Economic loss.* Elements of economic damages are limited to the following:

(a) Loss of monetary support of a Family member from the date of injury causing death until expiration of decedent's worklife expectancy. When requested, the previous 5 years Federal income tax forms must be submitted. Estimates must be discounted to present value at one to 3 percent after deducting for taxes and personal consumption. Loss of retirement benefits is compensable and similarly discounted after deductions.

(b) Loss of ascertainable contributions, such as money or gifts to other than Family member claimants as substantiated by documentation or statements from those concerned.

(c) Loss of services from date of injury to end of life expectancy of the decedent or the person reasonably expected to receive such services, whichever is shorter.

(d) Expenses as set forth in paragraph b(2)(a), above. In addition, burial expenses are allowable. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(3) *Non-economic loss.* Elements of damages are limited to the following:

(a) Pre-death conscious pain and suffering.

(b) Loss of companionship, comfort, society, protection, and consortium suffered by a spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child.

(c) Loss of training, guidance, education, and nurture suffered by a child under the age of 18 for the death of a parent, until the child becomes 18 years old.

(d) Claims for the survivors' emotional distress, mental anguish, grief, bereavement, and anxiety are not payable, in particular claims for intentional or negligent infliction of emotional distress to survivors arising out of the circumstances of a wrongful death are personal injury claims falling under paragraph 3-5b(3).

d. *Property damage claims.* The following provisions apply to all claims arising in the United States, its commonwealths, territories and possessions.

(1) Such claims are limited to damage to, or loss of, tangible property and costs directly related thereto. Consequential damages are not included (see para 2-34e and DA Pam 27-162, para 2-56a).

(2) Proper claimants are described in paragraph 2-6. Claims for subrogation are excluded (see para 2-6e). However, there is no requirement that the claimant use personal casualty insurance to mitigate the loss.

(3) Allowable elements of damages and measure of proof (additions to these elements are permissible with concurrence of the Commander, USARCS). These elements are discussed in detail in DA Pam 27-162, paragraph 2-54.

(a) Damages to real property.

(b) Damage to or loss of personal property, or personal property that is not economically repairable.

(c) Loss of use.

(d) Towing and storage charges.

(e) Loss of business or profits.

(f) Overhead.

### **3-6. Settlement authority**

a. *Authority of the Secretary of the Army.* The SA, the Army General Counsel, as the Secretary's designee, or another designee of the SA may approve settlements in excess of \$100,000.

b. *Delegations of authority.*

(1) Denials and final offers made under the delegations set forth herein are subject to appeal to the authorities specified in paragraph d, below.

(2) The Judge Advocate General and the DJAG are delegated authority to pay up to \$100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed.

(3) The Commander, USARCS is delegated authority to pay up to \$25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA), subject to limitations that USARCS may impose, and chiefs of a CCS are delegated authority to pay up to \$25,000 in settlement, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000.

(5) A head of an ACO is delegated authority to pay up to \$25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000. A head of a CPO with approval authority is delegated authority to approve, in full or in part, claims presented for \$5,000 or less,

and to pay claims regardless of the amount claimed, provided an award of \$5,000 or less is accepted in full satisfaction of the claim.

(6) Authority to further delegate payment authority is set forth in paragraph 1–5g(1) of this publication. (For further discussions also related to approval, settlement, and payment authority, see DA Pam 27–162, para 2–69.)

*c. Settlement of multiple claims arising from a single incident.*

(1) Where a single act or incident gives rise to multiple claims cognizable under this chapter, and where one or more of these claims apparently cannot be settled within the monetary jurisdiction of the authority initially acting on them, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the authority who has monetary jurisdiction over the largest claim for a determination of liability. However, where each individual claim, including derivative claims, can be settled within the monetary authority initially acting on them, and none are subject to denial, all such claims may be settled even though the total amount exceeds the monetary jurisdiction of the approving or settlement authority.

(2) If such authority determines that Federal liability is established, he or she may return claims of lesser value to the field claims office for settlement within that office’s jurisdiction. The field claims office must take care to avoid compromising the higher authority’s discretion by conceding liability in claims of lesser amount.

*d. Appeals.* Denials or final offers on claims described as follows may be appealed to the official designated:

(1) For claims presented in an amount over \$100,000, final decisions on appeals will be made by the SA or designee.

(2) For claims presented for \$100,000 or less, and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident-to-service bar, exclusionary language in a Federal statute governing compensation of Federal employees for job-related injuries (see para 2–27), or untimely filing, TJAG or DJAG will render final decisions on appeals, except that claims presented for \$25,000 or less, and not acted upon by the Commander, USARCS are governed by paragraph (3), below.

(3) For claims presented for \$25,000 or less, final decisions on appeals will be made by the Commander, USARCS, his or her designee, or the chief of a CCS when such claims are acted on by an ACO under such service’s jurisdiction.

(4) Paragraphs 2–52, 2–53, and 2–54 of this publication set forth the rules relating to the notification of appeal rights and processing.

*e. Delegated authority.* Authority delegated by this paragraph will not be exercised unless the settlement or approval authority has been assigned an office code.

### **3–7. Action on appeal**

*a.* The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this regulation. The settlement authority will also examine the claim file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented; and ensure that all pertinent evidence is included. If claimants state that they appeal, but do not submit supporting materials within the 60–day appeal period or an approved extension thereof, these appeals will be determined on the record as it existed at the time of denial or final offer. Unless action under paragraph *b*, below is taken, the claim and complete investigative file, including any additional investigation, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

*b.* If the evidence in the file, including information submitted by the claimant with the appeal and that found by any necessary additional investigation, indicates that the appeal should be granted in whole or in part, the settlement authority who last acted on the claim, or his or her successor, will attempt to settle the claim. If a settlement cannot be reached, the appeal will be forwarded in accordance with paragraph *a*, above.

*c.* As to an appeal that requires action by TJAG, DJAG, or the SA or designee, the Commander, USARCS may take the action in paragraph *b*, above or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

*d.* Since an appeal under this chapter is not an adversarial proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claim file to be used in considering the appeal will be granted unless law or regulation do not permit access.

*e.* If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority’s action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority’s action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

### **3–8. Payment of costs, settlements, and judgments related to certain medical malpractice claims**

*a. General.* Costs, settlements, or judgments cognizable under 10 U.S.C. § 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD); AMEDD personnel detailed for service with other than a Federal department, agency, or instrumentality; and direct contract personnel identified in the contract as Federal employees), will be paid provided that—

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

*b. Requests for contribution or indemnification.* All requests for contribution or indemnification under this paragraph should be forwarded to the Commander, USARCS for action, following the procedures set forth in this chapter.

### **3–9. Payment of costs, settlements, and judgments related to certain legal malpractice claims**

*a. General.* Costs, settlements, and judgments cognizable under 10 U.S.C. § 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff will be paid if—

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance, as requested;

(3) Such personnel cooperate in the defense of the action on the merits.

*b. Requests for contribution or indemnification.* All requests for contribution or indemnification under this paragraph should be forwarded to the Commander, USARCS for action, following the procedures set forth in this chapter.

### **3–10. Reopening a claim after final action by a settlement authority**

*a. Original approval or settlement authority (including the Deputy Judge Advocate General, The Judge Advocate General, Secretary of the Army, or the Secretary's designees).*

(1) An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the MCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may on his or her initiative reconsider a claim.

(2) An original approval or settlement authority may reopen and correct action on an MCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If the settlement or approval authority determines that their original action was incorrect, they will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

*b. A successor approval or settlement authority (including the Deputy Judge Advocate General, The Judge Advocate General, Secretary of the Army, or the Secretary's designees).*

(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an MCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

*c. Time requirement for filing request for reconsideration.* Requests postmarked more than 5 years from the date of mailing of final notice will be denied based on the doctrine of laches.

*d. Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or granting full or partial relief) is final under the provisions of 10 U.S.C. § 2735. Action upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.



## **Chapter 4**

### **Federal Tort Claims Act**

#### **4-1. Statutory authority**

The statutory authority for this chapter is the FTCA (60 Stat. 842, 28 U.S.C. §§ 2671–2680), as amended by Pub. L. No. 89–506, 18 July 1966 (80 Stat. 306); Pub. L. No. 93–253, 16 March 1974 (88 Stat. 50); Pub. L. No. 97–124, 29 December 1981 (93 Stat. 1666); Pub. L. No. 100–694, 18 November 1988 (102 Stat. 4563–67); and Pub. L. No. 101–552, 15 November 1996 (104 Stat. 734); and as implemented by the Attorney General’s Regulations (28 C.F.R. §§ 14.1–14.11 and its appendix).

#### **4-2. Scope**

*a. General.* This chapter applies in the United States, its commonwealths, territories, and possessions (all hereinafter collectively referred to as United States or U.S.). It prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General’s regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this regulation and the Attorney General’s regulations, the latter governs.

*b. Effect of the Military Claims Act.* A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under chapter 3 if the FTCA does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. If a claim is filed under both the FTCA and the MCA, or when both statutes apply equally, final action thereon will follow the procedures set forth in DA Pam 27–162, paragraphs 2–74 through 2–76, discussing final offers and denial letters.

#### **4-3. Claims payable**

*a.* Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this chapter when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of DA or DOD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited waiver of sovereign immunity without which the United States may not be sued in tort. Similarly, neither the Fifth Amendment nor any other provision of the U.S. Constitution creates or permits a Federal cause of action allowing recovery in tort. Immunity must be expressly waived, as the FTCA waives it.

*b.* To be payable, a claim must arise from the acts or omissions of an “employee of the Government” under 28 U.S.C. § 2671. Categories of such employees are listed in paragraph 2–2*b* of this publication.

#### **4-4. Claims not payable**

A claim is not payable if it is identified as an exclusion in paragraphs 2–23 through 2–32.

#### **4-5. Applicable law**

The applicable law is set forth in paragraphs 2–23 through 2–32.

#### **4-6. Settlement authority**

*a. General.* Subject to the Attorney General’s approval of payments in excess of \$200,000 for a single claim, or if the total value of all claims and potential claims arising out of a single incident exceeds \$200,000 (for which USARCS must write an action memorandum for submission to the Department of Justice), the following officials are delegated authority to settle (including payment in full or in part, or denial) and make final offers on claims under this chapter:

- (1) The Judge Advocate General.
- (2) The Deputy Judge Advocate General.
- (3) The Commander, USARCS.

*b. Area claims offices’ heads.* The head of an ACO is delegated authority to pay up to \$50,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$50,000, provided the value of all claims and potential claims arising out of a single incident does not exceed \$200,000.

*c. Claims processing office heads.* A head of a CPO with approval authority is delegated authority to approve, in full or in part, claims presented for \$5000 or less, and to pay claims regardless of amount, provided an award of \$5,000 or less is accepted in full satisfaction of the claim.

*d. Further guidance.* Authority to further delegate payment authority is set forth in paragraph 1–5*g*(1) of this publication. (For further discussions related to approval, settlement, and payment authority, see DA Pam 27–162, paras 2–69 and 2–71.)

*e. Settlement of multiple claims from a single incident.*

(1) Where a single act or incident gives rise to multiple claims cognizable under this chapter, and where one claim cannot be settled within the monetary jurisdiction for one claim of the authority acting on the claim, or all claims cannot be settled within the monetary jurisdiction for a single incident, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the Commander, USARCS.

(2) If the Commander, USARCS determines that all claims can be settled for a total of \$200,000 or less, he may return claims to the field office for settlement. If the Commander, USARCS determines that all claims cannot be settled for a total of \$200,000, he or she must request Department of Justice authority prior to settlement of any one claim. The field claims office must not concede liability by paying any one claim of lesser value.

#### **4-7. Reconsideration**

*a. Reconsideration of paid claims.* Under the provision of 28 U.S.C. § 2672, neither an original or successor authority may reconsider a claim which has been paid except as expressly set forth below. Payment of an amount for property damage will bar payment for personal injury or death except for a split claim provided the provisions of paragraph 2-48 are followed. Supplemental payments for either property or injury are barred by 10 U.S.C. § 2672. Accordingly, claimants will be informed that only one claim or payment is permitted.

*b. Notice of right to reconsideration.* Notice of disapproval or final offer issued by an authority listed in paragraph 4-6(b), above, will advise the claimant of a right to reconsideration to be submitted in writing not later than 6 months from the date of mailing the notice. Such a request will suspend the requirement to bring suit for a minimum of 6 months, or until action is taken on the request. The claimant will be so informed (see the Attorney General's regulations at 28 C.F.R. § 14.9(b)).

*c. Original approval or settlement authority.*

(1) *Reconsideration.* An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the FTCA upon request of the claimant or the legal representative, provided the request states the reason.

(2) *Settlement correction.* An original approval or settlement authority may reopen and correct action on a claim previously settled in whole or in part (even if a settlement agreement has been executed) when an error contrary to the parties' mutual understanding is discovered in the original action. For example: a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. An approval or settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim, and if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

*d. A successor approval or settlement authority.*

(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FTCA claim upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

*e. Requirement to forward a request for reconsideration.* When full relief is not granted, forward all requests for reconsideration of an ACO's denial or final offer to the Commander, USARCS for action. Include all investigative material and legal analyses generated by the request.

*f. Action prior to forwarding.* A request for reconsideration should disclose fully the legal and/or factual bases that the claimant has asserted as grounds for relief and provide appropriate supporting documents or evidence. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it, granting relief as warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded to the Commander, USARCS. The claimant will be informed of such transfer.

*g. Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the 6-month period set forth in 28 U.S.C. § 2401(b).

## **Chapter 5 Non-Scope Claims Act**

### **5-1. Statutory authority**

The statutory authority for this chapter is set forth in the Act of 9 October 1962, 10 U.S.C. § 2737, 76 Stat. 767, commonly called the "Non-Scope Claims Act (NSCA)."

## 5-2. Scope

*a.* This chapter applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than \$1,000 for any claim against the United States for personal injury, death, or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location, or incident to the use of other U.S. property on a Government installation, which claim is not cognizable under any other provision of law.

*b.* For the purposes of this chapter, a “Government installation” is a facility having fixed boundaries owned or controlled by the Government, and a “vehicle” includes every description of carriage or other artificial contrivance used, or capable of being used, as means of transportation on land (1 U.S.C. § 4).

*c.* Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under chapters 3, 4, or 6 of this regulation. Only when all parties, including an insurer, agree that there is no “in scope” issue will the claim be considered under this chapter.

## 5-3. Claims payable

*a. General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this chapter when—

(1) Caused by negligent or wrongful acts or omissions of DOD or DA military personnel or civilian employees, as listed in paragraph 2-2*b*—

(*a*) Incident to the use of a vehicle belonging to the United States at any place; or

(*b*) Incident to the use of any other property belonging to the United States on a Government installation.

(2) The claim is not payable under any other claims statute or regulation available to the DA for the administrative settlement of claims.

*b. Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

*c. Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

## 5-4. Claims not payable

Under this chapter, a claim is not payable that—

*a.* Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

*b.* Is for medical, hospital, or burial expenses furnished or paid by the United States.

*c.* Is for any element of damage pertaining to personal injuries or death other than as provided in paragraph 5-3*b*. All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement and pain and suffering are not payable.

*d.* Is for loss of use of property or for the cost of substitute property, for example, a rental.

*e.* Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

*f.* Is a subrogated claim.

*g.* In some circumstances, some claims may be partially payable (see DA Pam 27-162, para 5-4, for more information on claims that may be partially payable).

## 5-5. Settlement authority

*a. Settlement authority.* The following are delegated authority to pay up to \$1,000 in settlement of each claim arising out of one incident and to disapprove a claim presented in any amount under this chapter:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Commander, USARCS.

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA) or chief of a CCS.

(5) The head of an ACO.

*b. Approval authority.* The head of a CPO with approval authority is delegated authority to approve and pay, in full or in part, claims presented for \$1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of \$1,000 or less.

*c. Further guidance.* Authority to further delegate payment authority is set forth in paragraph 1-5*g*(1) of this publication. (For further discussions also related to approval, settlement, and payment authority, see also DA Pam 27-162, paras 2-69 and 2-71.)

## **5–6. Reconsideration**

The provisions of paragraph 4–7 addressing reconsideration apply and are incorporated herein by reference. If the claim is not cognizable under the FTCA, appellate procedures under the MCA or NGCA apply.

## **Chapter 6 National Guard Claims Act**

### **6–1. Statutory authority**

The statutory authority for this chapter is contained in the Act of 13 September 1960 (32 U.S.C. § 715, 74 Stat. 878), commonly referred to as the “National Guard Claims Act (NGCA),” as amended by Pub. L. No. 87–212, (75 Stat. 488), 8 September 1961; Pub. L. No. 90–486, (82 Stat. 756) 13 August 1968; Pub. L. No. 90–521, (82 Stat. 874) 26 September 1968; Pub. L. No. 90–525, (82 Stat. 877) 26 September 1968; Pub. L. No. 91–312, (84 Stat. 412) 8 July 1970; Pub. L. No. 93–336, (88 Stat. 291) 8 July 1974; and Pub. L. No. 98–564, (98 Stat. 2918) 20 October 1984.

### **6–2. Scope**

This chapter applies worldwide and prescribes the substantive bases and special procedural regulations for the settlement of claims against the United States for death, personal injury, damage to, or loss or destruction of property.

*a.* Soldiers of the ARNG can perform military duty in an active duty status under the authority of Title 10 of the United States Code, in a full-time National Guard duty or inactive-duty training status under the authority of Title 32 of the United States Code, or in a state active duty status under the authority of a state code.

(1) When ARNG Soldiers perform active duty, they are under Federal command and control and are paid from Federal funds. For claims purposes, those Soldiers are treated as active duty Soldiers. The NGCA, 32 U.S.C. § 715, does not apply.

(2) When ARNG Soldiers perform full-time National Guard duty or inactive-duty training, they are under state command and control and are paid from Federal funds. The NGCA does apply, but as explained in paragraph *c*, it is seldom used.

(3) When ARNG Soldiers perform state active duty, they are under state command and control and are paid from state funds. Federal claims statutes do not apply, but state claims statutes may apply.

*b.* The ARNG also employs civilians, referred to as technicians, and employed under 32 U.S.C. § 709. Technicians are usually, but not always, ARNG Soldiers who perform the usual 15 days of annual training (a category of full-time duty) and 48 drills (inactive-duty training) per year.

*c.* The NGCA coverage applies only to ARNG Soldiers performing full-time National Guard duty or inactive-duty training and to technicians. However, since the NGCA’s enactment in 1960, Congress has also extended FTCA coverage to these personnel.

(1) In 1968, technicians, who were formerly state employees, were made Federal employees. Along with Federal employee status came FTCA coverage. Technicians no longer have any state status, albeit they are hired, fired, and administered by a state official, the Adjutant General, acting as the agent of the Federal Government.

(2) In 1981, Congress extended FTCA coverage to ARNG Soldiers performing full-time National Guard duty or inactive-duty training (such as any training or other duty under 32 U.S.C. §§ 316, 502–505). Unlike making technicians Federal employees, this extension of coverage did not affect their underlying status as state military personnel.

*d.* Claims arising from the negligent acts or omissions of ARNG Soldiers performing full-time National Guard duty or inactive-duty training, or of technicians will be processed under the FTCA. Therefore, the NGCA is generally relevant only to claims arising from noncombat activities or outside the United States. Additionally, claims by members of the National Guard may be paid for property loss or damage incident to service if the claim is based on activities falling under this chapter and is not payable under chapter 11.

### **6–3. Claims payable**

The provisions of paragraph 3–3 apply to claims arising under this chapter and are incorporated herein by reference.

### **6–4. Claims not payable**

The provisions of paragraph 3–4 apply to claims arising under this chapter and are incorporated herein by reference.

### **6–5. Applicable law**

The provisions of paragraph 3–5 apply to claims arising under this chapter and are incorporated herein by reference.

### **6–6. Settlement authority**

The provisions of paragraph 3–6 apply to claims arising under this chapter and are incorporated herein by reference.

## 6-7. Actions on appeal

The provisions of paragraph 3-7 apply to claims arising under this chapter and are incorporated herein by reference.

## Chapter 7 International Agreements

### Section I General

#### 7-1. Statutory authority

The authority for claims presented or processed under this chapter is set forth in the following federal laws and binational or multinational agreements:

*a.* 10 U.S.C. §§ 2734a and 2734b (the International Agreements Claims Act) as amended, for claims arising overseas under international agreements.

*b.* Various international agreements, such as the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), and the Partnership for Peace (PFP) SOFA. These agreements and several others are posted on the USARCS Web site at “Claims Resources,” I, a, 8.

#### 7-2. Current agreements in force

Current listings of known agreements in force are also posted on the USARCS Web site at “Claims Resources,” I, a, 8(k).

#### 7-3. Responsibilities generally

*a.* The Commander, USARCS will—

(1) Provide policy guidance to command claims services or other responsible judge advocate (JA) offices on SOFA or other treaty reimbursement programs implementing 10 U.S.C. §§ 2734a and 2734b.

(2) Monitor the reimbursement system to ensure that programs for the proper verification and certification of reimbursement are in place.

(3) Monitor funds reimbursed to or by foreign governments.

*b.* The SA will implement these agreements within CONUS. The SA, in turn, has delegated that responsibility to the Commander, USARCS, who is in charge of the receiving State office for the United States, as prescribed in DODI 5515.08. The Commander, USARCS is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this chapter.

#### 7-4. Definitions

*a. Force and civilian component of force.* Members of the sending State’s Armed Forces on temporary or permanent official duty within the receiving State, civilian employees of the sending State’s Armed Forces, and those individuals acting in an official capacity for the sending State’s Armed Forces are the force and civilian component of force. However, under provisions of the applicable SOFAs, the sending State and the receiving State may agree to exclude from the definition of “force” certain individuals, units, or formations that would otherwise be covered by the SOFA. Where such an exclusion has been created, this chapter will not apply to claims arising from actions or omission by those individuals, units, or formations. The term “force and civilian component of force” also includes claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated 28 August 1952, such as Supreme Allied Command, Atlantic.

*b. Types of claims under agreements.*

(1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its Armed Services, or for injury or death suffered by a member of the Armed Services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity other than the Armed Services may be asserted (NATO SOFA, Article VIII, para 1-4; Singapore SOFA, Article XVI, para 2-3).

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible will be filed, considered and settled in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own Armed Service (see, for example, NATO SOFA, Article VIII, para 5).

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties

will be considered by the sending State for an “ex gratia” payment that is made directly to the injured party (see, for example, NATO SOFA, Article VIII, para 6).

## **Section II Claims Arising in the United States**

### **7-5. Scope for claims arising in the United States**

This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of cost sharing reciprocal international agreements that contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA has reciprocal provisions applying to all NATO member countries; the Partnership for Peace (PFP) Agreement has similar provisions, as do the Singapore and Australian SOFAs.

### **7-6. Claims payable**

*a.* Within the United States, Art. VIII, NATO SOFA applies to claims arising within the North Atlantic Treaty Area, which includes CONUS and its territories and possessions north of the Tropic of Cancer (23.5 degrees north latitude). This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii. Third-party scope claims are payable under chapter 4 or, if the claim arises incident to noncombat activities, under chapter 3. Maritime claims are payable under chapter 8. The provisions of these chapters on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty’s objectives.

*b.* Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under chapter 5.

### **7-7. Claims not payable**

The following claims are not payable:

*a.* Claims arising from a member of a foreign force or civilian component’s acts or omissions that do not accord with the objectives of a treaty authorizing their presence in the United States.

*b.* Claims arising from the acts or omissions of a member of a foreign force or civilian component who has been excluded from SOFA coverage by agreement between the sending State and the United States.

*c.* Third-party scope claims arising within the United States that are not payable under chapters 3, 4, or 8 are listed as barred under those chapters. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow v. United States*, 581 F.2d 785 (9th Cir. 1978).

### **7-8. Notification of incidents**

To enable USARCS to properly discharge its claims responsibilities under the applicable SOFAs, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the U.S. Armed Services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal officer receiving such notification will in turn notify the Commander, USARCS. If the member is neither assigned nor attached to any installation or activity within the United States, the Commander, USARCS will be notified.

### **7-9. Investigation**

Responsibility for investigating an incident rests upon the ACO or CPO responsible for the geographic area in which the incident occurred. The Commander, USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another Armed Force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service’s implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander, USARCS will furnish assistance.

### **7-10. Settlement authority**

Settlement authority is delegated to the Commander, USARCS, except for settlement amounts exceeding the commander’s authority as set forth in chapters 3, 4, or 8, or in those cases where settlement is reserved to a higher authority. Pursuant to the applicable SOFA, the Commander, USARCS will report the proposed settlement to the sending State office for concurrence or objection (see, for example, NATO SOFA, Article VIII).

### **7-11. Assistance to foreign forces**

As claims arising from activities of members of NATO, Partnership for Peace, Singaporean, or Australian forces in the

United States are processed in the same manner as those arising from activities of U.S. government personnel. All JAs and legal offices will provide assistance similar to that provided to U.S. Armed Services personnel.

### **Section III**

#### **Claims Arising Overseas**

##### **7–12. Scope for claims arising overseas**

*a.* This section sets forth guidance on claims arising from any act or omission of Soldiers or members of the civilian component of the U.S. Armed Services done in the performance of official duty or arising from any other act or omission or occurrence for which the U.S. Armed Services are responsible under an international agreement. Claims incidents arising in countries for which the SOFA requires the receiving State to adjudicate and pay the claims in accordance with its laws and regulations are subject to partial reimbursement by the United States.

*b.* Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under chapter 10. Claims arising from nonscope acts or omissions by third parties who are not foreign inhabitants are cognizable under chapter 5 but not under chapters 3 or 6.

##### **7–13. Claims procedures**

*a.* SOFA provisions that call for the receiving State to adjudicate claims have been held to be the exclusive remedy for claims against the United States, *Aaskov v. Aldridge*, 695 F. Supp. 595 (D.D.C. 1988); *Dancy v. Department of Army*, 897 F. Supp. 612 (D.D.C. 1995).

*b.* The SOFA provisions that call for the receiving State to adjudicate claims against the United States usually refer to claims by third parties brought against members of the force or civilian component. This includes claims by tourists or business travelers as well as inhabitants of foreign countries. Depending on how the receiving State interprets the particular SOFA's class of proper claimants, the receiving State may also consider claims by U.S. Soldiers, civilian employees, and their Family members. Chiefs of command claims services or other Army JA offices responsible for claims that arise in countries bound by SOFA or other treaty provisions requiring a receiving State to consider claims against the United States will ensure that all claims personnel know the receiving State's policy on which persons or classes of persons are proper claimants under such provisions. When a claim is filed both with the receiving State and under either the MCA or FCA, the provisions of paragraph 3–4*h* of this publication and DA Pam 27–162, paragraph 3–4*a* apply.

*c.* When SOFA provisions provide for receiving State claims consideration, the time limit for filing such claims may be much shorter than the 2 years otherwise allowed under the FCA or MCA. For example, receiving State claims offices in Germany require that a claim be filed under the SOFA within 3 months of the date that the claimant is aware of the U.S. involvement. If the filing period is about to expire for claims arising in Germany, have the claimant fill out a claim form, make two copies, and date-stamp each copy as received by a sending State claims office. Return the date-stamped original of the claim to the claimant with instructions to promptly file with the receiving State claims office. Keep one date-stamped copy as a potential claim. Forward one date-stamped copy of the claim to USACSEUR. This may toll the applicable German SOL. Additionally, many receiving State claims offices do not require claimants to demand a sum certain. All claims personnel must familiarize themselves with the applicable receiving State law and procedures governing SOFA claims.

*d.* All foreign inhabitants who file claims against the United States that fall within the receiving state's responsibility, such as claims based on acts or omissions within the scope of Armed Forces of the United States members' or civilian employees' duties, must file the claim with the appropriate receiving State office. Those U.S. inhabitants whose claims would be otherwise cognizable under the Military Claims Act (chapter 3) and whom the receiving State deems proper claimants under the SOFA must also file with the receiving State.

*e.* A claim filed with, and considered by, a receiving State under a SOFA or other international agreement claims provision may be considered under other chapters of this regulation only if the receiving State denied the claim on the basis that it was not cognizable under the treaty or agreement provisions. (See DA Pam 27–162, para 3–4*a*(2), for conditions of waiver of the foregoing requirement. See also paras 3–4*h* and 10–4*j* of this publication.) When a claimant has filed a claim with a receiving State and received payment, or the claim has been denied on the merits, such action will be the claimant's final and exclusive remedy and will bar any further claims against the United States.

##### **7–14. Responsibilities as to claims arising overseas**

*a.* Command claims services or other responsible JA offices within whose jurisdiction SOFA or other treaty provisions provide for a claim reimbursement system, and where DA has been assigned single-service responsibility for the foreign country seeking reimbursement (see para 1–19), are responsible for—

(1) Establishing programs for verifying, certifying, and reimbursing claims payments. Such service or JA office will provide a copy of its procedures implementing the program to the Commander, USARCS.

(2) Providing the Commander, USARCS with budget estimates for reimbursements in addition to the reports required by paragraph 13–7.

(3) Providing the Commander, USARCS, each month in which payments are made, with statistical information on

the number of individual claims reimbursed, the total amount paid by the foreign government, and the total amount reimbursed by the United States.

(4) Providing the Commander, USARCS with a quarterly report showing total reimbursements paid during the quarter for maneuver damage and tort claims classified according to major categories of damage determined by the Commander, USARCS, and an update on major issues or activities that could affect the reimbursement system's operation or funding.

*b.* Command claims services or other responsible Army JA offices will ensure that, within their areas of responsibility, all claims personnel—

(1) Receive annual training on the receiving State's claims procedures, including applicable time limitations, procedures, and the locations of the responsible receiving State claims offices.

(2) Screen all new claims and inquiries about claims to identify those claimants who must file with the receiving State.

(3) Ensure that all such claimants are informed of this requirement and the applicable time limitation.

(4) Ensure that all applicable SOFA claims based on incidents occurring in circumstances that bring them within the United States' primary sending State jurisdiction are fully investigated.

## **Chapter 8 Maritime Claims**

### **Section I General**

#### **8-1. Statutory authority**

The AMCSA (10 U.S.C. §§ 4801-04, 4806, as amended) authorizes the SA or his designee to administratively settle or compromise admiralty and maritime claims in favor of, and against, the United States.

#### **8-2. Related statutes**

*a.* The AMCSA permits the settlement of claims that would ordinarily fall under the Suits in Admiralty Act (SIAA), 46 U.S.C. §§ 30901-30918; the Public Vessels Act (PVA), 46 U.S.C. §§ 31101-31113; or the AEA, 46 U.S.C. § 30101. Outside the United States the AMCSA may be used to settle admiralty claims in lieu of the MCA or FCA. Within the United States, filing under the AMCSA is not mandatory for causes of action as it is for the SIAA or PVA.

*b.* Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. §§ 7363 and 7621-23 and by the Department of the Air Force under 10 U.S.C. §§ 9801-9804 and 9806.

### **Section II Claims Against the United States**

#### **8-3. Scope**

The AMCSA applies worldwide and includes claims that arise on high seas or within the territorial waters of a foreign country. At 10 U.S.C. § 4802, it provides for the settlement or compromise of claims for—

*a.* Damage caused by a vessel of, or in the service of, the Department of Army (DA) or by other property under the jurisdiction of the DA.

*b.* Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or other property under the jurisdiction of the DA.

*c.* Damage that is maritime in nature and caused by tortious conduct of U.S. military personnel or Federal civilian employees, an agent thereof, or property under the Army's jurisdiction.

#### **8-4. Claims payable**

A claim is cognizable under this chapter if it arises in or on a maritime location, involves some traditional maritime nexus or activity, and is caused by the wrongful act or omission of a member of the U.S. Army, DOD or DA civilian employee, or an agent thereof, while acting within the scope of employment. This class of claims includes, but is not limited to—

*a.* Damage to a ship, boat, barge, or other watercraft.

*b.* An injury that involves a ship, boat, barge, or other watercraft.

*c.* Damage to a wharf, pier, jetty, fishing net, farm facilities or other structures in, on, or adjacent to any body of water.

*d.* Damage or injury on land or on water arising under the AEA and allegedly due to operation of an Army-owned or leased ship, boat, barge, or other watercraft.



- e. An injury that occurs on board an Army ship, boat, barge or other watercraft.
- f. Crash into water of an Army aircraft.

### **8-5. Claims not payable**

Under this chapter, claims are not payable if they—

- a. Are listed in paragraphs 2-25, 2-26, 2-27, 2-28 (except at *e* and *k*), and 2-29.
- b. Are not maritime in nature.
- c. Are not in the best interests of the United States, are contrary to public policy, or are otherwise contrary to the basic intent of the governing statute (for example, claims for property loss or damage or personal injury or death by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States). When a claim is considered not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, along with the recommendations of the responsible claims office.
- d. Are 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 incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded or barred from bringing a claim for damage, loss, or destruction of personal property while held in the custody of the Government if the claim is otherwise payable.
- e. Are for damages or injuries that a receiving state should pay for under an international agreement (see para 2-15c).

### **8-6. Limitation of settlement**

- a. Within the United States the period of completing an administrative settlement under the AMCSA is subject to the same time limitation as that for beginning suit under the SIAA or PVA; that is, a 2-year period from the date the cause of the action accrued. The claimant must have agreed to accept the settlement and it must be approved for payment by the SA or other approval authority prior to the end of such period. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period and the claimant should be so informed, in writing, when the claim is acknowledged (see para 2-7).
- b. For causes of action under the AEA, filing an administrative claim is mandatory. However, suit is required under the 2-year time limit applicable to the SIAA and PVA, even though the AEA provides that no suit will be filed under 6 months after filing a claim.
- c. For causes of action arising outside the United States, there is no time limitation for completing an administrative settlement.

### **8-7. Limitation of liability**

For admiralty claims arising within the United States under the provisions of the Limitation of Shipowners' Liability Act, 46 U.S.C. §§ 30501-30512, in cases alleging injury or loss due to negligent operation of its vessel, the United States may limit its liability to the value of its vessel after the incident from which the claim arose. The act requires filing of an action in Federal District Court within 6 months of receiving written notice of a claim. Therefore, USARCS, or the Chief Counsel, U.S. Army Corps of Engineers (COE), or his designee must be notified within 10 working days of the receipt of any maritime claim arising in the United States or on the high seas out of the operation of an Army vessel, including pleasure craft owned by the United States. USARCS or Chief Counsel, COE will coordinate with the Department of Justice (DOJ) as to whether to file a limitation of liability action.

### **8-8. Settlement authority**

- a. The SA, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may approve any settlement or compromise of a claim in any amount. A claim settled or compromised in a net amount exceeding \$500,000 will be investigated and processed and, if approved by the SA or his or her designee, will be certified to Congress for final approval.
- b. The Judge Advocate General, DJAG, the Commander, USARCS, the Chief Counsel, COE, or division or district counsel offices are delegated authority to settle, such as to deny or approve payment in full or in part, any claim under this chapter, regardless of the amount claimed, provided that any award does not exceed \$100,000.
- c. A staff judge advocate (SJA) or chief of a CCS and heads of ACOs are delegated authority to pay up to \$50,000, regardless of the amount claimed, and to disapprove or make a final offer on a claim presented in an amount not exceeding \$50,000.
- d. Authority to further delegate payment authority is set forth in paragraph 1-5g(1) of this publication (see DA Pam 27-162, para 2-69 for further discussion related to settlement and approval authority).
- e. Where the claimed amount or potential claim damage exceeds \$100,000 for COE claims or \$50,000 for all others, the Commander, USARCS will be notified immediately, and be furnished a copy of the claim and a mirror file thereafter (see paras 2-9 and 2-12).

## **Section III**

### **Claims in favor of the United States**

#### **8-9. Scope**

The AMCSA applies worldwide and includes claims that arise on the high seas or within the territorial waters of a foreign country.

- a.* 10 U.S.C. §4803 provides for agency settlement or compromise of claims for damage to—
  - (1) DA-accountable properties of a kind that are within the Federal maritime jurisdiction.
  - (2) Property under the DA's jurisdiction or DA property damaged by a vessel or floating object.
- b.* 10 U.S.C. § 4804 provides for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA. Claims for salvage services are based upon labor cost, per diem rates for the use of salvage vessels and other equipment, and repair or replacement costs for materials and equipment damaged or lost during the salvage operation. The sum claimed is usually intended to compensate the United States for operational costs only, reserving, however, the Government's right to assert a claim on a salvage bonus basis in accordance with commercial practice.
- c.* The United States has 3 years from the date a maritime claim accrues under this section to file suit against the responsible party or parties.

#### **8-10. Civil works claims**

Under the River and Harbors Act (33 U.S.C. § 408), the United States has the right to recover fines, penalties, forfeitures and other special remedies in addition to compensation for damage to civil works structures such as a lock or dam. However, claims arising under 10 U.S.C. § 4804 are limited to recovery of actual damage to COE civil works structures.

#### **8-11. Settlement authority**

- a.* The SA, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may compromise an affirmative claim brought by the United States in any amount. A claim settled or compromised in a net amount exceeding \$500,000 will be investigated and processed and, if approved by the SA or his or her designee, certified to Congress for final approval.
- b.* The Judge Advocate General, DJAG, the Commander, USARCS, the Chief Counsel, COE, or division or district counsel offices may settle or compromise and receive payment on a claim by the United States under this chapter if the amount to be received does not exceed \$100,000. These authorities may also terminate collection of claims for the convenience of the Government in accordance with the standards specified by the DOJ. (See 32 C.F.R. Parts 536 and 537.)
- c.* An SJA or a chief of a CCS and heads of ACOs may receive payment for the full amount of a claim not exceeding \$100,000, or compromise any claim in which the amount to be recovered does not exceed \$50,000 and the amount claimed does not exceed \$100,000.
- d.* Any money collected under this authority will be deposited into the U.S. General Treasury, except that money collected on civil works claims in favor of the United States pursuant to 33 U.S.C. § 408 "will be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred...." (33 U.S.C. § 412; 33 U.S.C. § 571).

#### **8-12. Demands**

- a.* It is essential that Army claims personnel demand payment, or notify the party involved of the Army's intention to make such demands, as soon as possible following receipt of information of damage to Army property where the party's legal liability to respond exists or might exist. Except as provided below pertaining to admiralty claims and claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. § 408, copies of the initial demand or written notice of intention to issue a demand letter, as well as copies of subsequent correspondence, will be provided promptly to the Commander, USARCS, who will monitor the progress of such claims.
- b.* Subject to limitation of settlement authority, demands for admiralty claims and civil works damages in favor of the United States pursuant to 33 U.S.C. § 408 may be asserted, regardless of amount, by the Chief Counsel, COE, or his or her designees in COE Division or District Counsel offices.
- c.* Where, in response to any demand, a respondent denies liability, fails to respond within a reasonable period, or offers a compromise settlement, the file will be promptly forwarded to the Commander, USARCS, except in those cases in which a proposed compromise settlement is deemed acceptable and the claim is otherwise within the authority delegated in paragraph 8-11. Files for admiralty claims and civil works claims in favor of the United States pursuant to 33 U.S.C. § 408 will be promptly forwarded to the United States Department of Justice.

#### **8-13. Certification to Congress**

Admiralty claims, including claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. §

408, proposed for settlement or compromise in a net amount exceeding \$100,000 will be submitted through the Commander, USARCS to the SA for approval and, if in excess of \$500,000, for certification to Congress for final approval.

## **Chapter 9**

### **Claims Cognizable Under Article 139, Uniform Code of Military Justice**

#### **9-1. Statutory authority**

The authority for this chapter is Article 139, UCMJ (10 U.S.C. § 939), which provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

#### **9-2. Purpose**

This chapter sets forth the standards to apply and the procedures to follow in processing claims for the wrongful taking or willful damage or destruction of property by military members of DA.

#### **9-3. Proper claimants; unknown accused**

*a.* A proper claimant under this chapter includes any individual (whether civilian or military), a business, charity, or state or local government that owns, has an ownership interest in, or lawfully possesses property.

*b.* When cognizable claims are presented against a unit because the individual offenders cannot be identified, this chapter sets forth the procedures for approval authorities to direct pay assessments, equivalent to the amount of damages sustained, against the unit members who were present at the scene and to allocate individual liability in such proportion as is just under the circumstances.

#### **9-4. Effect of disciplinary action, voluntary restitution, or contributory negligence**

*a. Disciplinary action.* Administrative action under Article 139, UCMJ, and this chapter is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action, under both Article 139, UCMJ, and this chapter, requires independent findings on issues other than guilt or innocence, a Soldier's conviction or acquittal of claim-related charges is not dispositive of liability under Article 139, UCMJ.

*b. Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the Soldier voluntarily makes full restitution to the claimant.

*c. Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

#### **9-5. Claims cognizable**

Claims cognizable under Article 139, UCMJ (10 U.S.C. § 939), are limited to the following:

*a. Requirement that conduct constructively violates Uniform Code of Military Justice.* In order to subject a person to liability under Article 139, the Soldier's conduct must be such as would constitute a violation of one or more punitive articles of the UCMJ. However, a referral of charges is not a prerequisite to action under this chapter.

*b. Claims for property willfully damaged.* Willful damage is damage inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently, thoughtlessly or negligently. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

*c. Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, with the intent to deprive, temporarily or permanently, the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking. However, mere breach of a fiduciary or contractual duty that does not involve larceny, forgery, embezzlement, fraud, or misappropriation does not constitute wrongful taking.

*d. Definition of property.* Article 139 provides compensation for loss of or damage to both personal property, whether tangible or intangible, and real property. Contrast this to the PCA and chapter 11 of this regulation, which provides compensation only for tangible personal property. Monetary losses may fall into the category of either tangible property (for example, cash), or intangible property (for example, an obligation incurred by a claimant to a third party as a result of fraudulent conduct by a Soldier), although recovery for losses of intangible property may be limited by other provisions of this regulation, such as the exclusion of theft of services (see para 9-6f) or consequential damages (see para 9-6g).

*e. Claims cognizable under more than one statute.* Claims cognizable under other claims statutes may be processed under this chapter.

## 9-6. Claims not cognizable

Claims not cognizable under Article 139, UCMJ, and this chapter, include the following:

- a. Claims resulting from negligent acts.
- b. Claims for personal injury or death.
- c. Claims resulting from acts or omissions of military personnel acting within the scope of their employment, including claims resulting from combat activities or noncombat activities, as those terms are defined in the glossary.
- d. Claims resulting from the conduct of Reserve Component personnel who are not subject to the UCMJ at the time of the offense.
- e. Subrogated claims.
- f. Claims for theft of services, even if such theft constitutes a violation of Article 134, UCMJ.
- g. Claims for indirect, remote, or consequential damages.
- h. Claims by entities in conflict with the United States, or whose interests are hostile to the United States.

## 9-7. Limitations on assessments

### a. Limitations on amount.

(1) A special court-martial convening authority (SPCMCA) has authority to approve a pay assessment in an amount not to exceed \$5,000 per claimant per incident and to deny a claim in any amount. If the Judge Advocate responsible for advising the SPCMCA decides that the SPCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court martial arising out of the same incident would be compromised, the SPCMCA may forward the Article 139 claim to the general court-martial convening authority (GCMCA) for action.

(2) A GCMCA, or designee, has authority to approve a pay assessment in an amount not to exceed \$10,000 per claimant per incident and to deny a claim in any amount.

(a) If the GCMCA or designee determines that a claim exceeding \$10,000 per claimant per incident is meritorious, that officer will assess the Soldier's pay in the amount of \$10,000 and forward the claim to the Commander, USARCS, with a recommendation to increase the assessment.

(b) If the head of the ACO (usually the GCMCA's Staff Judge Advocate (SJA)) decides that the GCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court-martial arising out of the same incident would be compromised, that officer may forward the Article 139 claim to USARCS for action.

(3) Only TJAG, DJAG, the Commander, USARCS, or his or her designee has authority to approve assessments in excess of \$10,000 per claimant per incident.

b. *Limitations on type of damages.* Property loss or damage assessments are limited to direct damages. This chapter does not provide redress for indirect, remote, or consequential damages.

## 9-8. Procedure

a. *Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless the SPCMCA acting on the claim determines there is good cause for delay. Lack of knowledge of the existence of Article 139, or lack of knowledge of the identity of the offender, are examples of good cause for delay.

b. *Form and presentment of a claim.* The claimant or authorized agent may present a claim orally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

c. *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA exercising jurisdiction over the Soldier or Soldiers against whom the claim is made. If the claim is made against Soldiers under the jurisdiction of two or more convening SPCMCA's who are under the same GCMCA, forward the claim to that GCMCA. That GCMCA will designate one SPCMCA to investigate and act on the claim as to all Soldiers involved. If the claim is made against Soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same GCMCA, the claim will be forwarded to the SPCMCA whose headquarters is located nearest the situs of the alleged incident. That SPCMCA will investigate and act on the claim as to all Soldiers involved. If a claim is brought against a member of one of the other military Services, forward the claim to the commander of the nearest major command of that Service equivalent to an ACOM or ASCC.

### d. Action by the special court-martial convening authority.

(1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer within 4 working days of receipt of a claim. The investigating officer will follow the procedures of this chapter, supplemented by DA Pam 27-162, chapter 9, and AR 15-6, chapter 4, which applies to informal investigations. The SPCMCA may appoint the claims officer of a command (if the claims officer is a commissioned officer) as the investigating officer. In cases where the special court-martial convening authority is an inactive duty Soldier of the USAR, the appointment of an investigating officer will be made within 30 calendar days.

(2) If the claim is not brought against a person who is a member of the Armed Forces of the United States at the time the claim is received, or if the claim does not appear otherwise cognizable under Article 139, UCMJ, the SPCMCA may refer it for legal review (see g, below) within 4 working days of receipt. If after legal review the SPCMCA determines that the claim is not cognizable, final action may be taken disapproving the claim (see h, below)

without appointing an investigating officer. In claims where the special court-martial convening authority is an inactive duty Soldier of the USAR, the request for a legal review may be made within 30 calendar days.

*e. Expediting payment through Personnel Claims Act and Foreign Claims Act procedures.* When assessment action on a particular claim will be unduly delayed, the claims office supporting the SPCMCA may consider the claim under the PCA, 31 U.S.C. § 3721, and chapter 11 of this regulation, or under the FCA, 10 U.S.C. § 2734, and chapter 10 of this regulation, as long as it is otherwise cognizable under that authority. If the Article 139 claim is later successful, the claims office will inform the claimant of the obligation to repay to the government any overpayment received under these statutes.

*f. Action by the investigating officer.* The investigating officer will notify the Soldier against whom the claim is made.

(1) If the Soldier wishes to make voluntary restitution, the investigating officer may, with the SPCMCA's concurrence, delay proceedings until the end of the next pay period to permit restitution. If the Soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

(2) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and this chapter, and the amount to be assessed against each offender. This amount will be reduced by any restitution the claimant accepts from an offender in partial satisfaction. Within 10 working days, or such time as the SPCMCA may determine, the investigating officer will submit written findings and recommendations to the SPCMCA.

(3) If the Soldier is absent without leave and cannot be notified, a claims office may process the Article 139 claim in the Soldier's absence. If an assessment is approved, a copy of the claim and the memorandum authorizing pay assessment will be forwarded by transmittal letter to the servicing Defense Accounting Office (DAO) for offset against the Soldier's pay. If the Soldier is dropped from the rolls, the servicing DAO will forward the assessment documents to: Commander, Defense Finance and Accounting Service (DFAS), ATTN: Military Pay Operations, 8899 E. 56th Street, Indianapolis, IN 46249.

*g. Legal review.* The SPCMCA will refer the claim for legal review to its servicing legal office upon either completion of the investigating officer's report or the SPCMCA's determination that the claim is not cognizable (see para *d*(2), above).

(1) Within 5 working days or such time as the SPCMCA determines, that office will furnish a written opinion as to:

(a) Whether the claim is cognizable under the provisions of Article 139, UCMJ, and this chapter.

(b) Whether the findings and recommendations are supported by a preponderance of the evidence.

(c) Whether the investigation substantially complies with the procedural requirements of Article 139, UCMJ; this chapter; DA Pam 27-162, chapter 9; and AR 15-6, chapter 4.

(d) Whether the claim is clearly not cognizable (see para *d*(2), above) and final denial action can be taken without appointing an investigating officer.

(2) If the investigating officer's recommended assessment does not exceed \$5,000, the CJA or claims attorney will, upon legal review, forward the claim to the SPCMCA for final action.

(3) If the investigating officer's recommended assessment is more than \$5,000, the CJA or claims attorney will, upon legal review, forward the claim file to the head of the ACO, who will also conduct a legal review within 5 working days.

(a) If the recommended assessment does not exceed \$10,000, the head of the ACO will forward the claim file to the GCMCA for final action.

(b) If the recommended assessment exceeds \$10,000, the head of the ACO will forward the claim file to the GCMCA for approval of an assessment up to \$10,000 and for a recommendation of an additional assessment. The head of the ACO will then forward the claims file and the GCMCA's recommendation to the Commander, USARCS for approval.

*h. Final action.* After consulting with the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to, or less than, the amount of the assessment limitation. The approval authority is not bound by the findings or recommendations of the investigating officer; AR 15-6, paragraph 2-3a. The approval authority will notify the claimant, and any Soldier subject to that officer's jurisdiction, of the determination and the right of any party to request reconsideration (see para 9-9). A copy of the investigating officer's findings and recommendation will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration, unless the approval authority determines that this delay will result in substantial injustice. If after this period the approval authority determines that an assessment is still warranted, the approval authority will direct the appropriate Defense Accounting Office (DAO) to withhold such amount from the Soldier's pay account (see para 9-7a). For any Soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to the commander who exercises SPCMCA jurisdiction over the Soldier for assessment. The receiving SPCMCA is bound by the determination of the approval authority.

*i. Assessment.* Subject to any limitations set forth in appropriate regulations, the servicing DAO will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is binding on any finance officer. If the servicing DAO cannot withhold the required amount because it does not have

custody of the Soldier's pay record, the record is missing, or the Soldier is in a no-pay-due status, that office will promptly notify the approval authority of this fact in writing.

*j. Remission of indebtedness.* 10 U.S.C. § 4837, which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139, UCMJ.

## **9–9. Reconsideration**

*a. General.* Although Article 139, UCMJ, does not provide for a right of appeal, either the claimant or a Soldier whose pay is assessed may request the approval authority (SPCMCA or GCMCA, depending on the amount assessed) or successor in command to reconsider the action. Either party must submit such a request for reconsideration in writing and clearly state the factual or legal basis for the relief requested. The approval authority may direct that the matter be reinvestigated.

*b. Reconsideration by the original approval authority.* The original approval authority may reconsider the action at any time while serving as the approval authority for the claim in question, even after the transfer of the Soldier whose pay was assessed. The original approval authority may modify the action if it was incorrect, subject to paragraph 9–9*d*. However, the approval authority should modify the action only because of fraud, substantial new evidence, errors in calculation, or mistake of law.

*c. Reconsideration by a successor in command.* Subject to paragraph 9–9*d*, a successor in command may modify an action only because of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

*d. Legal review and action.* Prior to modifying the original action, the approval authority will have the servicing claims office render a legal opinion and fully explain the basis for modification as part of the file. If the legal review agrees that a return of the assessed pay is appropriate, the approval authority should request in writing that the claimant return the money, setting forth in the letter the basis for the request. There is no authority for repayment from APF.

*e. Disposition of files.* After completing action on reconsideration, the approval authority will forward the reconsideration action to the servicing claims office, which will then file the action in accordance with paragraph 9–8*h*.

## **9–10. Additional claims judge advocate and claims attorney responsibilities**

In addition to the duties set forth in this chapter, the CJA or claims attorney is responsible for forwarding copies of completed Article 139 actions to USARCS, maintaining a log, monitoring the time requirements of pending Article 139 actions, and publicizing the Article 139 program to commanders, Soldiers, and the community.

# **Chapter 10 Foreign Claims Act**

## **Section I General**

### **10–1. Statutory authority**

*a.* The statutory authority for this chapter is the Act of 10 August 1956, 10 U.S.C. § 2734 (70 Stat. 154), commonly referred to as the “Foreign Claims Act (FCA),” as amended by Pub. L. No. 86–223, 1 September 1959 (73 Stat. 453); Pub. L. No. 86–411, 8 April 1960 (74 Stat. 16); Pub. L. No. 90–521, 26 September 1968 (82 Stat. 874); Pub. L. No. 91–312, 8 July 1970 (84 Stat. 412); Pub. L. No. 93–336, 8 July 1974 (88 Stat. 292); Pub. L. No. 96–513, Title V, §511 (95), 12 December 1980 (94 Stat. 2928).

*b.* Claims arising from the acts or omissions of the Armed Forces of the United States in the Marshall Islands or the Federated States of Micronesia are settled in accordance with Art. XV, Non-Contractual Claims, of the U.S.-Marshall Islands and Micronesia Status of Forces Agreement (the “SOFA”) (posted on the USARCS Web site at “Claims Resources,” I, a 8(f)). This is pursuant to the “agreed upon minutes” that are appended to the SOFA, pursuant to Section 323 of the Compact of Free Association between the United States and the Marshall Islands and the Federated States of Micronesia, enacted by Pub. L. No. 99–239, January 14, 1986. (The Compact may be viewed at <http://www.fm/jcn/compact/reindex.html>.) The “agreed upon minutes” state that “all claims within the scope of paragraph 1 of Article XV (Claims), (of the Compact) ... shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. § 2734, and any regulations promulgated in implementation thereof.” Therefore, Title I, Article 178 of the Compact, regarding claims processing, is not applicable to claims arising from the acts or omissions of the Armed Forces of the United States, but only to other Federal agencies. Those agencies are required to follow the provisions of the FTCA, 28 U.S.C. § 2672.

### **10–2. Scope**

*a. Application.* This chapter, which is applicable outside the United States, its commonwealths, territories, and

possessions, including areas under the jurisdiction of the United States, implements the FCA and prescribes the substantive basis and special procedural requirements for settlement of claims of inhabitants of a foreign country, or of a foreign country or a political subdivision thereof, against the United States for personal injury, death, or property damage caused by Service members or civilian employees, or claims that arise incident to noncombat activities of the Armed Forces.

*b. Effect of Military Claims Act.* Claims arising in foreign countries will be settled under the MCA if the injured party is an inhabitant of the United States subject to the provisions of paragraph 7–13*b* of this publication (for example, a member of the Armed Forces of the United States, a U.S. civilian employee, or a Family member of either category). In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his survivors are U.S. inhabitants, the FCA will apply (see para 3–2*c*).

*c. Effect of Army Maritime Claims Settlement Act (10 U.S.C. §§ 4801, 4802 and 4808).* A maritime claim may be settled under the FCA.

### **10–3. Claims payable**

*a.* A claim for death, personal injury, or loss of or damage to property may be allowed under this chapter if the alleged damage results from noncombat activity or a negligent or wrongful act or omission of Soldiers or civilian employees of the Armed Forces of the United States, as enumerated in paragraph 2–2*b*, regardless of whether the act or omission was made within the scope of their employment. This includes non-U.S. citizen employees recruited elsewhere but employed in a country of which they are not a citizen. However, a claim generated by non-U.S. citizen employees in the country in which they were recruited and are employed will be payable only if the act or omission was made in the scope of employment. But claims arising from the operation of Armed Forces of the United States vehicles or other equipment by such employees may be paid, even though the employees are not acting within the scope of their employment, provided the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

*b.* Claims generated by officers or civilian employees of the American Battle Monuments Commission (36 U.S.C. § 2110), acting within the scope of employment, will be paid from American Battle Monuments Commission appropriations.

*c.* Claims for the loss of, or damage to, property that may be settled under this chapter include the following:

(1) Real property used and occupied under lease, express, implied, or otherwise (see paras 2–15*m* of this publication and DA Pam 27–162).

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss.

### **10–4. Claims not payable**

A claim is not payable if it—

*a.* Results wholly from the negligent or wrongful act of the claimant or agent.

*b.* Is purely contractual in nature.

*c.* Arises from private or domestic obligations as distinguished from Government transactions.

*d.* Is based solely on compassionate grounds.

*e.* Is a bastardy claim for child support expenses.

*f.* Is for any item whose acquisition, possession, or transportation is in violation of DA or DOD directives, such as illegal war trophies.

*g.* Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for DA (see paras 2–15*m* of this publication and DA Pam 27–162).

*h.* Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. § 2734) (for example, claims for property loss or damage, or personal injury or death caused by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States).

*i.* 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 from filing a claim for damage, loss, or destruction of personal property within the Federal Government's custody if the claim is otherwise payable.

*j.* Is for damages or injury, the claim for which a receiving state should adjudicate and pay pursuant to an international agreement, subject to waiver by the Commander, USARCS (see DA Pam 27–162, para 3–4*a*(2), for a discussion of the conditions of waiver).

*k.* Is listed in paragraphs 2–28 and 2–29, except for the exclusions listed in paragraphs 2–28*e*, *h*, and *k*. Additionally, the exclusions set forth in paragraphs 2–28*a* and *b* do not apply to a claim arising incident to noncombat activities.

*l.* Is brought by a subrogee.

*m.* Is covered by insurance on the involved Armed Forces of the United States' vehicle or the tortfeasor's privately

owned vehicle (POV), in accordance with requirements of a foreign country, unless the claim exceeds the coverage or the insurer is insolvent (see para 10–5c).

*n.* Is payable under chapters 3 or 11.

*o.* Is brought by or on behalf of a member of a foreign military force for personal injury or death arising incident to service, or pursuant to combined military operations. Combined military operations include exercises and United Nations and North Atlantic Treaty Association (NATO) peacekeeping and humanitarian missions. Derivative claims arising from these incidents are also excluded.

### **10–5. Applicable law**

*a. Venue of incident and domicile of claimant.* In determining an appropriate award, the law and custom of the country in which the incident occurred will be applied to determine which elements of damages are payable and which individuals are entitled to compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily within the country in which the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Where the decedent is the subject of a wrongful death case, the quantum will be determined based on the country of the decedent's permanent residence regardless of the fact that his survivors live in the United States or a different foreign country than the decedent (see para 3–5 for further damages guidance).

*b. Other guidance.* The guidance set forth in paragraph 3–5*b* through *d* as to allowable elements of damages is generally applicable. Where moral damages, as defined in DA Pam 27–162, paragraph 2–53*c*(4), are permitted, such damages are payable. In some countries it is customary to get a professional appraisal to substantiate certain claims and pass this cost on to the tortfeasor. The Commander, USARCS or the chief of a CCS may, as an exception to policy, permit the reimbursement of such costs in appropriate cases. Where feasible, claimants should be discouraged from incurring such costs.

*c. Deductions for insurance.*

(1) Insurance coverage recovered or recoverable will be deducted from any award. In that regard, every effort will be made to monitor the insurance aspect of the case and encourage direct settlement between the claimant and the insurer of the tortfeasor.

(2) When efforts under paragraph (1), above, are of no avail, or when it otherwise is determined that an insurance settlement will not be reasonably available for application to the award, no award will be made until the chief of the CCS or the Commander, USARCS has first granted consent. In such cases, an assignment of the insured's rights against the insurer will be obtained and, in appropriate cases, reimbursement action will be instituted against the insurer under applicable procedures.

(3) If an insurance settlement is not available due to the insurer's insolvency or bankruptcy, a report on the bankruptcy will be forwarded to the Commander, USARCS without delay, setting forth all pertinent information, including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

*d. Deductions for amounts paid by tortfeasor.* Settlement authorities will deduct from the damages any direct payments by a member or civilian employee of the Armed Forces of the United States for damages (other than solatia).

## **Section II**

### **Foreign Claims Commissions**

#### **10–6. Appointment and functions**

*a.* Claims cognizable under this chapter will be referred to the command responsible for claims arising within its geographic area of responsibility, including claims transferred by agreement between the services involved. The senior judge advocate of a command having a CCS, or his delegee, will appoint a sufficient number of FCCs to dispose of the claims. If there is no CCS, the responsible commander may ask the Commander, USARCS for permission to establish one. Otherwise, the Commander, USARCS will appoint a sufficient number of FCCs from personnel furnished by the command involved (see para 1–5*d* for more information about command claims services).

*b.* The Commander, USARCS will appoint all other FCCs to act on all other claims, regardless of where such claims arose, unless they arose in a country for which single-service responsibility has been assigned to another service. The FCCs appointed by the Commander, USARCS at units based in CONUS may act on any claim arising out of such unit's operations. Any FCC operating in, or adjudicating claims arising out of, a geographical area within a command claims service's jurisdiction, will comply with that service's legal and procedural rules.

*c.* An FCC may operate as an integral part of a CCS, which will determine the cases to be assigned to it, furnish necessary administrative services, and establish and maintain its records. Where an FCC does not operate as part of a CCS, it may operate as part of the office of a division, corps, or higher command staff judge advocate (SJA), which will perform the foregoing functions.

*d.* An appointing authority who appoints or relieves an FCC whom he or she has appointed will forward one copy of each order addressing an FCC's appointment, relief, or change of responsibility to the Commander, USARCS. Upon



receipt of an initial appointing order, the Commander, USARCS will assign an office code number to the FCC. Without such a number the FCC has no authority to approve or pay claims (see para 13–1).

*e.* Normally, the FCC is responsible for the investigation of all claims referred to it, using both the procedures set forth in chapter 2 and any local procedures established by the appointing authority or CCS responsible for the geographical area in which the claim arose. Chiefs of a CCS may request assistance on claims investigation within their geographical areas from units or organizations other than the FCC. The Commander, USARCS may make the same request for any claim referred to an FCC appointed under his or her authority.

*f.* When an FCC intends to deny a claim, or offer an award less than the amount claimed, it will notify in writing the claimant, the claimant's authorized agent, or legal representative of the intended action on the claim and the legal and factual bases for that action. If the FCC proposes a partial award, a settlement agreement should be enclosed with the notice. Claimants will be advised that they may either accept the FCC action by returning the signed settlement agreement or, if dissatisfied with the FCC's action, they may submit a request for reconsideration stating the factual or legal reasons why they believe the FCC's proposed action is incorrect. This notice serves to give the claimant an opportunity to request reconsideration of the FCC action and state the reasons for the request before final action is taken on the claim. When the FCC intends to award the amount claimed, or recommend an award equal to the amount claimed to a higher authority, this procedure is not necessary. However, a settlement agreement is required for all awards, full or partial (see para 2–51*a*).

(1) This notice should be given at least 30 days before the FCC takes final action, except on small claims processed pursuant to paragraph 2–14. The notice should be mailed via certified or registered mail to the claimant. The claimant should be informed that any request for reconsideration should be addressed to the FCC that took final action, and that all materials the claimant wishes the FCC to consider should be included with the request for reconsideration.

(2) An FCC may alter its initial decision based on the claimant's response or proceed with the intended action. If the claimant's response raises a general policy issue, the FCC may request an advisory opinion from the Commander, USARCS or the chief of the CCS while retaining the claim for final action at its level.

(3) Upon completing of its evaluation of the claimant's response, the FCC will notify the claimant of its final decision and advise the claimant that its action is final and conclusive as a matter of law (10 U.S.C. § 2735), unless the final decision is a recommendation for payment above its authority. In that case, the FCC will forward any response submitted by the claimant along with its claims memorandum of opinion to the approval authority and will notify the claimant accordingly.

(4) When an FCC determines that a claim is valued at more than \$50,000, or all claims arising out of a single incident are valued at more than \$100,000, the file will be transferred to the Commander, USARCS for further action (see para 10–9*d*(2)). Upon request of the Commander, USARCS, the FCC may negotiate a settlement, the amount of which exceeds the FCC's authority; however, prior approval by a higher authority is required.

(5) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims. When an agreement can be reached, the notice and response provisions above are not necessary. If the FCC recommends an award in excess of its monetary authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

*g.* The chief of an overseas CCS may delegate to a one-member FCC the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving state office for adjudication under the provisions of a treaty concerning the status of U.S. forces in the country in which the claim arose. If, after investigation, it appears that action by a three-member FCC is appropriate, the one-member FCC should send the claim to the appropriate three-member FCC with a complete investigation report, including a discussion of the applicable local law and a recommendation for disposition.

## **10–7. Composition**

*a.* Normally, an FCC will be composed of either one or three members. Alternate members of three-member FCCs may be appointed when circumstances require, and may be substituted for regular members on specific cases by order of the appointing authority. The appointing orders will clearly designate the president of a three-member FCC. Two members of a three-member FCC will constitute a quorum, and the FCC's decision will be determined by majority vote.

*b.* Upon approval by the Commander, USARCS and the appropriate authority of another uniformed service, the membership may be composed of one or more members of another uniformed service. If another service has single-service responsibility over the foreign country in which the claim arose, that service is responsible for the claim. If requested, the Commander, USARCS may furnish a JAG officer or claims attorney to be a member of another service's FCC.

## **10–8. Qualification of members**

Normally, a member of an FCC will be either a commissioned officer or a claims attorney. At least two members of a three-member FCC must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the Armed Forces may be appointed to an FCC, subject to prior approval by the Commander, USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification for such

appointment (for example, the lack of legally qualified personnel). The FCC will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another Armed Force will be appointed a member of an Army FCC only if approved by the Commander, USARCS.

#### **10–9. Settlement authority**

a. In order to determine whether the claim will be considered by a one-member or three-member FCC, the claimed amount will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable). However, the FCC's jurisdiction to approve is determined by the conversion rate on the date of final action. Accordingly, if the value of the U.S. dollar has decreased, the FCC will forward the recommendation to a higher authority, if necessary.

b. Payment will be made in the currency of the country in which the incident occurred or in which the claimant resided at the time of the incident, unless the claimant requests payment in U.S. dollars or another currency and such request is approved by the chief of a CCS or the Commander, USARCS. However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country without the approval of the Commander, USARCS.

c. A one-member FCC may consider and pay claims presented in any amount provided a mutually agreed settlement may be reached in an amount not exceeding the FCC's monetary authority. A one-member FCC may deny any claim when the claimed amount does not exceed its monetary authority. Unless otherwise restricted by the appointing authority, a one-member FCC who is a JA or claims attorney has \$15,000 monetary authority, while any other one-member commission has \$5,000 monetary authority.

d. A three-member FCC, unless otherwise restricted by the appointing authority, may take the following actions on a claim that is properly before it:

(1) *Disapprove a claim presented in any amount.* After following the procedures in paragraph 10–6, including reconsideration, the disapproval is final and conclusive under 10 U.S.C. § 2735. The FCC will inform the appointing authority of its action. After it takes final action and disapproves a claim presented in any amount over \$50,000, the FCC will forward to the appointing authority the written notice to the claimant required by paragraph 10–6f, any response from the claimant, and its notice of final action on the claim.

(2) *Approve and pay meritorious claims presented in any amount.*

(a) Claims paid in full or in part for an amount not exceeding \$50,000 will be paid after any reconsideration as set forth in paragraph 10–6. This action is final and conclusive under 10 U.S.C. § 2735.

(b) Claims valued at an amount exceeding \$50,000, or multiple claims arising from the same incident valued at more than \$100,000, will be forwarded through the appointing authority with a memorandum of opinion to the Commander, USARCS for action (see DA Pam 27–162, para 2–60). The memorandum of opinion will discuss the amount for which the claimant will settle and include the recommendation of the FCC.

e. The Judge Advocate General, DJAG, and the Commander, USARCS, or his or her designee serving at USARCS, may approve and pay, in whole or in part, any claim as long as the amount of the award does not exceed \$100,000; may disapprove any claim, regardless of either the amount claimed or the recommendation of the FCC forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of \$50,000, may refer the claim back to the FCC or another FCC for further action.

f. Payments in excess of \$100,000 will be approved by the SA, the Army General Counsel as the Secretary's designee, or other designee of the Secretary.

g. Following approval where required and receipt of an agreement by the claimant accepting the specific sum awarded by the FCC, the claim will be processed for payment in the appropriate currency. The first \$100,000 of any award will be paid from Army claims funds. The excess will be reported to the Financial Management Service, Department of Treasury, with the documents listed in DA Pam 27–162, paragraph 2–81.

h. If the settlement authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the settlement authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the settlement authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

#### **10–10. Reopening a claim after final action by a Federal Claims Commission**

a. *Original approval or settlement authority (including The Deputy Judge Advocate General, The Judge Advocate General, Secretary of the Army, or the Secretary's designees).*

(1) An original settlement authority may reconsider the denial of, or final offer on a claim brought under the FCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may reconsider a claim on its own initiative.

(2) An original approval or settlement authority may reopen and correct action on an FCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in

fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties mutual understanding is discovered in the original action. If it is determined that the original action was incorrect, the action will be modified, and if appropriate, a supplemental payment made. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for \$15,000, but the settlement agreement was typed to read “\$1,500” and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or the claimant’s legal representative will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

*b. A successor approval or settlement authority (including The Deputy Judge Advocate General, The Judge Advocate General, Secretary of the Army, or the Secretary’s designees).*

(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FCA claim upon request of the claimant or the claimant’s authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor’s action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

*c. Time requirement for filing request for reconsideration.* Requests postmarked more than 5 years from the date of mailing of final notice will be denied based on the doctrine of laches.

*d. Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) is final under the provisions of 10 U.S.C. § 2735. Action upon request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

## **10–11. Solatia payment**

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her Family is common in some overseas commands. Solatia payments are known to be a custom in the Federated States of Micronesia, Japan, Korea, and Thailand. In other countries, the FCC should consult the CCS or Commander, USARCS for guidance. Such payments are not to be made from the claims expenditure allowance. These payments are made from local operation and maintenance funds. This applies even where a CCS is directed to administer the command’s solatia program. (See, for example, United States Forces Korea Regulation 526–11 regarding solatia amounts and procedures.)

## **Chapter 11 Personnel Claims and Related Recovery Actions**

### **Section I General**

#### **11–1. Authority**

*a.* The Military Personnel and Civilian Employees Claims Act, also known as the “Personnel Claims Act (PCA),” 31 U.S.C. § 3721, is the authority for paying claims for loss or damage of personal property incident to service.

*b.* The authority to assert, collect, and compromise or waive claims by the United States against third parties legally liable for loss or damage to personal property of our personnel and for other losses paid under the PCA, is the Federal Debt Collection Act, 31 U.S.C. § 3711, as implemented by the Federal Claims Collection Standards, 31 C.F.R. Parts 900–904, and the Contract Disputes Act, 41 U.S.C. §§ 601–613, as implemented by the Federal Acquisition Regulation, 48 C.F.R. Vol.1, Chap. 1, Parts 1–99, and the Defense Federal Acquisition Regulation Supplement, 48 C.F.R. Vol. 3, Chap. II, Parts 200–299.

#### **11–2. Delegation of authority**

*a. Settlement authority.*

(1) The following are delegated authority to pay up to the statutory limit, currently \$40,000 for most claims, but \$100,000 for claims arising out of emergency evacuations or extraordinary circumstances, to determine that extraordinary circumstances exist, and to deny claims regardless of the amount claimed:

(a) The Judge Advocate General.

(b) The Deputy Judge Advocate General.

(c) The Commander, USARCS, or the Chief, Personnel Claims and Recovery Division, USARCS.

(2) Heads of ACOs, and chiefs of overseas command claims services may pay up to the statutory limit of \$40,000 and may deny claims regardless of the amount claimed. If a claim is adjudicated in an amount in excess of \$40,000, and the head of an ACO or chief of an overseas CCS believes payment in excess of \$40,000 is appropriate, the claim will be forwarded to USARCS after local payment of the \$40,000 limit.

(3) CJA/CA of an ACO may approve and authorize payment of up to \$25,000.

*b. Approval authority.* Heads of CPOs with approval authority are delegated authority to pay up to \$10,000 in settlement of claims. They may deny specific items in the claim, but they do not have authority to deny the entire claim.

*c. Recovery authority.* Claims offices may accept the full amount asserted from third parties on a demand for payment for loss and damage to personal property. Authority to take other action is as follows:

(1) The Judge Advocate General; DJAG; the Commander, USARCS; and the Chief, Personnel and Recovery Division, USARCS, or his or her delegee may compromise or terminate collection action against a third party asserted for \$100,000 or less.

(2) The JA or SJA of a command having a claims service and, subject to the limitations imposed by them, the chief of a CCS, may compromise or terminate collection action of a claim against a third party asserted for \$50,000 or less.

(3) Unless authority is withheld by the Commander, USARCS or the chief of a CCS, the head of an ACO authorized to perform recovery may compromise up to the recovery limits of current USARCS policy set forth in the Delegation of Recovery Authority posted on the USARCS Web site at "Claims Resources," III, no. 31. However, ACOs may not negotiate recovery on a claim that has been forwarded to USARCS or is not under their control at the time of an offer.

*d. Office code required.* Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code by USARCS.

*e. U.S. Army Corps of Engineers area claims offices.* U.S. Army Corps of Engineers (COE) ACOs are not delegated approval or settlement authority under this chapter and will forward all claims covered by the PCA and this chapter to the ACO for the geographic area in which the COE office is located. Claims from COE personnel who are deployed in support of military operations overseas will submit their claims to the Army claims office that supports the operation.

*f. Claims office jurisdiction exceeded by adjudicated claim.* If the adjudicated amount of a claim exceeds the monetary jurisdiction of the claims office, the CJA or claims attorney will approve and pay the claim up to that office's delegated authority and forward it with all documentation and a memorandum of opinion to the next higher claims authority for additional payment. (Until the new Web-based PC data system is operational, documentation will include a disk with all data on the claim to date, and a printed copy of the claims summary report.)

*g. Further delegation.* Pursuant to paragraph 1-5g(1) of this publication, the authorities named in paragraph *a* and *b*, above, may further delegate, in writing, any portion or all of their monetary approval authority to a subordinate judge advocate (JA) or claims attorney in their service or office. The authority of the head of an ACO or chief of an overseas CCS to approve payments between \$25,001 and \$40,000, to act upon requests for reconsideration (see para 11-20, below) to approve waiver of a maximum allowable limit (see para 11-14*b*), and to deny claims will not be delegated. In this context, "deny" refers to disapproval of a claim in its entirety, not simply disapproval of a single line item (unless the claim has only one line item).

### **11-3. Scope**

*a.* This chapter prescribes the substantive basis and special procedural rules for the administrative settlement of claims against the United States submitted by Active Army, ARNG, and USAR personnel, and DOD or Department of Army (DA) civilian employees for damage to, or loss of, personal property incident to their service. This chapter also sets forth procedures for administrative recovery from third parties responsible for the loss of or damage to personal property. The PCA is a gratuitous payment statute that does not require the SA to pay any claim. It does not create an entitlement to payment of a claim for loss or damage incident to service but merely permits the Secretary to specify rules and requirements for payment of such claims and to effect payment. Claims payable under the PCA are not based in tort, even though some tort concepts are used in the adjudication of these claims. Further, the PCA does not make the United States a total insurer of the personal property of proper claimants.

*b.* The maximum amount that may be paid for any loss or damage arising from a single incident is set forth in the PCA, as amended. The maximum amount is \$40,000 for most claims. However, the PCA does permit payment up to \$100,000 for loss or damage arising from an emergency evacuation or other extraordinary circumstances. The Commander, USARCS or the Chief, Personnel Claims and Recovery Division, USARCS, will determine if "extraordinary circumstances" exist for purposes of this increased payment authority. The determination will be on a case-by-case basis.

*c.* Any claim within the scope of this chapter that otherwise would be cognizable under chapters 3, 4, 5, 6, 8 or 10 will first be considered under this chapter. One exception to this rule is a claim for loss or damage to a privately owned vehicle driven under orders for the convenience of the Government and which is damaged by negligence of a Soldier or Army employee who was acting in the scope of his/her employment at the time of the incident. This type of claim should be adjudicated and paid under the provisions of the Military Claims Act and chapter 3 of this regulation. Other

exceptions to the general rule may be approved by the Commander, USARCS. If not payable under this chapter, the claim will be considered under the other chapters prior to any denial. Particular attention will be given to the nature of the claim; many alleged "unusual occurrences" are actually torts, either by employees or by individuals in their private capacities.

(1) If a claim cognizable under this chapter arises from an incident resulting in personal injury, no payment or emergency partial payment will be made under this chapter until the incident has been investigated in accordance with chapter 2, section IV. The Commander, USARCS or Chief, Personnel Claims and Recovery Division, USARCS may waive this requirement and permit an emergency partial payment.

(2) Any claims of Service members that are not payable under this chapter should be considered under chapter 3 if they involve any allegation of a tort.

*d.* Any claim within the scope of this chapter that is also cognizable under Article 139 will first be considered under chapter 9. If settlement of the Article 139 claim will be unduly protracted, the claim may be settled under this chapter and the claimant advised to repay any overpayment if payment is later received under the provisions of chapter 9.

*e.* Any claim cognizable under this chapter that is primarily the result of the fault or negligence of a Government contractor, other than a common carrier or warehouse firm, will first be referred to the contractor or his or her insurer for settlement in accordance with the claims and liability provisions of the contract (see DA Pam 27-162, para 11-5a).

#### **11-4. Claimants**

*a.* The following personnel may present a claim and be paid under this chapter:

(1) A member of the Active Army.

(2) A member of the USAR or the ARNG performing inactive-duty training or active service.

(3) A civilian employee of DA.

(4) A civilian employee of the ARNG funded under 32 U.S.C. § 709, a continental wage scale, local wage scale, and other foreign national local civilian employee.

(5) A civilian employee of the DOD who is not an employee of the Department of the Navy, including the U.S. Marine Corps, or the Department of the Air Force. However, the claims of employees of the DOD Education Activity (formerly DODDS) and Defense Commissary Agency (DECA) will be settled by the Service operating the installation where they are employed. (Air Force, Navy, and Marine Corps claims offices will not adjudicate and pay the claims of DOD employees, other than the claims of DOD Education Activity and DECA employees who are working on one of their installations. They will forward DOD employee claims to the nearest Army claims office for adjudication and payment) (see DODD 5515.10).

(6) The authorized agent or legal representative of any member of a military component or civilian employee listed in paragraphs (1) through (5), above. Additionally, a proper claimant's spouse may file a claim on that claimant's behalf if the spouse provides to the field claims office a written and dated document signed by the proper claimant authorizing the spouse to file the claim. Any claim presented by a claims preparation service or other hired agent must be signed and ratified by the proper claimant to preclude assignment of claims, regardless of whether the claimant has executed a power of attorney.

(7) The survivors of any member of a military component or civilian employee listed in paragraphs (1) through (6), above, in the following order of precedence:

(*a.*) Spouse.

(*b.*) Child or children.

(*c.*) Father or mother, or both.

(*d.*) Brothers or sisters, or both.

(8) A former member of the Army, a former employee of the Army, or a former DOD employee if the claim is for a loss or damage that was incident to their service while on active duty or employed by the Army or DOD. This includes claims for loss or damage arising out of an entitlement to a final shipment or storage of personal property at Government expense, even if the loss occurs after the claimant has separated from Service or is no longer employed by DOD or the Army.

*b.* Claims of civilian employees of NAF activities for damage to or loss of personal property incident to their service will be processed and adjudicated in accordance with this chapter and chapter 12, with payment made only from NAFs.

*c.* A member of another U.S. Armed Force may present a claim to an Army claims office for loss of, or damage to, personal property incident to his or her service. The Army office that receives such a claim will date stamp the claim to show the date of receipt, review the claim to make sure it is complete, advise the claimant if additional information or documents are needed, and then forward the claim file to the nearest legal office of the appropriate military Service. The Commander, USARCS may enter into an agreement with the other Services to permit more extensive claims processing.

*d.* Subrogees, assignees, conditional vendors, and similar third parties are not proper claimants under this chapter, and their claims are barred from payment.

*e.* Personnel who do not fall within one of the categories listed in paragraph a (such as spouses of proper claimants without a power of attorney or written authorization, Red Cross employees, foreign military personnel, United Services

Organization personnel, or employees of Government contractors, including technical representatives) are not proper claimants under this chapter.

f. A claim submitted before a Soldier is reported absent without leave (AWOL) or is confined by the Army may be adjudicated and paid unless the claims office receives notice that the Soldier is AWOL or confined. If the claims office receives notice before a claim has been paid that the claimant has been reported as AWOL by his or her unit or has been confined by sentence of a court-martial, then the claim should be denied and closed, regardless of whether the claim was otherwise payable. Such a denial should be sent to an AWOL claimant's last known military address. A claim denied on this basis may be reopened only on the basis that the claimant was not properly placed in an AWOL status or is later determined not be guilty of the charge for which he or she was confined. If the claimant wants to request reconsideration on this basis, then the claimant must submit a written request for reconsideration within 60 days of being returned to military control or released from confinement. A claim based on an allegation that the claimant's property was lost, stolen, or damaged because the claimant's unit failed to safeguard the claimant's property after the claimant went AWOL or was sentenced to confinement will be denied under this chapter but may be considered under the provisions of chapter 3 of this regulation. If personal property belonging to an AWOL Soldier, a Soldier in confinement, or a Soldier who has been discharged due to some other misconduct is shipped in connection with the Soldier's confinement or separation from service, and the shipment is at Government expense, then a claim for loss or damage to items in that shipment will be denied. However, such claimants will be advised that they may file a claim directly with the responsible carrier.

### **11-5. Claims payable**

The following are nonexclusive examples of categories of damage to, or loss of, property that may be considered by claims approval and settlement authorities as having been sustained incident to service. Note that a loss unconnected with the performance of duty, particularly a loss occurring outside of normal duty hours, is normally not incident to a civilian employee's service, although the same loss might be deemed incident to a Soldier's service. This is particularly true if the civilian employee is a local foreign national employee. A claims approval or settlement authority will ask the Chief, Personnel Claims and Recovery Division, USARCS for an advance opinion prior to adjudicating a claim that is deemed incident to service, but does not fall within one of the following categories:

a. *Contractor-caused losses.* As noted, losses caused by a contractor or contractor employee may be incident to service, but they should be paid only after seeking compensation from the contractor. The exception to this rule is a claim for loss or damage to property during transportation or storage by a commercial carrier or warehouse under the provisions of a DOD contract. However, a claim for loss or damage arising out of a shipment transported by an independent contractor hired by the claimant under the self-procured move entitlement is not a claim arising out of a DOD contract. Such claims must be asserted first against the private contractor, even though the claimant may have been reimbursed by DOD for the cost of the move.

b. *Tangible personal property.* The PCA authorizes payment for damage to tangible personal property only. Payment for damage to real property, loss or damage to intellectual property, or for consequential or most incidental damages is not authorized. Some incidental expenses that are necessarily incurred in obtaining repairs or a replacement item are payable, such as the costs of estimates, drayage fees, sales taxes, shipping costs, and the costs of obtaining forms for the relief of value-added taxes in some foreign countries.

c. *Unusual occurrence.* Claims resulting from unusual occurrences are generally payable when they result in losses at quarters, damage to vehicles while properly on post or while being driven for the convenience of the Government, or other types of loss or damage to a proper claimant's property while the claimant was acting incident to their service. Unusual occurrences include but are not limited to fire, flood, hurricane, earthquake, or weather phenomena that are unusual for the location of the loss.

d. *Quarters or other authorized places.* Damage to, or loss of, property by unusual occurrences, or by theft or vandalism may be considered, when it occurs at—

(1) Quarters, wherever situated, that are assigned to the claimant or otherwise provided in kind by the Government. Quarters on military installations in the United States and the District of Columbia that have been transferred to or built by a private housing corporation under the residential communities initiative (RCI) may still qualify as quarters that have been assigned or provided in kind. Heads of ACOs on installations that have privatized all or part of their on-post housing should request a decision on this issue from the Chief, Personnel Claims and Recovery Division, USARCS.

(2) Quarters not located in a state or the District of Columbia, that are occupied by the claimant in compliance with competent authority but are neither assigned to the claimant nor otherwise provided in kind by the Government. However, such a claim is not cognizable when the claimant is:

(a) A civilian employee who is a local inhabitant.

(b) A U.S. citizen hired as a civilian employee while residing abroad or after moving to a foreign country as part of the household of a person who is not a proper party claimant.

(c) A Family member not residing in a state or the District of Columbia while the Soldier is stationed in a different country. However, this rule does not apply to Family members whose sponsor normally resides with them but is away on an operational deployment.

(d) A member of the Army Reserve who has been called to active duty, or a member of the ARNG on full-time National Guard duty or on active duty under Title 10, who is assigned to duty in a U.S. territory and who was already residing in that territory before he or she came on active duty. The test is whether such claimants are in the territory because of their military service or are there because they were already a resident of the territory.

(3) Any place of lodging (such as a hotel, motel, guest house, transit billet or other place), wherever situated, when occupied by the claimant while in the performance of temporary duty or similar authorized military assignment of a temporary nature.

(4) Any warehouse, office, hospital, baggage holding area, or other place authorized or apparently authorized by the Government for the reception or storage of personal property.

(5) Loss or damage due to theft or vandalism must be incident to service to be payable. When theft or vandalism occurs on a military installation, it is presumed to be incident to the claimant's service. However, this presumption can be rebutted by other evidence, such as proof that the damage was done as the result of a purely private or domestic dispute.

*e. Transportation and storage losses.* Damage to, or loss of, property incident to transportation or storage pursuant to orders, in connection with travel under orders, or in performance of military duty may be considered. Claims are generally payable if the damage occurred during the transportation or storage and is not the result of a preexisting defect, is not due to normal usage, and is not the result of normal deterioration during storage. This includes property in the custody of the following:

(1) A common or contract carrier, freight forwarder, ocean carrier, air carrier, warehouse or any other commercial concern, pursuant to an entitlement to payment by the Government for transportation or storage under the Joint Travel Regulation and Joint Federal Travel Regulation (JTR/JFTR). This includes household goods carriers hired directly by the claimant pursuant to the self-procured moving procedures authorized by the JTR/JFTR when the claimant is reimbursed for the transportation by the Government.

(2) An agent or agency of the Government, to include property mailed at Government expense in the custody of the U.S. Postal Service.

(3) The claimant or appropriate personnel while the claimant is traveling in a private or public vessel, vehicle, aircraft, or other conveyance in performance of military duty.

(4) The claimant or appropriate personnel while the claimant is traveling aboard a military vessel, aircraft, or vehicle (to include aircraft, vessels or vehicles chartered by the military) in performance of military duty or pursuant to orders authorizing travel, including travel pursuant to leave orders on a space available basis.

*f. Losses due to public service, enemy action, evacuation, or hostile acts.* Damage to, or loss of, property may be considered that is a direct result of—

(1) Enemy action, or threat thereof, combat, guerrilla, or other belligerent activities, whether or not the United States was involved; or unjust confiscation by a foreign power or its nationals of property belonging to Soldiers or U.S. national civilian employees.

(2) Acts of mob violence, terrorist attacks, or other hostile acts directed against the United States, or against its officers and employees.

(3) Action by the claimant in an attempt to quiet a civil disturbance or alleviate a public disaster.

(4) Efforts by the claimant to save a human life or Government property.

(5) Evacuation from a foreign country on the recommendation or order of competent authority. This subsection provides payment for tangible personal property belonging to Soldiers and civilian employees and their command-sponsored Family members, with entitlement to shipment at Government expense, which is abandoned during an evacuation and not recovered, or damaged by an incident of political unrest or hostile act prompting or following such evacuation.

*g. Loss of money delivered to a Government agent.* Loss of funds neither applied as directed by the owner nor returned may be considered when the funds were delivered to, and accepted by, Government personnel authorized or apparently authorized to receive them for such purposes as safekeeping; deposit in savings deposit program; transmission by personal transfer account; purchase of U.S. bonds or postal money orders; or conversion into military payment orders or Government checks, or into another kind of currency.

*h. Vehicle losses.* Vehicles are defined to include automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks with mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft. Mobile homes and other property used as dwelling places are not considered vehicles. Damage to, or loss of, vehicles and property properly stored or contained therein may be considered when the vehicle was—

(1) Used in the performance of military duty, if such use was authorized or directed for the convenience of the Government and provided that—

(a) The travel did not include commuting to or from the claimant's permanent place of duty.

(b) The loss or damage did not arise as a result of a mechanical or structural failure of the vehicle during such usage.

(c) The vehicle was shipped to, from, or between an overseas area or areas at Government expense in accordance with paragraph b. This includes loss or damage that occurs while the claimant or the claimant's agent is driving the

vehicle between a vehicle processing center (VPC) and his or her duty station in connection with Government-funded shipment or storage.

(d) The vehicle was located at quarters or a place of lodging, as defined in paragraph *d*(1), or located on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism. For the purposes of this paragraph, the term “quarters” includes garages, carports, driveways, assigned parking spaces, and lots specifically provided and used for the purpose of parking at one’s quarters, or other areas normally used for parking by occupants of the quarters.

(e) The vehicle was located at areas on the military installation where the command has assumed responsibility for the security of the vehicle (for example, when a Soldier is directed to park the vehicle in a specific area during a deployment, and the Government provides security for the lot). The term “military installation” is used broadly to describe any fixed land area, wherever situated, that is controlled and used by one of the military Services or the DOD.

(f) The vehicle was located off the military installation when the loss or damage was directly connected to the claimant’s service, provided the incident does not occur at quarters in a state or the District of Columbia that were not assigned or provided in kind by the Government.

(2) For this category, there is a presumption that vehicle theft or vandalism does not occur on the military installation or at quarters and is generally not compensable. Claims for theft from or vandalism to vehicles (including property located inside a vehicle) are only payable when a claimant proves that the theft or vandalism occurred while the vehicle was on the military installation or at quarters (for example, a military police report indicates broken glass from the window was found at the on-post parking lot where the vehicle was parked), or was otherwise directed against the claimant’s property because of the claimant’s status as a member of the military or as a Government employee.

(3) Loss or damage to a vehicle that is properly on the installation or at quarters should be presumed to be incident to service unless such a presumption would be unreasonable under the particular circumstances.

(4) Loss or damage due to theft or vandalism must be incident to service to be payable. When theft or vandalism occurs on a military installation, it is presumed to be incident to the claimant’s service. However, this presumption can be rebutted by other evidence, such as proof that the damage was done as the result of a purely private or domestic dispute.

*i. Clothing and articles being worn.* Damage to or loss of clothing and articles being worn while on a military installation or in the performance of military duty may be considered, provided such loss was caused by an unusual occurrence, by vandalism, by theft, or by enemy action.

*j. On-post robberies, theft, or vandalism.* Claims for losses due to vandalism, theft from quarters or vehicles, and theft from the claimant on a military installation by the use of force, violence, or threat to do bodily harm are presumed to be incident to service and may be considered. However, this presumption can be rebutted by other evidence, such as proof that the damage was done as the result of a purely private or domestic dispute. If cognizable under Article 139, the claim should be considered under chapter 9 of this publication (see para 11–3*d*).

*k. Personal property held as evidence.* Destruction of property held as evidence may be considered when the claimant is a victim of a crime, and the destruction was not due to the claimant’s negligence. Deprivation of property held as evidence may be considered a payable loss when, after taking all circumstances into consideration, the approval authority determines that the temporary loss of the property will work a grave hardship on a claimant who is a victim of a crime.

*l. Other claims payable.* The above listing is not exclusive. Other examples of payable incident-to-service claims are noted in DA Pam 27–162, paragraph 11–5.

## **11–6. Claims not payable**

The following are examples of types and categories of property losses for which compensation will not be allowed:

*a. Real property.* Damage to real property is not compensable. Generally, any permanent structure or item that is permanently fixed to the land is considered real property.

*b. Property located at quarters.* Loss or damage to property located at quarters within the United States that were occupied by the claimant but were neither assigned nor otherwise provided in kind by the Government, is not compensable (see para 11–5*d*(1).)

*c. Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Similarly, a claimant may not be compensated for the inability to use nonrefundable tickets or recover lease or utility deposits. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses incurred by the claimant in preparing the item, such as the cost of the paper or other materials. No compensation is authorized for the time spent by the claimant in its preparation or for supposed literary value.

*d. Incidental expenses and consequential damages.* The PCA and this chapter authorize payment for loss of, or damage to, tangible personal property only. Except as provided in paragraph 11–15, below, consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while



awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or Family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable. However, expenses that are incurred only because of the need to substantiate ownership or value of property following a covered loss may be paid. Such expenses include estimate fees and fees charged by banks for copies of old checks that prove purchase cost of an item as well as the reasonable cost of providing photographs of damaged items, and the for the cost of obtaining value added tax relief forms overseas. Likewise, expenses that are normally necessary to complete repairs, such as cost of transporting an item to a repair facility (for example, drayage or towing charges), are compensable.

*e. Property not reasonable or useful.* The PCA requires the approval authority to determine that possession of the property that was lost or destroyed was reasonable and useful under the circumstances. For property listed in the Allowance List-Depreciation Guide (ALDG) (posted to the USARCS Web site at “Claims Resources,” III, no. 1), possession of amounts less than or equal to the maximum allowable amount listed in the table is presumed to be reasonable and useful. Possession of property with a value in excess of the amount listed may be reasonable and useful, under the circumstances unique to the individual claimant and to the cause of the loss. However, the facts justifying payment in excess of these amounts must be stated in the claim file, and the ACO or higher authority must approve the waiver of the maximum allowable amount.

*f. Property held for commercial purposes.* Loss of, or damage to, property that was acquired or held for sale, or held for disposition by other commercial transactions on more than an occasional basis, and property that is owned primarily for use in a private profession or business enterprise, is generally not compensable.

*g. Fraud.* The head of an ACO may completely deny a claim that he or she determines to be tainted by fraud. This determination will be made on the basis that a preponderance of the evidence indicates that the claim is tainted by fraud. A conviction for fraud, or a formal charge of fraud under the UCMJ, is not required to deny a claim on this basis.

*h. Property lost or damaged as a result of claimant’s negligence.* A claim for loss or damage is not compensable if any negligence or wrongful act of the claimant, of the claimant’s spouse, child, or person who resides with the claimant, or any agent or employee of the claimant acting in the scope of employment, was a proximate cause of the loss. Negligence may be defined as failure to exercise the degree of care that a reasonable and prudent person would have exercised under the same circumstances.

*i. Property acquired, possessed, or transported unlawfully or in violation of local law or competent regulations or directives.* This includes loss or damage to vehicles not properly registered or insured in compliance with local law or competent regulations or directives as well as properly registered vehicles that were abandoned in violation of law or regulation. The head of an ACO may waive this provision and pay a claim if he or she determines that good cause existed as to why the claimant failed to comply with the local law, competent regulation, or competent directive.

*j. Enemy property or war trophies.* This includes property that, by regulation, directive, or order is declared inappropriate or unlawful for personal possession.

*k. Money.* Loss of money in any amount during shipment or storage with baggage or household goods is not compensable. This includes coin collections.

*l. Property in storage.* Loss or damage to property stored at a commercial facility for the convenience of the claimant and at his or her expense is not compensable.

*m. Other items not payable.* This listing is not exclusive. Other examples of items not reasonable or useful or otherwise not payable are found in DA Pam 27-162, paragraph 11-6.

## **11-7. Time prescribed for filing**

*a. General.* No claim may be paid under this chapter unless it is presented in writing to a U.S. military establishment or the office within a U.S Embassy or consular facility that normally receives claims from Department of State personnel, within 2 years after it accrues. A claim is presented when it is received, not when it enters the mail.

*b. When accrual occurs.* For purposes of this chapter, a claim accrues at the time of the incident causing the loss or damage, or at such time as the loss or damage is, or should have been, discovered by the claimant through the exercise of due diligence. The claim accrues when the claimant knew or should have known that some damage or loss occurred, even if the full extent of the loss or damage is not known at that time. In the case of multiple deliveries on the same bill of lading, contract, or service order, the claim for each portion of the shipment accrues when those items are delivered. The claim filed for the initial damage will be amended to reflect the subsequently claimed items.

*c. Accrual in time of war.* If a claim accrues in time of war or armed conflict in which the Armed Forces of the United States are engaged, or if such a war or armed conflict intervenes within 2 years after the claim accrues, and if good cause is shown, the claim may be presented not later than 2 years after the cause ends or the armed conflict is terminated, whichever is earlier. If good cause for delay in filing is not established, the intervention of war or armed conflict, in itself, will not permit payment of a claim presented later than 2 years after accrual. The Chief, Personnel Claims and Recovery Division, USARCS will make all determinations that good cause exists for the purposes of determining if the 2-year limit for filing claims should be extended under this provision.

*d. Accrual when property in non-temporary storage.* If a proper party claimant is notified that his or her personal property in non-temporary storage (NTS) at Government expense has sustained partial damage, the 2-year time limit

for filing a claim under this chapter begins to run on the day the claimant receives written or electronic mail notice of the incident and damage. The claimant is expected to exercise due diligence in attempting to ascertain the extent of the loss. If the claimant is unable to determine the full extent of his or her loss within 2 years, the claimant should file a claim based on the loss that is known, and request that the claims office hold the claim in suspense until a final inspection of all of his or her goods can be completed.

*e. Equitable estoppel.* The doctrine of equitable tolling may permit payment of a claim that is filed after the 2-year limit. (See *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990).) (See also *Kelly v. National Labor Relations Board*, 79 F.3d 1238 (1st Cir.1996) for discussion of factors to consider.) In most cases where this doctrine has been invoked, the claimant has alleged some sort of affirmative misconduct or misrepresentation against the agency that has invoked a statutory limit on the claim. The chief of a CCS or the head of an ACO must forward all requests for waiver of the 2-year limit on the basis of equitable estoppel along with a claims memorandum to the Chief, Personnel Claims and Recovery Division for approval.

*f. Other remedies.* Although the Army may not pay a claim that is received more than 2 years after it accrues, the claimant may still be able to assert a claim against a third party, such as a warehouse or household goods carrier, that is legally responsible for the loss or damage. Claims offices that deny a claim on the basis that it is past the PCA's 2-year limit will advise the claimants that they may want to consult with private counsel to see if they may recover from a party other than the United States.

### **11-8. Form of claim**

*a.* Any written demand for compensation under this chapter is a claim, even if no specific sum is mentioned nor supporting documentation provided. A demand for compensation is also a claim if it is submitted in the form required by an authorized automated system (for example, an online, Web-based personnel claims program). Claims personnel will date-stamp, log in, and consider as a personnel claim any writing received at a U.S. military establishment or U.S. Embassy claims office if it constitutes a demand for compensation for loss of, or damage to, personal property. Claims personnel will not return such writings to the claimant without action as "lacking documentation" and may only consider the claim abandoned in accordance with paragraph 13-3*d* of this publication and paragraph 11-10*h*, DA Pam 27-162. However, the claimant must complete and submit a DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) and DD Form 1844 (List of Property and Claims Analysis Chart) and provide necessary substantiation before a claims office can pay the claim. Claimants will be required to complete only one DD Form 1842 and DD Form 1844 and to provide only one copy of supporting documentation.

*b.* A demand on a carrier, warehouse firm, insurer, or other third party is not considered a claim against the United States. Submission of a DD Form 1840R (Notice of Loss or Damage) to the claims office does not constitute presentation of a claim.

### **11-9. Presentation**

*a. Submission of claim.* To constitute a filing under this regulation, a claim must be presented, in writing or by authorized electronic means, to an agency of one of the military departments other than the National Guard or a Reserve Component, or to the proper office in a U.S. Embassy or consular office. A claim in writing should, if practicable, be submitted to the claims office serving the Army installation where the claimant is stationed, or nearest to the point where the loss or damage occurred, or where investigation of the facts and circumstances can most conveniently be made. ARNG and USAR personnel will not file claims with their unit, but with the nearest Army installation. If submission in accordance with the foregoing is impracticable under the circumstances, the claim may be submitted, in writing, to the commander of any installation or establishment of the Armed Forces who will forward the claim to the appropriate Army claims office for processing. The Chief, Personnel Claims and Recovery Division, USARCS may designate an installation for filing of specific claims in unusual circumstances, in joint claims processing situations, or for other situations in the best interest of claims processing.

*b. Verification of facts.* The claimant is responsible for substantiating ownership and possession, the fact of loss or damage, and the value of property, especially for expensive items. The claimant is also responsible for promptly discovering and reporting loss whenever failure to do so would prejudice either effective investigation of the claim or effective recovery action from a third party. Failure to do so may result in reduction of the amount allowable or denial of the claim in accordance with paragraph 11-21*a*, below.

*c. Where to file.*

(1) *United States.* Claims should normally be filed at the claims office that has responsibility for the geographic area in which the claimant is living at the time of filing. However, in some areas, claimants may live in an area for which one office is responsible, but commute to work on another claims office's installation. In those cases, claimants may file their claim at the claims office on the installation where they work because it is more convenient to them. Likewise, some claimants who live near the boundary between two ACOs may be closer to the one that does not have ACO responsibility for the location where the claimant actually lives. Those claimants may also file their claim at the installation that is most convenient.

(2) *Overseas.* For personnel stationed at military installations outside the United States, claims should be filed at the

military claims office that serves their unit or installation. For claimants who are assigned to or work out of U.S. Embassies, the following rules apply:

(a) For embassies in Europe, the claims should go to this address— U.S. Army Claims Service Europe, ATTN: AEAJA-CD-PC, Unit #30010, Box 32, APO, AE 09166-0010, Germany. The Chief, USACSEUR, may designate a specific office within Europe that will actually adjudicate all such claims.

(b) Claims from personnel assigned to the Embassy in Japan should be submitted to the claims office at Camp Zama. For embassies in Burma, Singapore, Malaysia, Indonesia, Thailand, Laos, Cambodia, Vietnam, Philippines, Taiwan, Korea, and China, claims should be submitted to the following address: OJA, USFK (Claims), Unit 15322, APO AP 96205-0084.

(c) For all other embassies in Africa, South America, Central America, the Caribbean area, Central Asia, Southwest Asia, Australia, New Zealand, and the Pacific island nations, claims should be forwarded to: U.S. Army Claims Service, ATTN: JACS-PC, 4411 Llewellyn Ave., Fort Meade, MD 20755-5360.

## **Section II**

### **Evaluation, Adjudication, and Settlement of Claims**

#### **11-10. Policy**

a. *Purpose of claims program.* The personnel claims program is a morale program designed to assist Soldiers and civilian employees whose property has been lost or damaged incident to their service. To be effective, claims must be adjudicated fairly and promptly to maintain morale, prevent financial hardship, and ensure the integrity of the program. Claims approval and settlement authorities should manage this program to meet those objectives.

b. *Small claims procedures.* The small claims procedures are applicable to claims that request payment of \$500 or less and can be resolved without extensive investigation. These procedures should be used to the maximum extent feasible. When these procedures are used, every reasonable effort should be made to settle the claim within the shortest possible period, usually by the end of the next working day after the claim is filed. However, the small claims procedures should not be used when additional investigation is necessary to develop the facts required for an informed disposition of the claim regardless of the amount claimed.

c. *Transfer of claims.* The chiefs of command claims services may approve the transfer of a personnel claim between two offices within their area of responsibility. For all other cases, only the Commander, USARCS, or Chief, Personnel Claims and Recovery Division, USARCS may approve the transfer of a personnel claim.

d. *Communications with claimant.* When it is necessary to deny a claim or to allow a sum less than the amount claimed, the claimant must be informed, in writing, of the factual or legal basis for the decision. The file must reflect that this explanation was provided to the claimant.

#### **11-11. Preliminary findings required**

Prior to allowing or recommending compensation for the loss, damage, or destruction of property, the approval or settlement authority will make the following findings:

- a. The claimant is a proper party claimant.
- b. The evidence substantiates the fact of ownership or possession of the personal property involved and the fact of loss, damage, or destruction as alleged (see para 11-13, below).
- c. The loss, damage, or destruction of the property involved was sustained incident to the claimant's military service or employment.
- d. Possession of the type of property claimed and the amount claimed was reasonable or useful under the attendant circumstances.
- e. There is no bar to the allowance of compensation for the type of property involved, or for the type of loss, damage, or destruction providing the basis of the claim.
- f. The claimant has not been compensated or will not be compensated by a third party, such as a transportation contractor, that is legally responsible for the loss.
- g. The effect that insurance will have on the final settlement against the United States must be determined. The claimant will certify in block 11, DD Form 1842, whether he or she has insurance covering the loss. Currently, there is no requirement to file and settle with insurers on claims for loss and damage of property involved in any shipment or storage at Government expense. For all other losses, the claimant is required to file with private insurance before seeking compensation from the Government. The claimant should also certify in block 12 of the DD Form 1842 that he or she filed a claim against the insurer for the loss. Generally, the claimant is also required to settle with the insurer prior to settlement against the United States. This requirement may be waived for good cause in accordance with paragraph 11-21 of this chapter. If this is the case, the claim will be adjudicated as if the claimant had filed with his insurer and the claim had been paid by the insurer in full, less any applicable insurance deductible amount. (See also DA Pam 27-162, para 11-21, for more detailed instructions regarding insurance including calculating compensation on claims involving insurance.)

- (1) When a claimant refuses to provide information on private insurance coverage, and the claim is one for which a

claimant must first file against private insurance, the claims JA or claims attorney may assume, in the absence of evidence to the contrary, that the claimant had private insurance covering the entire loss, and deny the claim.

(2) If the face value of an applicable insurance policy is less than the total value of the loss (as determined by the insurer), or the itemization by the insurer does not indicate the amount actually paid for each item but only its determination of the adjudicated value of each item, settlement will be determined by dividing the policy limit or total amount paid by the total insurance valuation (for example, divide a \$50,000 policy limit by a \$100,000 loss). That fraction will be applied on an item-by-item basis to allocate the actual amount paid by the insurer for each item. This method of calculation will be used regardless of the method the insurer used to determine its payment. As an alternative on large claims, if the insurer merely pays the policy limits, the claims office may calculate the amount the Army would pay for all loss and damage, and then deduct the insurance payment from the total that the Army would have paid if there had been no private insurance coverage.

#### **11–12. Guides for computing amounts allowable**

*a.* On claims for losses incident to service processed under this chapter or chapter 12, periodically, the Commander, USARCS will publish an Allowance List-Depreciation Guide specifying rates of depreciation and maximum payments that apply to categories of property. The Allowance List-Depreciation Guide will be binding on all Army claims personnel. On claims for losses incident to service processed under this chapter or chapter 12, no payment will be made on an item or category of items in excess of the maximum payment in effect at the time the claim arose, unless a waiver is granted by proper authority as provided in paragraph 11–14*b*.

*b.* The Commander, USARCS will promulgate additional guides, references, and tables to assist in computing allowable compensation under this chapter. (See postings to the Claims Forum and notices posted on the USARCS Web site, both hosted on JAGCNet at <https://www.jagcnet.army.mil>.)

#### **11–13. Ownership or custody of property**

Compensation may be allowed even though the property was not in the actual possession of the claimant at the time of the damage or loss. Compensation may also be allowed even though the property was not owned by the claimant, provided it was lawfully under his or her dominion and control. However, compensation will not be allowed for damage or loss to personal property transported to accommodate another, other than the claimant's Family members, nor will compensation for damage or loss to a vehicle loaned to a claimant be allowed unless both the claimant and the owner are proper party claimants. A vehicle registered in the name of the claimant or a spouse is not deemed, as between them, to be loaned (see DA Pam 27–162, para 11–5*h*(5)). When a vehicle is subject to a lien, the vehicle is not deemed to be loaned merely because the title is in the name of the lien holder.

#### **11–14. Determination of compensation**

*a. Reasonable and useful.* A claim may be allowed only for the amount and quantity of personal property considered reasonable or useful for the claimant to have used or possessed under the attendant circumstances, incident to his or her service or employment. In determining the reasonableness or utility of types and quantities of property included in a claim cognizable under this chapter, an approval or settlement authority will give consideration to the claimant's living conditions, Family size, social obligations, and need to have more than average quantities, as well as the circumstances attending acquisition or possession of the property and the manner of damage or loss.

*b. Maximum allowable limits.* The maximum amounts allowable for specific types and categories of personal property listed in the Allowance List-Depreciation Guide constitute a determination of amounts or quantities that are usually reasonable or useful. To avoid application of these maximum allowances, a Soldier or civilian employee may obtain additional protection on shipments by requesting increased value protection (option 1), or full replacement protection (option 2). The Commander, USARCS; the Chief, Personnel Claims and Recovery Division, USARCS; or the head of an ACO may waive the maximum in a particular case for good cause and must personally certify this by including a memorandum in the claim file. The memorandum will state the facts relied upon which constituted good cause to waive the maximum allowable amount. This authority is non-delegable and must be exercised personally. The mere fact that application of the maximum allowable limits will result in a significant financial loss to the claimant is not, by itself, good cause for waiver. The following are examples of good cause that may justify a waiver:

(1) The claim would also be payable under the Military Claims Act, as implemented by chapter 3, AR 27–20, which does not have a maximum allowable limit.

(2) In claims for loss or damage to goods in transit or storage, the claimant can prove by clear and convincing evidence that the transportation counselors at origin did not provide any verbal or written notice (for example, DA Pam 55–2, "It's Your Move" pamphlet) of the limits; the claimant had never received such information in any prior counseling; and the claimant had never filed a claim in which a limit was applied.

(3) The evidence confirms that the claimant requested increased protection (option 1 or option 2) on the shipment, but the transportation office failed to arrange for the higher level of coverage with the carrier.

(4) On claims for loss or damage to goods in DOD shipment or storage, the carrier's liability is sufficient to pay the full value, and the evidence makes recovery likely.

*c. Determining base value.* Compensation allowable for an item of personal property will not exceed the actual

value of the item at the time of its loss, damage, or destruction. Guidance on determining the base figure for actual value, using replacement costs, estimates, or the Table of Adjusted Dollar Value (posted on the USARCS Web site at “Claims Resources,” III, no. 4) is in DA Pam 27–162. Soldiers are permitted to replace items missing or destroyed during permanent change of station moves by ordering from the Overseas Post Exchange Catalog, even when ordering from this catalog is not otherwise permitted. Therefore, such items may be valued using this catalog.

*d. Depreciation.* Standard yearly rates of depreciation have been established for the types and categories of items that have generally recognized periods of useful life. Standard flat rates of depreciation have been established for certain kinds of items that decrease in value primarily because they are no longer new and unused, but which do not continue to depreciate on a yearly basis because they are not subject to fixed periods of useful life (see Allowance List-Depreciation Guide, posted on the USARCS Web site at “Claims Resources,” III, no. 1). However, if inspection of damaged property indicates that it was in better than average condition prior to damage, a lesser rate of depreciation should be applied. Similarly, if the evidence indicates that an item was in poor condition at time of damage, a higher rate of depreciation is appropriate. Variations from the established rates of depreciation will be fully explained. The following rules are to be observed in computing the depreciation applicable to any item:

(1) Normally goods do not depreciate during periods of storage at the same rate as goods that are in everyday use. However, this does not mean that deductions cannot be taken for other reasons, such as a reduction in the market value of an item because of changes in style or obsolescence. Depreciation rates for goods in storage will be established by the Commander, USARCS. (See the Non-Temporary Storage Depreciation Guide, posted on the USARCS Web site at “Claims Resources,” III, no. 3.)

(2) Do not depreciate an item that is less than 6 months old (including an item subject to flat rate depreciation) except clothing and other rapidly depreciating articles that may be subject to considerable use in such a short period of time. Calculate yearly depreciation from the date an item is originally acquired to either the date of pickup (for shipment or storage claims), or to the date the property was lost or damaged (for other personnel claims). If the claimant acquired a used item, the claimant should use either the date the original owner acquired the item and the original purchase price, or the claimant’s purchase price and date he or she purchased the item. Compute yearly depreciation in accordance with the Allowance List-Depreciation Guide (posted on the USARCS Web site at “Claims Resources,” III, no. 1).

(3) No item will be depreciated by more than 75 percent.

(4) No depreciation is charged against genuine antiques, objects of art, and collector’s items, except for repair of portions thereof, such as upholstery, which requires periodic replacement or repair.

*e. Valuing items damaged beyond economic repair.* Compensation normally allowed for an item damaged beyond economic repair is the actual value at the time of destruction. However, if an item has not been totally destroyed and any part remains useful or has a salvage value, and that part is to be retained by the claimant, the allowance will be the value at time of destruction less the ascertained value of the salvageable part. If the claimant does not wish to retain any salvageable part of a destroyed item, he or she may be allowed the actual value at the time of the destruction with no deduction for salvage value, provided the claimant holds the item for turn-in to the carrier, if the carrier is liable for the damage and entitled to salvage. If a carrier is not liable for the damage or entitled to salvage the item, the claimant may be required to turn over the item to a Defense Reutilization and Marketing Office (DRMO) facility if one is reasonably available, or to the claims office for disposition (see DA Pam 27–162, para 11–14I). If the CJA or claims attorney determines that salvageable items are valued at \$25.00 or less, he or she may advise the claimant to dispose of them other than by turn-in, and this decision will be noted on the chronology sheet.

*f. Salvage to carriers.* On almost all claims for loss or damage to property in transit or storage where the goods are delivered in the United States, the carrier or warehouse is liable at a rate of at least \$1.25 times the weight of the shipment and is, therefore, entitled to salvage if it pays the full value of an item. In overseas locations, carriers are generally not entitled to salvage. On most claims, direct procurement method (DPM) carriers are not entitled to salvage on claims arising from DPM shipments because the origin and delivery contractors are liable at a rate of only \$.60 per pound times the weight of the item. Review the memorandum of understanding (MOU) between the military and industry on “The Salvage Rights of the Carrier” (posted on the USARCS Web site at “Claims Resources,” III, no. 42) prior to making a decision on reducing a payment by the salvage value, or telling a claimant that he or she can dispose of the items.

*g. Recalculations.* If, after payment of a claim, an approving or settlement authority discovers that the payment was erroneous because the claimant misrepresented the quality, quantity, age, condition, replacement or repair cost of items, or misrepresented other facts necessary to the adjudication of the claim, the approval or settlement authority may recalculate the amount allowed and arrange for recoupment of the erroneous amount paid. The head of an ACO or higher claims authority may also initiate action to recoup payments made to a claimant under this chapter, if information establishes that the claimant has been compensated for the same items by both the Army and by a private insurer or by another third party, such as a carrier or warehouse. However, this procedure should be used sparingly, with doubts resolved in favor of the claimant. The procedure is independent of any other action taken against the claimant (see para 11–37).

*h. Rounding figures.* In determining allowable amounts, cents will be rounded off to the nearest whole dollar on

each line item. Drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. Thus, \$1.49 becomes \$1.00, and \$2.50 becomes \$3.00.

### **11–15. Payable incidental expenses**

*a. Expenses incident to repair or replacement.* In addition to actual value, the cost of obtaining estimates of repair necessary to substantiate amounts claimed for damaged property may be considered, provided the action of the claimant in contracting for the estimates appears reasonable under the circumstances or was specifically directed by the approval or settlement authority. However, when the cost of an estimate can be applied toward the bill due upon completion of repairs, the cost of the estimate will not be allowed, whether or not the claimant chooses to have the repair done. The reasonable cost of supplies/developing for damage photographs is also authorized for reimbursement.

*b. Replacement of certain documents.* The fee charged for replacing certain necessary documents such as marriage licenses, driver's licenses, passports, or birth certificates may be allowed when these documents are lost or destroyed.

*c. Sales tax and drayage.* Sales tax, value added tax relief forms, drayage, towing charges, and postage or handling charges to mail a replacement item or part, can be allowed up to \$50 per claim prior to the actual cost being incurred. However, payment in excess of \$50 will require the claimant to substantiate that the cost has been incurred. The \$50 limit is per claim, not per item and includes all of the charges listed above. The cost of obtaining value added tax relief forms to be used for damage/loss replacement purchases is also reimbursable.

### **11–16. Property recovered**

*a. Before approval.* Do not pay claims for missing property if the missing property is located before payment of the claim is approved. As an exception to this rule, compensation may be allowed for necessary items that were missing for an unreasonable time after the required delivery date and were replaced by claimant prior to the items being located. In determining what constitutes an unreasonable time, the necessity of the item for operation of the household, care of Family members, or performance of official duties should be considered. If compensation is allowed under the above exception, the claimant will disclaim, in writing, further interest and ownership in such items in accordance with paragraph *b(2)*, below.

*b. After approval.* If missing property is located after the claim is approved for payment, the claimant will normally be advised of his or her option to—

- (1) Accept any or all of the items located, and remit the amount already allowed for such items to the United States.
  - (2) Disclaim in writing further interest and ownership in the property, and retain the amount approved for payment.
- If, however, the approval or settlement authority determines that any of the recovered property is substantially different in quality, price, or value from the property claimed, the approval or settlement authority may require the claimant to return the amount allowed for such property and accept the property.

### **11–17. Companion claims**

When two or more claims that arose from the same incident are, by reason of differences in amounts, within the jurisdiction of different approval or settlement authorities, action will be withheld on these claims until the authority having jurisdiction over the largest claim has determined that the claims arising out of the incident are payable.

### **11–18. Emergency partial payments**

*a.* Frequently a claimant is in immediate need of funds to replace essential items that have been damaged or destroyed. An emergency partial payment up to \$5,000 is authorized under the following circumstances:

(1) A hardship situation exists that can be alleviated by providing immediate funds for the repair or replacement of certain property lost or damaged.

(2) A claim has been presented.

(3) The approval or settlement authority determines that the claim is clearly payable under this chapter, in an amount exceeding the amount of the proposed emergency payment.

*b.* The approval or settlement authority may approve an emergency partial payment on any claim that meets the above criteria, even if the adjudicated amount of the entire claim is likely to exceed the approval or settlement authority's delegated monetary authority. Emergency payments are to be considered part of the total amount that the paying office is authorized to award.

*c.* Prior to making any emergency payment, the authority approving such payment normally will obtain an executed partial acceptance agreement from the claimant or his or her representative. Only the Commander or Chief, Personnel Claims and Recovery Division, USARCS, or his or her designee, can authorize emergency partial payments above \$5,000. The authority requesting an emergency partial payment above \$5,000 may coordinate by telephone or e-mail with USARCS.

### **11–19. Personnel claims memorandum**

A personnel claims memorandum of opinion will be included in the file of each personnel claim in which an increase over the maximum allowable limit in the ALDG is approved; on each claim forwarded to a higher authority for

adjudication, disapproval, or reconsideration; on each claim forwarded for action on a request for equitable tolling of the 2-year filing limit, and on each claim forwarded with a recommendation that there be a deviation from established policy. A personnel claims memorandum of opinion will be signed by the CJA or claims attorney. It will be routed through any intervening settlement authority, addressed to the settlement authority who will take final action (for example: denial would be addressed to the staff judge advocate of an ACO, and a reconsideration that cannot be acted on by the head of an ACO would generally be addressed to the Commander, USARCS). The memorandum will be sufficiently detailed to explain fully and support the action taken or recommended.

## **11–20. Reconsideration**

A claimant has 60 days from the settlement date of the claim to request reconsideration. The head of an ACO or higher claims authority may waive this time period in exceptional cases. The claimant will receive written notification of this time limit as part of the notice of action on the claim. A claim will be reconsidered under the conditions listed below. Reconsiderations normally require additional investigation and review. This additional information will be documented in the file. An approval or settlement authority—

*a.* May always reconsider his or her action if the original action was in error or is incorrect on the basis of new facts. This may be pursuant to either a claimant’s oral request for reconsideration or as the result of a post-settlement review conducted on the claims file. Note that while the original approving or settlement authority may consider a claimant’s “oral” request for reconsideration, claims personnel should advise claimants that a higher settlement authority will not act on an oral request until the claimant presents it in writing in accordance with paragraph *b*. The basis for any change will be clearly reflected in the file by additional documentation or by explanation on the chronology sheet.

*b.* Must reconsider a claim upon the written request (or request in authorized electronic form) of the claimant or someone acting on his or her behalf (see paras 11–4*a*(7) and 11–4*a*(8)). The claimant must clearly state the factual or legal basis for relief. The reconsideration process must be considered not as an adversarial process, but rather as an opportunity for the approval or settlement authority to continue a dialogue with the claimant. Every effort should be made to develop the claimant’s version of the facts. A claim will be reconsidered even if a settlement agreement has been executed.

(1) The original approval or settlement authority will modify the original action if he or she determines that the original action was incorrect, or is incorrect based on new evidence. The basis for any change will be clearly reflected in the file by additional documentation or by explanation on the chronology sheet.

(2) A successor or higher approval or settlement authority will only modify the original action on the basis of fraud, substantial new evidence, mistake (misinterpretation) of law or regulation, or an error in calculation. The basis for any change will clearly be reflected in the file by additional documentation or by explanation on the chronology sheet.

(3) If the approval or settlement authority cannot take final action on the request (see para *c*, below), he or she will issue any offered payment and will forward the claim through any intervening approval or settlement authorities to the official authorized to take final action on the request.

*c.* May take final action on a request for reconsideration if the action taken on reconsideration results in the acceptance by the claimant as full relief on the claim.

*d.* May take final action on a request for reconsideration if they are the head of an ACO or higher settlement authority, and—

- (1) The reconsideration request does not contain new facts or legal basis for requesting reconsideration; or
- (2) There was no timely request for reconsideration and no exceptional circumstances are present; or
- (3) The total amount in dispute after the settlement or approval authority has acted on the request for reconsideration does not exceed \$1,000.

*e.* Will forward to USARCS for action a request for reconsideration that does not meet any of the criteria in paragraphs *c* or *d*, or—

(1) Involves a claim on which the head of an ACO or higher settlement authority has personally acted, where that individual believes the request for reconsideration should be denied; or

(2) Involves a question of policy or practice that the head of an ACO or higher settlement authority believes is appropriate for resolution by USARCS; or

(3) An amount in excess of \$1,000 is still in dispute.

*f.* As an exception, the Chief, USACSEUR, or FJKA-CL, USAFCS–K, may take final action on any reconsideration request forwarded there by a subordinate office. A complete copy of the final action must be in the file.

*g.* The authority to take final action on reconsideration requests is personal to the settlement or approval authority and may not be delegated.

*h.* Prior to forwarding a request for reconsideration, the settlement or approval authority must notify the claimant, in writing, of the action he or she has taken.

## **11–21. Claims judge advocate/claims attorney responsibilities**

*a. Reductions for inaction.* Timely notice of loss or damage after delivery of goods from DOD-funded storage or

transportation is essential to prove that the goods were lost or damaged while in the custody of the carrier or warehouse. Timely notice creates an evidentiary presumption that the loss or damage was incident to service and that a third party is legally liable for all or part of the claim.

(1) The CJA/claims attorney will ensure that a claim for loss or damage to goods in DOD-funded transit or storage is supported by timely written notice of the loss or damage before payment is approved. If the member fails to provide timely written notice to either the Army or the carrier/warehouse that an item was lost or damaged, payment for that item should be denied unless the evidence proves that the Government or the carrier received actual notice of the loss or damage from some other source.

(2) The CJA/claims attorney will ensure that, when a demand on a carrier or warehouse is required, and the claimant's failure, absent good cause, to provide notice or perform other required actions materially prejudices effective recovery action with respect to all or part of the loss, the amount otherwise allowable under this chapter will be reduced by the amount of the anticipated recovery so affected on an item-by-item basis.

(3) When a claimant fails to provide timely notice to perfect a claim against his or her private insurer, absent good cause, the claim will be denied if the claim is one that requires a demand against private insurance before a claim can be made under the PCA. In determining whether a claimant has good cause for failing to provide timely notice to a private insurer, the CJA or claims attorney will, in addition to the considerations in paragraph (4), below, determine whether the claimant (or agent) willfully did not provide notice to his insurance carrier (see para 11-11g for policy when a claimant refuses to provide information concerning private insurance). A claimant will be presumed to have knowledge of the terms and conditions of his or her insurance contract.

(4) When a claimant fails to provide timely notice to a carrier, warehouse firm, or private insurer, settlement and approval authorities may waive reduction action for good cause only if one of the following circumstances directly contributed to the claimant's failure to give timely notice:

(a) Officially recognized absence (for example: TDY or off-post training exercises) resulting in claimant's absence from official duty station for a significant portion of the notice period.

(b) Hospitalization of claimant for a significant portion of the notice period.

(c) Substantiated misinformation concerning notice requirements given to the claimant by Government personnel.

(5) Requests for good cause waivers under circumstances other than those in paragraph (4), above, may be granted only by the Commander, USARCS or Chief, Personnel Claims and Recovery Division, USARCS, or designee. Such requests should be forwarded by e-mail to USARCS before taking action on the claim, and a copy of the e-mail messages that give the facts and the final decision must be included in the file.

(6) Prior to denying payment for an item because the claimant failed to give timely notice or failed to file a timely claim with his or her private insurer, the CJA or claims attorney will ensure the claimant is provided an opportunity to explain the circumstances of his or her failure to take appropriate action. The claim file must include a statement that the claimant was afforded this opportunity and must provide the result. The chronology sheet or a memorandum for record in the file will contain an explanation of the CJA or claims attorney's decision regarding reduction or the lack thereof.

*b. Information and assistance to claimants.* Claims personnel will—

(1) Furnish the necessary claims forms (DD Form 1842 and DD Form 1844) (sample completed forms posted on the USARCS Web site at "Claims Resources," III) to any individual who indicates, in person, by letter, or by e-mail that he or she desires to be compensated for loss or damage to personal property incident to service.

(2) Furnish instructions and advice as to the evidence required to substantiate the claim, assist in the completion of claim forms, and help with the procurement of evidence in support of the loss and the amount claimed.

(3) Assure that the description of the items and the damage shown on DD Form 1844 are sufficiently detailed to permit verification of the purchase price and replacement price or repair cost of the item claimed.

(4) Inform a claimant of the 2-year limit within which a claim must be filed in order to be considered. Ensure that oral and written instructions make clear the difference between what is needed to meet the filing deadline and what is needed to substantiate a claim. Instructions must state that all a claimant needs to meet the 2-year deadline is to submit a written demand for payment, signed by the claimant or authorized electronic demand, and that the demand does not need to state a specific amount.

(5) Inform all claimants that, on all claims other than those that arise from the shipment or storage of personal property at Government expense or in a Government facility, they must file and settle with their private insurance companies, before the CJA or claims attorney will approve a claim for payment under this chapter. Claimants who state they have no insurance will be asked to certify that fact by checking the appropriate block (currently block 11) on the DD Form 1842. If a claim is filed with a private insurer, the claimant will be required to submit proof of final action by the insurer. A CJA or claims attorney may decide to approve a claim for payment under this chapter without a claimant first settling with his or her insurance company in cases where an insurance company improperly refuses to pay a claim, or the CJA or claims attorney is provided with a copy of the insurance policy, can determine if there is an insurance deductible amount, and can adjudicate the claim as if paid in full by the insurer less the deductible amount.

(6) Advise a claimant to notify the CJA or claims attorney of any offer of settlement or denial of liability by any



third party, and to secure the CJA or claims attorney's written consent before executing a release or acceptance of any such offer.

(7) Take an active and continuing role in publicizing claims information to Soldiers and their families.

(8) Inform all claimants of the action taken on their claim, and inform in writing those whose claim has been denied in part or in full of their reconsideration rights and applicable time limits.

*c. Other actions.* The CJA or claims attorney will ensure that—

(1) One copy of the DD Form 1840R (a sample completed form has been posted on the USARCS Web site at "Claims Resources," III, no. 14) or other form giving notice of damage after delivery is dispatched to the appropriate third party within 75 days of delivery of goods; another copy is dispatched to the destination transportation office; and a signed and dated copy is maintained in the claims office and incorporated into any claim filed.

(2) The servicing transportation office is asked to inspect damaged property in appropriate cases. If the transportation office cannot do an inspection, then claims office personnel should conduct it in appropriate cases (for example: large claims, a reconsideration, suspected fraudulent claim, dispute with claimant over amount of preexisting damage (PED) or depreciation taken, or need for reupholstering an item) and record the results in the file.

(3) The DD Form 1844 is completed (amount allowed column, remarks column, and where appropriate, either or both columns for exceptions) prior to settling the claim.

(4) All documents written in a foreign language are translated into English, either verbatim or in summarized form.

(5) A request to DFAS–Indianapolis is prepared seeking return of unearned freight charges for property that carriers lose or irreparably damage, but only if the actual weight of the lost or destroyed item was greater than 42 pounds on an international shipment, or greater than 100 pounds on a domestic shipment. In estimating weight, the actual weight of the item will be used, not the agreed weight in the Joint Table of Weights.

(6) A claims office representative will periodically attend local transportation office outbound briefings to ensure that appropriate information is disseminated to Soldiers, and that copies of the Counseling Checklist that is required as an attachment to DD Form 1797 (Personal Property Counseling Checklist) (the attachment is posted on the USARCS Web site at "Claims Resources," III, no. 12) are provided to all transportation offices in the ACOs area of responsibility for use in outbound counseling.

(7) Disbursements of funds are issued using DA Form 7501 (Personnel Claims Payment Report), (a sample completed form is posted on the USARCS Web site at "Claims Resources," III, no. 6), which is generated by the Personnel Claims Management System. When that form is not accepted by local finance offices, another form, such as the SF 1034 (example completed form posted to JAGCnet, Claims Intranet, at "Government Use Only" documents), can be used in lieu of the DA Form 7501.

*d. Financial.* The CJA or claims attorney will properly manage claims funds in accordance with the provisions of paragraph 13–6 of this publication. In addition, the CJA or claims attorney will ensure that all recovery checks are secured in a locked container immediately upon receipt at the claims office, that only copies of checks are placed in claims files, and that all checks are either deposited or returned to the issuer within 30 days of receipt. If a check is received in payment of a claim that has already been forwarded to USARCS, USARCS should be contacted by phone or e-mail and disposition instructions should be requested.

## **11–22. Finality of settlement**

The settlement of a claim is final and conclusive for all purposes (31 U.S.C. § 3721(k)), unless the claimant makes a timely request for reconsideration under the provisions of paragraph 11–20. Action by the appropriate authority on a reconsideration request is final and conclusive for all purposes.

## **Section III**

### **Recovery from Third Parties**

#### **11–23. Scope**

*a.* The Army Carrier Recovery Program involves supervising and pursuing administrative settlements of all claims in favor of the Government against third parties arising from claims settled under the preceding sections of this chapter. The program includes making and issuing policies, procedures, and instructions pertaining to recovery action.

*b.* The authorities for pursuing recovery action against third parties are the Federal Claims Collection Act, 31 U.S.C. §§ 3711–3720E, the Contracts Disputes Act, 41 U.S.C. §§ 601–613, the Federal Acquisition Regulation's (FAR) disputes provisions. (See particularly FAR 33.201; FAR 33.215, FAR 52.233–1), the Defense Federal Acquisition Regulations Supplement, and the Federal Claims Collection Standards, 31 C.F.R. Parts 900–904.)

*c.* The term "third parties," as used in this section, refers to all types of contractors, household goods carriers, freight forwarders, freight carriers, warehouses, and their insurers. It also includes passenger carriers, such as airlines and bus companies.

## 11–24. Duties and responsibilities

*a.* Field claims approval and settlement authorities are responsible for local implementation of the Army Carrier Recovery Program and will ensure that—

- (1) Timely notice of loss or damage is provided to third parties.
  - (2) Claims are processed expeditiously so that time limitations specified in this regulation for pursuing recovery demands are met, particularly the 6–year limit on Government contract claims set forth in 28 U.S.C. § 2415(a). In overseas areas, time limits relevant to disputes and claims arising from locally procured tenders and contracts will be observed.
  - (3) Servicing transportation offices provide supporting documentation and perform necessary inspections in a timely manner. Claims personnel will inspect if transportation personnel are unavailable (see para 11–21c(2)).
  - (4) The claim file or record includes complete, legible documentation needed to support recovery action, including a copy of the itemized settlement breakdown prepared by the claimant’s insurer, when appropriate.
  - (5) Third-party liability is correctly calculated, and is reflected on DD Form 1844. This should be done at the same time that payment to the claimant is calculated.
  - (6) Written demands for reimbursement are prepared against appropriate third parties, and demands on local recovery actions are dispatched no more than 7 days after approval of the payment to the claimant. If no demand is prepared because liability will not be pursued, claims personnel will explain the basis for this on the claims chronology sheet or record and enter the appropriate closure code in the automated database.
  - (7) Recovery files forwarded for centralized recovery to USARCS must include a demand packet and must have the appropriate forwarding codes (FR or FM) entered in the electronic record. Files created in the old database must be held for 30 days or until the data is uploaded to the USARCS database (whichever comes first). Additionally, a floppy disk must accompany files created in the old database being transferred to a command claims service for recovery (for example, files with FE or FA transfer codes). Uploads and data transfers are not required for claims created in the Personnel Claims Management System (PCMS) and paper files can be forwarded within 7 days of verification of payment of the claimant.
  - (8) The requirement for inclusion of a demand packet may be waived by USARCS or the appropriate overseas CCS. In exceptional cases, forwarding of a recovery claim or dispatch of a local demand may be delayed if the CJA or claims attorney determines that it is more likely than not that a request for reconsideration will be submitted. However, under no circumstances should all recovery claims be held until the 60–day time limit for requesting reconsideration is passed.
  - (9) Unearned freight letters are prepared when required and are either included in files forwarded for centralized recovery or are dispatched locally after settlement with the carrier.
  - (10) Settlement offers from third parties are accepted or rejected within 30 days of receipt. If a carrier responds to a demand within 90 days of receipt of the demand, and the carrier’s offer is rejected, the carrier must be given a written explanation for our action before the claim is sent for collection by administrative offset.
  - (11) Checks received are kept in a locked container in accordance with financial management regulations and are hand-carried or mailed to the servicing Defense Accounting Office (DAO) or deposited in a local bank account for transfer to Defense Finance and Accounting Service (DFAS) within 3 working days of acceptance. Checks will be accepted, or rejected and returned to the third party, within 30 days of receipt.
  - (12) Under the terms of most contracts, carriers have up to 120 days after receipt of a demand to pay, deny, or make a final written offer. Claims files for which a third party fails to satisfy its liability within 130 days of dispatch of a demand will be forwarded to USARCS or to a contracting officer for offset, as appropriate. (The extra 10 days are to allow for the time the demand and any response are in the mail.) Files should be forwarded for offset within 7 days of rejection of the contractor’s final offer or within 7 days of the end of the 130 day period. Carriers attempting to settle a claim may be granted an extension beyond the normal 120 day deadline in order to complete negotiations and payment. However, such extensions should not exceed more than 45 days except in very unusual circumstances.
  - (13) Demand packets, consisting of a completed DD Form 1843 (Demand on Carrier/Contractor) with copies of supporting documents, are included for all claim files forwarded to USARCS due to incidents of bankruptcy, or for centralized recovery.
  - (14) Unless the field office denied the entire claim, demand packets are included in all claim files forwarded to USARCS for reconsideration that involve potential recovery.
- b.* The Commander, USARCS is responsible for the general administration of the Army Carrier Recovery Program and for the Army Centralized Recovery Program. The Commander, USARCS will ensure that field claims offices comply with paragraph *a*, above, and will also ensure that—
- (1) Demands for reimbursement received for centralized recovery are reviewed for correctness and dispatched within 7 days of receipt.
  - (2) Within 30 days of receipt, all checks are matched to files and are either accepted or rejected and returned to the third party. If accepted, all checks will be deposited in a local bank account for transfer to DFAS or will be transferred directly to DFAS within 3 working days of acceptance. All checks are kept in a locked cabinet in accordance with financial management regulations.

- (3) Unearned freight letters are dispatched to DFAS after settlement with the carrier, if appropriate.
- (4) Offset action, or other collection action, as appropriate, is initiated against any carrier or other third party that fails to satisfy its liability.
- (5) Field claims offices are promptly notified that a third party has filed for bankruptcy so that the field claims offices can cease all collection actions and forward all files involving the bankrupt third party to USARCS as soon as possible.
- (6) Records are maintained of carriers and NTS contractors who frequently fail to respond to demands within the period specified in the contract (usually 120 days). Records will also be kept of unusual incidents that occur in NTS warehouses or during transportation of household goods, in order to alert the appropriate contract officer of possible breaches of the contractor's obligations.

c. The Chief, USACSEUR and the FKJA-CL, USAFCS-K will—

(1) Assume the responsibilities outlined in paragraphs *b*(1) through (5), above, on claims forwarded for European or Korean centralized recovery, except that claims requiring collection by offset, other than local DPM offset actions, will be forwarded to USARCS.

(2) Review each privately owned vehicle (POV) shipment file forwarded for recovery for potential liability and assert a demand, if appropriate, or forward the file to USARCS within 30 days of receipt. If negotiations with a POV contractor result in an impasse, promptly forward the file for offset to USARCS.

d. Army claims offices in Korea (USAFCS-K), Okinawa, and Japan will forward all recovery actions to the following address in accordance with procedures established by the chief of that service: OJA, USFK (Claims), Unit 15322, APO AP 96205-0084.

e. Army claims offices in Europe will forward all POV recovery claims, all unaccompanied baggage recovery claims, and all recovery claims arising out of intra-theater, local, or DPM moves, to the following address and comply with USACSEUR guidance on procedures for forwarding such claims: U.S. Army Claims Service Europe, ATTN: AEAJA-CD-PC-R, Unit 30010, Box 30, APO AE 09166-0010, Germany. All recovery claims arising from international through Government bill of lading (GBL) shipments of household goods will be forwarded to USARCS for recovery.

### **11-25. Determination of liability**

A prima facie case of liability against a third party (for example: freight forwarder or warehouse) is established when evidence shows tender (delivery) of an item to the third party, return of the items with new damage or loss of the item, and the amount of damage or loss. (See the discussion of these concepts at DA Pam 27-162, para 11-25.)

### **11-26. Exclusions of liability**

The third party is not always held responsible even though a prima facie case is established. A warehouse, carrier, or freight forwarder is not liable for loss or damage that is due solely to an act of God, inherent vice of the article, acts of a public enemy, acts of the shipper, or acts of a public authority. A third party has the burden of proving that loss or damage was caused by one of the excepted conditions that relieves it of liability. This burden includes proving that negligence by the agents of the carrier, forwarder, or warehouse did not contribute to the loss. Third parties involved in the transportation or storage of goods are not liable for the following:

- a. Infestations by mollusks, arachnids, crustaceans, parasites, or other types of pests, fumigation, or decontamination when not the fault of the third party.
- b. Pre-existing damage indicated on the inventory.
- c. Loss or damage that occurred while the shipment was in the custody and/or control of the Government.
- d. Loss or damage to any item for which timely notice has not been provided to the third party.
- e. Any loss or damage not presented to the third party within the 6-year SOL for filing claims arising out of a Government contract.

### **11-27. Contractual limits on maximum liability of third parties**

a. *General.* In order to obtain economical rates, the domestic and international rate solicitations and most direct procurement method (DPM) contracts contain a provision limiting the third party's maximum liability. If this liability is expressed as an amount times the weight of the shipment, the weight used is normally the net weight listed on the bill of lading (BL) or GBL. Gross weight is used on baggage shipments (codes 7, 8, and J). If the liability is expressed as an amount times the weight of an article, the weight listed for that article in the Joint Military-Industry Table of Weights (posted on the USARCS Web site at "Claims Resources," III, no. 43) will be used to determine the maximum liability. If an article is shipped in a carton, the weight of the carton is the weight of that article. Each piece or package shipped constitutes one article. Any article/item taken apart or "knocked down" for handling constitutes one article. Individual article weights are listed in the Joint Military-Industry Table of Weights.

b. *Carriers.*

(1) Liability on GBLs (codes 1 through 6 and T) for household goods shipments currently is \$1.25 times the weight of the shipment in pounds (see the list with explanations "GBL Service Codes," posted on the USARCS Web site at

“Claims Resources,” III, no. 26). A domestic through-bill-of lading carrier may be liable for a higher amount per pound of the shipment if the owner purchased coverage for a higher released valuation under option 1. A domestic through-bill-of- lading carrier may be liable for the current replacement cost of items, without application of depreciation, if the owner purchased replacement cost protection (RCP), also known as “full replacement protection,” or option 2 coverage. (See DA Pam 27–162, para 11–27, for details.)

(2) Carrier liability on some international through-GBL shipments (for example, codes of service 5, T and J) may be shared with the Government, because the goods are carried in Government vessels or aircraft for part of the movement. Where the evidence does not clearly establish whether the carrier or the Government had custody of the property at the time of the loss or damage, the carrier will only be liable for 50 percent of the loss, not to exceed its maximum liability based on the weight of the shipment, if the carrier agrees to pay that amount without any objection. (See para 11–26b(3) and the Joint Military-Industry Agreement (posted on the USARCS Web site at “Claims Resources,” III, no. 40) at Code 5, Code T, and Code J Shipments.)

(3) Under the direct procurement method (DPM) of contracting, the goods may be transported part of the way by a freight carrier, not as household goods but as miscellaneous freight. The maximum liability of international air carriers, of international ocean carriers and of domestic freight carriers on this type of household goods shipment is generally stated on the bill of lading, in the contract, or in a rate solicitation. Excess valuation (Option 1 coverage) or full replacement cost protection (Option 2 coverage) is not available on such shipments.

(4) Liability of commercial airlines for loss of or damage to luggage is stated on the passenger’s ticket.

(5) Liability for intra-theater shipments in Europe and Korea depends on the contracts that are in effect at the time of the shipment (see DA Pam 27–162, para 11–32g).

*c. Nontemporary storage contractors.* The contract for nontemporary storage of household goods is the Basic Ordering Agreement for Storage of Personal Property and Related Services, Appendix J, DOD 4500.9–R, Defense Transportation Regulation, Part IV, Personal Property. Under this agreement, an NTS contractor is liable for a maximum of \$50 per inventory line item, for storage booked before 1 January 1997. (An exception to the limit of \$50 per item applies to large wall units known as schranks. Regardless of the way a schrank is listed on the inventory, only one charge of \$50 can be applied when liability is calculated.) For storage booked after 1 January 1997 liability is \$1.25 times the weight of the shipment. The contractor may be liable to the full extent of the declared value if the owner purchased an insurance policy from the warehouse firm. Goods may be delivered out of storage either by the warehouse company that was storing the goods or by another household goods carrier. Delivery by another carrier may be under either a bill of lading, or under a DPM contract. No liability can be pursued against the NTS contractor when goods are delivered out of storage by another household goods carrier unless an exception sheet was prepared by the carrier showing any differences as to shortages or overages or the condition of items. The exception sheet must be signed and dated by a representative of the warehouse and a representative of the delivery carrier to be valid.

*d. DPM contractors.* Under the DPM method, the contracts, under which personal property shipping offices (PPSO) and transportation offices order services, have three items on their Schedule of Supplies and Services. In the typical contract, Schedule I services are for outbound services, to include packing, containerization, and drayage of the goods to a freight terminal. Schedule II services are inbound services including drayage from a freight terminal, delivery, unpacking, and removal of packing materials. Schedule III services are for local or regional moves in which a single contractor packs, transports and delivers the goods. Currently, a local contractor operating under Schedule I or II is usually liable for loss or damage in the amount of 60 cents per pound times the weight per article as stated in the liability clause of the contract for non-negligent damage. However, if the evidence proves that the loss is the result of negligence by the contractor, its liability for such damage is the full cost of satisfactory repair or for the current depreciated replacement value of the item. Currently, schedule III shipment liability is a maximum of \$1.25 per pound times the net weight of the shipment. (See DFARS para 252.247–7016, Contractor Liability for Loss or Damage, which is required by 48 C.F.R. § 247.271.)

*e. Mobile home carriers.* Liability is governed by the bill of lading, and Domestic Mobile Home/Boat Rate Solicitation that is periodically issued by the Surface Deployment and Distribution Command (SDDC). The rate solicitation can be accessed at <http://www.sddc.army.mil/>. Liability generally is the full cost of repairs for damage incurred during transit. In addition to the exclusions listed in paragraph 11–26, a mobile home carrier is excused from liability when the carrier has introduced substantial proof that a latent structural defect (one not detectable during the carrier’s preliminary inspection) caused the loss or damage.

## **11–28. Settlement procedures in recovery actions**

*a. Offers of settlement.* Any offer of settlement or payment from a third party should be carefully examined giving due regard to all relevant facts, contract provisions, and applicable memoranda of understanding. When such consideration shows the offer or payment to be appropriate, it may be accepted. When the offer or payment does not appear appropriate, further correspondence should be initiated with the third party to clarify the issues if it appears that this will result in a settlement. Any Army claims office that rejects a third party’s offer must advise the carrier or its representative in writing of the reason for the rejection, if the carrier or its representative sent its offer within 90 days of receipt of the Army’s offer.

*b. Prior acceptance of settlement by owner.* DA is not bound by the owner’s acceptance of a settlement from a third

party where the acceptance was procured through fraud, duress, collusion, mistake of fact, or misrepresentation. In such circumstances, when a claim is filed, all correspondence with the third party must be included in the file, and further recovery action should be taken where the prior settlement is inadequate.

*c. Establishment of timely notice.*

(1) *Handled by one third party only.* Where one third party had responsibility for a personal property shipment from pickup to delivery, written exceptions on DD Form 1840 are evidence that items in the shipment were lost or damaged while in the custody of the carrier. However, a delivery receipt (DD Form 1840) with no damage indicated is only prima facie evidence of a good delivery and may be rebutted by submission of DD Form 1840R, listing all later discovered loss or damage, or by other written notice to the claims office or carrier within 75 days of delivery that items are lost or damaged. The DD Form 1840R or other notice must be dispatched to the appropriate third party within 75 days of delivery; the date of dispatch is the controlling date. However, the normal 75-day limit for reporting additional damage on DD Form 1840R may be extended by the claimant's hospitalization, officially recognized absence or other good cause (see para 11-21a(4), and the Joint Military-Industry Agreement on Loss and Damage Rules (posted on the USARCS Web site at "Claims Resources," III, no. 41)). Timely notice is a question of fact and may be established by proving a carrier's agent inspected damaged items within 75 days of delivery. It may also be shown by exceptions noted at delivery on DD Form 619-1 (Statement of Accessorial Services Performed), or on the inventory if dated and signed by a representative of the third party. A letter, a claim form (for example, DD Form 1842 or 1844), or other document noting loss or damage, dispatched to the third party or received at the claims office within 75 days of delivery, may also constitute timely notice.

(2) *Handled by two or more third parties.* Each time custody of the property changes hands, the inventory will be annotated to show any overage, shortage, or damage found. In the case of pickup by a carrier from a NTS contractor, an exception sheet must be prepared and be acknowledged by the warehouse firm to reflect any changes in the condition of the goods. Such a notation, commonly called a "rider" to the inventory, acts as timely notice to the party that is surrendering custody of the goods to another company. In the case of a DPM shipment, if evidence indicates that the damage was due to poor packing at origin, or that a loss occurred at origin, then a copy of the notice document must be sent back to the origin DPM contractor within one year of delivery in order to give the origin contractor timely notice. (See DFARS para 257.247-7016, Contractor Liability for Loss and Damage.)

## **11-29. Reimbursements to claimants and insurers from money received**

*a. Requirement.* USARCS is responsible for reimbursing claimants or claimants' insurance companies any amount recovered in excess of what was paid by the Army to the claimant under this chapter. A claims office may determine that a carrier or warehouse is liable for more than was paid to the claimant if the claim involved payment of a statutory or category limit, Option 1; increased valuation protection, Option 2; replacement cost protection purchased by the member; loss or damage to items held for a private business; or payment to the claimant under a private insurance policy. When forwarding these files to USARCS, the field office should identify them by writing in red on the front upper left corner of the file, "CLAIMANT DUE CARRIER RECOVERY." Similarly, if private insurance has paid all or part of the claimant's loss, the amount the insurer has paid will be added to the Army's demand against the third party. A pro rata share of the amount will be refunded to the insurer by USARCS. When forwarding these files to USARCS, the file will be marked in red, "INSURANCE RECOVERY."

*b. Calculating reimbursement amount to claimant.* A claimant may not be fully compensated for loss on one or more items by the Army because of regulatory limits on payments for those items (for example, property damaged in excess of the maximum allowable limits or property held for a private business). However, all losses or damages that are verified by the evidence will be asserted against the responsible third party, subject to any contractual limits on the third party's maximum liability. The USARCS will pay to the claimant any money recovered in excess of what was paid to the claimant by the Army, after the money is collected from the carrier or other third party. Command claims services, ACOs, and CPOs with approval authority will not make such payment. All of these claims will be forwarded to USARCS for reimbursement of the claimant.

*c. Reimbursement to insurers by USARCS only.* When a claimant has purchased an insurance policy covering the shipment or storage of property and the insurance company pays any portion of the value of items lost or damaged, the insurance company is entitled, to the extent of its payment, to reimbursement of a pro rata share of the amount recovered by USARCS on such items. All claims officers, when computing third-party liability must include amounts paid by private insurance and forward the file to USARCS.

*d. Reimbursement of recovery money to a carrier, warehouse, or contractor.* If a claims office or contracting office determines that recovery or offset against a third party was improper, the claims office will forward a request (with appropriate justification) to the Chief, Recovery Branch, USARCS, who will authorize a refund as necessary.

## **11-30. Privately owned vehicles recovery**

*a. Payment of less than \$50.* A POV shipment file will be closed and no recovery action taken when the amount paid to the claimant by both the Army and the claimant's private insurer is less than \$50. POV shipment files involving loss of items (for example: tool boxes, infant seats, seat covers, first aid kits, jacks, jumper cables, radios) from a POV

combined with any damage to the POV will continue to be processed for recovery regardless of the amount claimed for damage to the POV, if the total for both the missing items and the damage to the POV is \$50 or more.

*b. Payment of \$50 or more.* Before a claims office determines liability, it should make every effort to obtain the original copy of the inspection form prepared by the contractor that lists the damage noted at delivery. (The DD Form 788 (Private Shipping Document for Automobile) is no longer used under the global POV contract.) Following receipt of the vehicle inspection form, the claims office will forward the recovery claim to the appropriate office, as discussed below.

*c. Non-European claims offices.* If the amount paid on a POV shipment claim is \$50 or more, claims personnel will forward the claim to USARCS for centralized recovery. As an exception, some claims offices in CONUS may be directed by USARCS to forward POV recovery files to another CONUS claims office for recovery.

*d. European claims offices.* If the amount paid on a POV shipment claim is \$50 or more, claims personnel will forward it within 7 days of verification of payment to the claimant to the European claims office: U.S. Army Claims Service Europe, ATTN: AEAJA-CD-PC-R, Unit 30010, Box 37, APO AE 09166-0010. U.S. Army Claims Service Europe will review POV shipment files for recovery action against the responsible third party within 30 days of receipt. In almost all cases, the demand will be against the prime contractor for the global POV contract, (GPC), American Auto Logistics. If an impasse results, USACSEUR will forward the file to Recovery Branch, USARCS for further action and referral to the contracting officer.

### **11-31. Centralized recovery program procedures**

The following claims must be forwarded to USARCS for centralized recovery. The Commander, or the Chief, Personnel Claims and Recovery Division, USARCS may, from time to time, issue supplemental instructions and guidance on this program.

*a.* All claims, except DPM claims, on which private insurance has paid part of the claimant's loss. (DPM recovery claims asserted against the origin or delivery contractor that include payment by private insurance will be processed to completion by the appropriate field office. Once recovery has been completed and the funds deposited, the file will be forwarded to USARCS for processing of the pro rata distribution of the recovery funds to the private insurer.)

*b.* All claims from domestic bill of lading shipments on which the recovery demand is more than \$1,000.

*c.* All claims from domestic bill of lading shipments and international government bill of lading shipments for which more than one third party may be liable (for example, delivery out of NTS with the warehouse responsible for part of the loss and a carrier responsible for part of the loss).

*d.* For offices in the United States, all recovery claims that seek recovery in excess of the amount paid to the claimant and, therefore, may result in a payment to the claimant after recovery is completed.

*e.* For European offices, international GBL shipments of household goods that are delivered in Europe. (This includes goods that move under codes of service 3, 4, 5, 6, and T.)

*f.* All POV claims from offices in Korea and the United States, unless the Commander, USARCS has directed an office to forward its POV claims for recovery to a regional CONUS office.

*g.* All claims against air, land, or ground transportation providers that moved personal property as freight in a DPM shipment.

*h.* All claims against airlines or chartered aircraft for loss or damage to luggage.

### **11-32. Direct procurement method recovery**

*a.* The recovery file for a European intra-theater tender or a delivering DPM contract will be prepared and forwarded to U.S. Army Claims Service Europe, ATTN: AEAJA-CD-PC, Unit 30010, Box 37, APO AE 09166-0010, Germany.

*b.* The recovery file for a Korean intra-theater tender or a delivering DPM contract will be assembled and forwarded to U.S. Armed Forces Claims Service-Korea, Unit 15311, APO AP 96205-5311, Korea.

*c.* Recovery claims against delivery DPM contractors on shipments delivered in the United States will be processed to completion, to include referral to the appropriate contracting officer for collection by administrative offset, by the ACO (see DA Pam 27-162, para 11-35). If private insurance paid for part of the loss, the amount paid by the insurer will be added to the demand against the carrier.

*d.* If the evidence indicates that all or part of the damage on a DPM shipment claim was due to poor packing at origin, or occurred while the goods were in the custody of the origin contractor, the claims office that receives the claim will ensure prompt notice is sent back to the origin contractor, as DPM contracts for packing and containerization require notice to the contractor within 1 year. If all of the damage is owing to poor packing, or some other fault of the origin contractor, the recovery file will be transferred back to the claims office responsible for claims from the origin installation or area. If the destination contractor is liable for only part of the loss and damage, then the file will not be transferred until the recovery action against the destination contractor has been completed.

*e.* On domestic DPM shipments, if the evidence indicates that all of the loss or damage occurred while the goods were in the custody of a freight carrier, the file will be forwarded for centralized recovery to USARCS. If only part of

the loss occurred while the goods were in the custody of the freight carrier, the file should not be forwarded to USARCS for recovery until after recovery action against the delivery carrier has been completed.

*f.* On international DPM shipments, if the evidence indicates that all of the loss or damage occurred while the goods were in the custody of the ocean or air carrier, then the file will be forwarded for centralized recovery to USARCS. If only part of the loss occurred while the goods were in the custody of the air or ocean carrier, the file should not be forwarded to USARCS for recovery until after recovery action against the delivery carrier has been completed.

### **11-33. Special recovery actions**

Recovery actions involving storage in transit converted to storage at owner's expense, loss or damage to mobile homes, and airline shipments are discussed in DA Pam 27-162, paragraph 11-33.

### **11-34. Offset actions**

*a.* *Offset actions against personal property bill of lading and Government bill of lading carriers.* Only USARCS may process offset actions against BL/Government bill of lading (GBL) carriers.

*b.* *Offset actions against nontemporary storage (NTS) contractors.* When a NTS contractor is liable and a satisfactory settlement cannot be reached, the claims office will forward the file to the Regional Storage Management Office (RSMO) responsible for administering the Basic Ordering Agreements for storage in that geographic area. The file forwarded to the RSMO will include a 7-paragraph claims memorandum explaining the legal and factual basis for the Army's claim.

*c.* *Offset against DPM origin or delivery contractors.* When any claims office determines that a DPM origin contractor (also known as packing and crating contractors) is liable and a satisfactory settlement cannot be made, a copy of the complete claim file will be forwarded by letter to the local contracting office administering the contract, requesting offset action. The file forwarded to the contracting office will include a 7-paragraph claims memorandum explaining the legal and factual basis for the Army's claim.

*d.* *Carrier procedural rights.* The Federal Claims Collection Standards, 31 C.F.R. § 901.3(c) affords a carrier or contractor certain procedural rights prior to offset. These standards include—

(1) Written notice of the nature and amount of the debt, and the consequences of failure to pay the debt to include the agency's intention to collect by offset if the debt is not paid, and to assess interest, penalty and processing fees on delinquent claims. The DD Form 1843 (Demand on Carrier/Contractor) or demand letter and the Federal Debt Collection Act Notice (posted on the USARCS Web site at "Claims Resources," III, nos. 17 and 51) will meet this requirement. Because the contract establishes the time that the contractor has to pay the debt, the written notice does not need to include the specific date on which payment is due.

(2) Copies of documents given to the carrier or contractor that establish the validity of the claim, or advise that they may inspect and copy agency records pertaining to the debt, if requested. The demand packet that accompanies the DD Form 1843 is usually sufficient to satisfy this requirement.

(3) An opportunity to obtain review within the agency if the carrier or contractor requests this. No oral hearing is required. A CJA or claims attorney will review any claim file prior to forwarding it to a RSMO or DPM contract officer for offset.

(4) The opportunity to enter into a written agreement with the agency to repay the debt. Written agreements are usually used for repayment of the debt in installments, rather than a lump sum. However, we have the discretion to accept such agreements, and the Army's normal practice is not to allow commercial firms to pay recovery claims in installments. Normally, a carrier or contractor may be allowed 45 days beyond the normal contractual settlement period to follow up a settlement offer with a check. If the contractual settlement period has passed and a satisfactory check is not received within 45 days, the CJA or claims attorney should seek collection by offset without delay.

*e.* *Action required before offset.* For claims that require action by a contracting officer before collection by offset, a CJA or claims attorney will certify to the contracting office that the Army has complied with these standards.

*f.* *Emergency offset.* In accordance with 31 C.F.R. § 901.3(b)(4)(iii), an agency may request an offset prior to completion of any or all of the procedures in paragraph *d*, above, if failure to promptly offset would substantially prejudice the Government's ability to collect the debt. The head of an ACO, the chief of a CCS, or the Chief, Recovery Branch USARCS, and their superiors may approve an emergency offset request.

### **11-35. Compromise or termination of recovery actions**

*a.* The Commander, USARCS, heads of overseas command claims services, heads of ACOs, CJAs, and claims attorneys may accept the full amount asserted on any claim.

*b.* The Commander, USARCS, heads of overseas command claims services, and heads of ACOs may compromise a claim in any amount in accordance with the standards in 31 C.F.R. § 902, and they may waive, or terminate collection action in accordance with the standards in 31 C.F.R. § 903.

*c.* CJAs and claims attorneys may compromise claims for \$25,000 or less in accordance with the standards in 31 C.F.R. § 902 and may waive, or terminate collection action in accordance with the standards in 31 C.F.R. § 903. Authority to compromise, or terminate collection in the amount of \$5,000, or less, on any recovery claim may be

delegated in writing to subordinate attorneys, or to claims examiners in the grade of GS-6, or above, if they work under the direct supervision of a CJA or claims attorney.

*d.* The Commander, USARCS or the Chief, Personnel claims and Recovery Division, USARCS may limit the authority of any head of an ACO, CJA, or claims attorneys to compromise, waive, or terminate collection on recovery claims. The heads of overseas command claims services may do the same for Army claims offices in their areas of responsibility. Only the Commander, USARCS or the Chief, Personnel Claims and Recovery Division, USARCS may suspend collection on a recovery claim.

*e.* Normally, a recovery claim should not be compromised or terminated on the basis that the debtor is unable to pay, as most transportation contractors and warehouse that do business with DOD must have insurance that will pay the full amount of any loss and damage claims. Claims may be compromised or collection terminated on the basis that the information provided by the carrier or contractor indicates there is real doubt concerning the Government's ability to prove its case in court for the full amount claimed, that the full amount claimed cannot be substantiated by the evidence, or that the claim is otherwise without legal merit.

*f.* Recovery claims will not be asserted for amounts less than \$50, because the cost of collecting such claims exceeds the average recovery.

### **11-36. Unearned freight claims**

If personal property is lost or destroyed in transit, the carrier is not entitled to payment for the transportation of those items. Most contracts require the carrier to remit, on its own initiative, a pro rata portion of its freight charges if it settles a claim that includes lost or destroyed items. Because carriers seldom do so, the Army claims system is required to give the DFAS office that pays carriers notice that items were lost or destroyed so that DFAS can assert a claim for unearned freight. Procedures for processing unearned freight claims are set out in DA Pam 27-162, paragraph 11-36.

### **11-37. Actions to recoup payments from claimants**

*a.* A settlement or approval authority who determines that all or part of a payment should be recouped from a claimant should initiate the request for repayment promptly. These actions are governed by the Federal Debt Collection Act, 31 U.S.C. §§ 3711-3720E and by the Federal Claims Collection Standards, 31 C.F.R. Parts 900-904. Procedural guidance is at paragraph 11-37, DA Pam 27-162.

*b.* The decision to recoup a payment from a claimant should normally not be based merely on a mistake by a Government adjudicator in applying rules relating to depreciation, preexisting damages, the application of a specific maximum allowable limit, or any other aspect of the adjudication which requires the exercise of the adjudicator's judgment or discretion.

*c.* If the decision to recoup all or part of a payment to a claimant is based on fraud, the approval or settlement authority that initiates the action will ensure that the appropriate law enforcement official or the Soldier's commander is informed of the alleged fraud so that an investigation can be initiated. However, the determination to deny a claim in whole or in part because of fraud, or to recoup all or part of a payment because of fraud, is an independent determination that is made by the appropriate settlement or approval authority on the basis of the preponderance of the evidence.

## **Chapter 12**

### **Nonappropriated Fund Claims**

#### **Section I**

#### **Claims Against Nonappropriated Fund Employees**

##### **12-1. General**

See paragraph 2-2b(4)(c) of this publication. This section sets forth the procedures to follow in the settlement and payment of claims generated by the acts or omissions of the employees of NAF activities. The NAF activities include NAF or Army and Air Force Exchange Service (AAFES) facilities, post exchanges, bowling centers, officers and noncommissioned officers' clubs, and other facilities located on land or situated in a building used by an activity that employs personnel compensated from NAFs.

##### **12-2. Claims by employees for losses incident to employment**

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by chapter 11 and will be paid from NAFs in accordance with paragraph 12-7.

##### **12-3. Claims generated by the acts or omissions of employees**

*a. Processing.* Claims arising out of acts or omissions of employees of NAFI activities will be processed and settled



in the manner specified for similar claims against the United States, except that payment will be made from NAF in accordance with AR 215–1, chapter 19, section IV, and paragraph 12–7 of this regulation.

*b. Procedural requirements.* Procedural requirements of this regulation’s pertinent chapters, as stated below, will be followed except as provided in paragraphs 12–6 and 12–7. However, when the NAFI is protected by a commercial insurer (for example, flying and parachute activities), the claim will be referred to the insurer as outlined in paragraph 12–3d. (See DODD 5515.6.)

(1) *Claims arising within the United States, its territories, commonwealths, or possessions.* Such claims will be processed in the manner prescribed by chapters 3, 4, 5, 6 or 8, as appropriate.

(2) *Claims arising outside the United States, its territories, commonwealths, or possessions.* Such claims will be processed in accordance with the provisions of applicable Status of Forces Agreements (SOFAs) or in the manner prescribed by chapters 3, 5, 6, 8 or 10, as appropriate.

*c. Reporting and investigation.* Such claims will be investigated in accordance with AR 215–1 and chapter 2 of this regulation.

(1) *Reporting.* Personal injury, death, or property damage resulting from vehicular collisions, falls, falling objects, assaults, or accidents of similar nature will be reported immediately to the person in charge of the NAFI or activity at which it occurred. The report should be made by the employee who initially received notice of the incident, even if the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the person in charge of the NAF activity concerned will transmit the report to the ACO or CPO for investigation.

(2) *Investigation.* Claims arising out of acts or omissions of employees of NAF activities will be investigated in the manner set forth in chapter 2. A determination as to whether the claim is cognizable under this section will be made as soon as practicable.

*d. Customer complaints.* The AAFES-generated complaints will be handled in accordance with Exchange Service Manual 57–2. NAFI-generated complaints will be handled in accordance with AR 215–1, chapter 3. Complaints generated by APF laundry and dry-cleaning operations will be handled in accordance with AR 210–130, chapter 2. Complaints generated by refunds of sales proceeds will be handled in accordance with Exchange Operating Procedures (EOP) 57–2.

*e. Commercial insurance.* Certain NAFI activities (such as flying and parachute activities, and all AAFES concessions) may have private commercial insurance.

(1) A claims investigation under chapter 2 will not be conducted except when the claim’s estimated value may exceed the insurance policy limits. In that event, the Commander, USARCS, will be notified immediately and an investigation will be conducted with a view to determining whether the United States may be liable under chapters 3, 4, 6, 8 or 10. Otherwise, the ACO or CPO will refer the claim to the insurer and furnish copies to the USARCS AAO, as required in paragraph 2–12. Assistance will be furnished to the insurer as needed. Copies of any other required investigations may be furnished to the insurer.

(2) The claim will be reviewed at key intervals to ensure that progress is being made, negotiations are properly conducted, and the file is closed. The Commander, USARCS will be advised of any problems.

(3) If requested by either the insurer or NAFI officials, the appropriate claims authority will assist in or conduct negotiations.

(4) Where NAFI vehicles are required to be covered by insurance in foreign countries, the insurer will process the claim. However, if the policy coverage limit is exceeded or the insurer is insolvent, the claim may be processed under chapter 7, section III (claims arising overseas) or, if chapter 7 does not apply, under chapters 3 or 10 (see para 10–5c for additional guidance).

#### **12–4. Persons generating liability**

Claims resulting from the acts or omissions of members of the classes of persons listed below may be processed under this section. An ACO or a CPO authority will ask the Commander, USARCS for an advisory opinion prior to settling any claim where the person whose conduct generated the claim does not clearly fall within one of the following categories:

*a.* Civilian employees of NAFI activities whose salaries are paid from NAFs.

*b.* Active duty military personnel while performing off-duty part-time work for which they are compensated from NAFIs, not to include members who are acting in their capacity as an officer or other official of the NAFI.

*c.* Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45d.

#### **12–5. Claims payable from appropriated funds**

Claims payable from APF will be processed under the appropriate chapter. Appropriated fund payable claims include those resulting from—

*a.* Acts or omissions of military personnel while performing assigned military duties in connection with NAFI activities.

*b.* Acts or omissions of civilian employees paid from APF in connection with NAFI activities.

c. Negligent maintenance of an APF facility used by a NAFI activity, but for which DOD or DA command concerned is responsible and has been notified of the deficiency by the NAF. Where liability is determined to exist for both an NAFI and an APF activity, liability will be apportioned between the two activities.

d. Temporary use of a NAFI facility by an APF activity.

e. Operation of Government-owned or rented vehicles on authorized missions for NAFI activities where the driver is a DA Soldier or civilian employee and is paid from APFs.

#### **12-6. Settlement authority**

a. *Settlement.* Claims cognizable under this section and processed under chapters 3, 4, 5, 7, 8, or 10 will be settled by claims authorities authorized to settle claims under those chapters subject to the same monetary and denial authority limitations, except that TJAG, DJAG, and the Commander, USARCS may settle such claims without regard to monetary limitations. However, the approval of the Attorney General or Assistant General Counsel may be required for an apportioned amount to be paid from APFs when chapter 4 procedures are used and the amount to be paid from APFs exceeds \$200,000. Similarly, approval of DJAG, the Attorney General, or the Assistant General Counsel is required when using procedures under chapters 3, 6, 8 or 10 and an apportioned amount to be paid from APFs exceeds the limits set for the Commander, USARCS.

b. *Finality of settlement.* A determination made by a claims settlement authority on a claim processed under chapter 4 is subject to suit. A claim processed under chapters 3 or 6 may be appealed. Claims processed under chapters 3, 4, 5, 8, 10 or 11 may be reconsidered in accordance with the paragraphs addressing reconsideration in those chapters.

#### **12-7. Payment**

a. The settlement or approval authority will forward the appropriate payment documents to the office listed in DA Pam 27-162, paragraph 2-80h, for payment.

b. Reimbursement to a foreign country of the United States' pro rata share of a claim paid pursuant to an international agreement will be made from NAFs.

### **Section II**

#### **Claims Involving Tortfeasors Other than Nonappropriated Fund Employees**

#### **12-8. Non-appropriated fund instrumentality contractors**

The AAFES concessionaires and NAFI contractors, such as entertainment performers or groups, carnival operators, and fireworks displayers, are considered independent contractors, and claims arising from their activities should be disposed of as set forth in DA Pam 27-162, paragraph 2-15f. If a dispute arises as to the availability of liability or workers' compensation insurance, the claims should be referred to AAFES Dallas (see address in para 2-9e(4)) or the Central Insurance Fund, U.S. Army Community and Family Support Agency, as applicable.

#### **12-9. Non-appropriated fund instrumentality Risk Management Program claims**

The RIMP is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215-1 and AR 608-10, paragraph 6-19. To encourage authorized personnel, that is, military and civilian employees, to use the Family child care program and sports equipment, such claims are processed in a manner similar to NAFI claims in section I of this chapter. Certain claims are payable from NAF even though the United States is not liable under the FTCA or the MCA because the tortfeasor is not an APF or NAF employee.

#### **12-10. Claims payable**

a. Non-NAFI RIMP claims can arise from the activities of—

(1) Members of NAFIs or authorized users of NAFI sports equipment or devices for recreational purposes, while using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity.

(2) Family child care providers, authorized members of the provider's household and approved substitute providers while care under the Family child care program is being provided in the manner prescribed in AR 608-10, except as excluded below. Such claims are generally limited to injuries to, or death of, children receiving care under the Family child care program that are caused by the negligence of authorized providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss of or damage to property are not cognizable.

b. An ACO or a CPO will ask the Commander, USARCS for an advisory opinion prior to settling any non-NAFI RIMP claim where the person whose conduct generated liability does not fall clearly within the categories listed above. Such authorities may also ask, through the Commander, USARCS for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under paragraph a(2), above, where it is not clear that the injured or deceased child was receiving care within the scope of the Family child care program.

c. Where liability has been determined to exist for both non-NAFI RIMP and APF activities, liability will be apportioned between the two activities.

d. The total payment for all claims (including derivative claims), arising as a result of injury to, or death of, any one person is limited to \$500,000 for each incident. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for purposes of determining the limits of liability.

### **12-11. Procedures**

a. *Reporting.* Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to non-NAFI RIMP claims will be reported to USARCS and the Army Central Insurance Fund immediately.

b. *Investigation.* The ACOs and CPOs are responsible for the investigation of non-NAFI RIMP claims. Such investigation will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is also required, and USARCS will maintain mirror files containing the investigative materials of all actual and potential claims.

c. *Payment.* Non-NAFI RIMP claims will be transmitted for payment to The Army Central Insurance Fund, ATTN: CFSC-FM-I, 4700 King Street, Alexandria, VA 22302-4406.

d. *Commercial insurance.* The provisions of paragraph 12-3d also apply to claims arising under this section, except that in claims involving Family child care providers, a claims investigation will be conducted regardless of whether commercial insurance exists.

### **12-12. Settlement authority**

a. *Settlement authority.* The Judge Advocate General, DJAG, and the Commander, USARCS are authorized to approve in full or in part, or deny a non-NAFI RIMP claim, regardless of the amount claimed, except where an apportioned amount to be paid from APFs exceeds their monetary authority, and the action of the Attorney General or Assistant General Counsel is required as set forth in paragraph 12-6a, above.

b. *Approval authority.*

(1) The staff judge advocate, commander, or chief of a CCS, and the head of an ACO are authorized to approve in full or in part non-NAFI RIMP claims presented in the amount of \$50,000 or less, provided the acceptance is in full settlement and all claims and potential claims arising out of a single incident do not exceed \$100,000.

(2) The above authorities are not delegated authority to deny or make a final offer on a claim under this section. Claims requiring such action will be forwarded to the Commander, USARCS with an appropriate recommendation.

c. *Finality of settlement.* A denial or final offer on a non-NAFI RIMP claim is final and conclusive and is not subject to reconsideration or appeal.

## **Chapter 13 Claims Office Administration**

### **13-1. Automated claims databases**

a. *Automated claims programs.* The USARCS has established four database programs to manage claims effectively. These are the only programs authorized for recording and reporting claims in the Army claims system. Local modification of these programs is not authorized. The three automated claims database programs used in claims processing are—

(1) Tort and Special Claims Application Program (TSCA) (includes potential claims).

(2) Personnel Claims Management System (PCMS).

(3) Affirmative Claims Management Program (ACMP) (includes potential claims).

(4) SOFA databases. In countries where the Army operates under a SOFA, the responsible CCS maintains a database of claims against the United States arising under the SOFA. Access to these databases is limited to in-country claims personnel.

b. *Office codes.* Each field claims office and FCC is identified by an automated office code assigned by the Information Management Office, USARCS. This code consists of three letters and/or digits, depending on the type and location of the claims office. A complete list of all office codes is contained in the databases. Only offices with office codes can access the databases.

c. *Requesting an office code.* All command claims services, ACOs, and CPOs with or without approval authority, and FCCs are required to have an office code. To request an office code, an office should mail or e-mail a memorandum to the Commander, USARCS, ATTN: Budget and Information Management Office (BIMO). The memo should include the office name and address, the type of office (for example, ACO, CPO, or FCC) and the name, address, telephone number, e-mail address, and fax number of a contact person.

d. *Claim numbers.* The databases automatically assign claim numbers in sequence as entered (see DA Pam 27-162, para 13-1d for detailed information).

e. *Management reports.* The database systems are designed to produce management reports for claims officers, Staff Judge Advocates, Corps of Engineers District Counsel, chiefs of outside the continental United States (OCONUS)

command claims services and the Commander, USARCS. The primary report produced by the personnel and torts databases is the staff judge advocate report (SJA) report. Claims office personnel may obtain this report at any time. Each SJA report consists of general information such as numbers and types of open claims, status of unsettled claims, claims expenditure allowance (CEA) budget information, and analysis of settled claims. The reports produced by the databases are used to analyze the status of the budget and prepare budget estimates to the Defense Finance and Accounting Service (DFAS) as well as to identify delays in processing claims and permit worldwide management control of all claims. Supervisory claims personnel may request SJA and other reports as needed. For these reasons it is imperative that claims office personnel ensure that automated claims records are complete and accurate. Please note, however, that the tort claims database cannot generate reports of reimbursement obligations to foreign countries pursuant to the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) or other similar treaties or agreements.

### **13-2. Transferring of claims responsibility and/or files**

#### *a. Tort claims.* (See para 2-13.)

(1) A claim filed at a different location than where the claim arose will be transferred to the ACO or CPO with geographic responsibility for the location in which the claim arose. Responsibility for claims arising in more than one location will be assigned to the office with geographic responsibility for the location with the most involvement in the allegation, usually where the incident giving rise to the claim arose (see DA Pam 27-162, para 2-9d). In such instances, the original claim file will be maintained by the responsible claims office, and each claims office involved in the investigation will maintain a copy of the relevant portions of the claim file. Copies of claim files may also be sent to another ACO or CPO to assist the sending office in the investigation.

(2) Claims will be forwarded to the appropriate CCS and USARCS when the amount of the claim (or the total amount of all claims arising from a single incident) exceeds the monetary jurisdiction of the owning ACO or CPO or upon request of the CCS or USARCS. The forwarding claims office will coordinate with the CCS or USARCS to ensure all necessary investigations have been completed prior to the transfer. When the claim is forwarded, the claim will be accompanied by a memorandum of opinion and recommendation. The file will be forwarded as set forth in DA Pam 27-162, paragraph 2-15, "Mirror file requirements."

(3) All transfers and forwarding of claims files will be annotated in the TSCA.

*b. Affirmative claims.* The responsible office is normally the office in whose area of geographic responsibility the incident has occurred unless another APO or CPO has the largest financial interest. In that event all files should be transferred to that office.

*c. Personnel claims (file and responsibility forwarding).* The procedures set out in DA Pam 27-162, paragraph 13-2c will be followed.

### **13-3. Claims files organization and maintenance.**

Every file for a claim against the United States must contain, in addition to the requirements of DA Pam 27-162, paragraph 13-3, the following:

- a.* The claims summary report printout of the data pertaining to that claim.
- b.* For claims that have been paid, in whole or in part, a copy of the settlement agreement, if any, and the certified copy of the paid voucher (returned copy from the Defense Finance Accounting Office).
- c.* The action or recommendation.
- d.* The claim (initial and any amendment).
- e.* The report of the CJA or claims attorney, with exhibits.

### **13-4. Claims files retention and disposal (retirement)**

For instructions on closing abandoned or withdrawn claims files, see DA Pam 27-162, paragraph 13-4.

*a. Governing regulation.* General guidance for managing claims files will be found in AR 25-400-2 and in records retention schedules posted under AR 27-20 on <https://www.arims.army.mil/>.

*b. Tort and affirmative claims files.* Rules governing retirement of tort and affirmative claims files are discussed below:

(1) The claims office that takes final action will retire the file, except for medical malpractice claims files, which must be sent to USARCS for retirement in accordance with paragraph (3), below, and claims on which offices under the authority of USACSEUR have taken final action, which must be sent to USACSEUR for retirement in accordance with paragraph (4), below.

(a) If USARCS or a CCS takes final action, such as a payment or denial, including denial of a reconsideration, or an appeal, collection, or termination, it will retire the file upon expiration of the time to file suit. Any field office having a copy of the file will destroy it upon receiving notice of final action or upon expiration of the time to file suit.

(b) If a CPO or ACO takes final action (for example, payment, denial or collection or termination), it will retire the file after the expiration of any appeal period or time to file suit. If USARCS or a CCS has a mirror copy, it will destroy it upon receiving notice of final action or upon expiration of the time to file suit. Whichever office is retiring

the file must be in possession of an “original” of the claim form, as that document is a mandatory part of the retired record. (See also, “mirror file” discussions in para 2–12 of this publication and DA Pam 27–162, para 2–12.)

(c) After an office transferring a claim to another Army office or to another Federal agency has received notice of final action by the receiving office, the transferring office may destroy its mirror file.

(d) Mirror files of claims transferred to Department of Justice Litigation Division will be destroyed upon notice of final action by the court. Original files will be retired in accordance with the provisions of AR 25–400–2.

(2) Before a tort claim file is retired, the claim record in the TSCA database will be updated to reflect the final action on the claim (for example, denial, payment, collection or termination). In addition, a scanned copy of the final action document (denial letter, payment report, and so forth) will be uploaded to the TSCA database claim record as in A portable document format (pdf) file. When the claim is paid by check, if possible, a copy of the scanned check will be uploaded to the claim record. When it is paid by electronic funds transfer, the comeback copy will be scanned and uploaded.

(3) In addition, a copy of the SF 95 or other claim form must be scanned and uploaded into the TSCA claim record if it has not been uploaded already.

(4) Field claims offices other than those under USACSEUR, with the exception of medical malpractice claims that must be sent to USARCS to the attention of JACS–TCO, will retire files to their local records holding area. USARCS will retire medical malpractice claim files to the Armed Forces Institute of Pathology and will retire all its other files to the Washington National Records Center.

(5) Claims offices under the authority of USACSEUR that have taken final action on a claim will forward the claim file to USACSEUR for retirement no earlier than 60 days after final action.

*c. Personnel claims.* Rules governing retirement of personnel claims files include the following:

(1) After settlement, all personnel claim files that do not require a recovery claim against a third party will be closed and forwarded to USARCS for retirement.

(2) For personnel claims involving recovery action, claims files will be assembled and processed for local recovery action or forwarded for centralized recovery action in accordance with DA Pam 27–162, chapter 11, and DA Pam 27–162, paragraph 13–2c. After completion of final recovery action by field claims offices or command claims services, such files will be forwarded to USARCS for retirement.

(3) If the claim is withdrawn, abandoned, or otherwise discontinued by the claimant, the file will be administratively closed and forwarded to the Commander, USARCS. Only USARCS, Fort Meade, MD, has the authority to retire files.

(4) Personnel claim files are retired as follows:

(a) Files are sent to USARCS from the field office. The last transaction code, “FF,” is already in the database.

(b) Mail room receipt dates are stamped on the back of each file and entered into the headquarters portion of the database.

(c) Boxes are set up to receive the files. Each box is assigned an “accession” number. Accession numbers are distributed to USARCS from the Federal Records Center. There are 50 boxes in each accession.

(d) A claims assistant fills the boxes. Within each box the files are ordered first by year, second by field office, and then by the last four digits of the claim number.

(e) Each file is then entered into the “retirement” portion of headquarters personnel claims database.

(f) Boxes are placed into the assigned holding area until two accessions are filled (100 boxes). A telephone call is made to the contracted moving company (contracted by the Federal Records Center), that takes the boxes to the Federal Records Center in Suitland, MD, for storage.

### **13–5. Certified and registered mail**

*a.* Correspondence to claimants and/or their attorneys as described below will be sent by certified or registered U.S. mail, return receipt requested, or by private carriers (such as Federal Express) if those carriers provide item tracking service:

(1) Acknowledgement letters accompanied by HIPAA-related documents requiring claimants’ signature.

(2) 30 and 60 day letters.

(3) Notice of final actions, and proposed final actions under chapter 10, including final offers and denials

(4) Courtesy letters informing claimants of action taken by DJAG or the SJA’s designee in MCA or FCA claims.

(5) Denial notices of abandoned claims.

(6) Assertion letters.

(7) Installation Agreements for affirmative claims repayments.

*b.* Any of the above correspondence sent to a foreign country other than by the military postal system will be sent by registered mail.

*c.* The green or pink return receipt will be retained as a part of the claims file as proof of receipt by the claimant or other addressee.

*d.* The tracking number will be annotated on the file copy of the correspondence (alternatively a photo-copy of the certified mail white slip and green card must be placed in the claim file, stapled to the correspondence) and a copy of

the tracking information obtained from the U.S. Postal Service or private carrier's Web site will be printed and retained as a part of the claim file as proof of dates and times of mailing and delivery. Also, the claim number must be annotated on the slip that will be returned by the mail carrier.

### **13-6. U.S. Army Claims Service operating budget**

*a. General.* The USARCS receives its fiscal year operating budget from Headquarters Department of the Army (HQDA) Operating Agency 22. The USARCS uses its budgeted money to pay for the salaries, training, and travel of its personnel, as well as for supplies, equipment, and services. In addition, USARCS uses its money to fund contracts for such things as IMEs and accident investigations for claims. Subject to availability of funds, it may pay for both on behalf of field offices that lack sufficient funds. The USARCS also uses year-end funds, when available, to support automation by purchasing computers and/or software for field claims offices that have a bona fide need for such equipment.

*b. Claims open allotment.*

(1) The claims open allotment is the fund from which personnel, torts, and foreign tort claims are paid except for tort claims paid from the Judgment Fund by the FMS. Following the annual Congressional appropriation to the DOD, funds are allotted to HQDA Operating Agency 22 (OA22), an office of Resource Services-Washington (RS-W). The OA22 provides USARCS with open allotment funds on a quarterly or monthly basis. In turn, as USARCS receives this funding, it updates the budget allocations for each claims office. Centrally managed by the USARCS budget office, the allotment provides the flexibility essential for the worldwide administration of claims funds that by law are paid from 15 separate accounts, including civilian personnel, marine casualty, and Federal and foreign tort claims. The management of this allotment by USARCS allows the organization to move funds quickly in order to pay claims around the world without unnecessary delay.

(2) A portion of the claims open allotment is held in reserve to assist field claims offices that receive an unexpected increase in the number of payable claims (see para c(2), below, for procedures to access additional funding).

*c. Claims expenditure allowance.*

(1) Funds for the claims expenditure allowance (CEA) are allocated by USARCS to claims settlement authorities, either monthly or quarterly, based on availability and receipt of funds from DA headquarters. Each claims settlement or approval authority is responsible for managing its CEA. The CEA is often referred to as "the target" within the Army claims community. As part of its management responsibilities, each field claims office must know at all times the target it has been authorized by the USARCS budget office, how much of the target has been obligated, and the remaining balance. Field claims offices use the applicable database for automatic tracking of disbursement data against the assigned target.

(2) Claims offices are not authorized to exceed their CEA/target. When emergencies warrant additional funds, the field claims office will contact the USARCS budget office, DSN 923-7009, ext. 331 or 332.

(3) Charges against the CEA may be made by authorized claims personnel from field claims offices worldwide. Authorized claims personnel are U.S. Army judge advocates and DA civilian attorneys specifically assigned to a claims attorney position and properly designated under the provisions of AR 27-20, chapter 1.

*d. Fiscal year close-out.* After completing of all claims payments at the close of the fiscal year, each field claims office will submit a "close-out report" in the same format as the monthly report. The budget office will send out year-end instructions with a close-out date. The USARCS will reserve funds to pay emergency claims until approximately 27 September.

### **13-7. Reporting requirements**

*a. Transition.* Various management reports are produced from the data entered in the claims databases. They are discussed in paragraph 13-1e of this chapter. The torts and affirmative claims databases have transitioned to a Web-based system that makes management reports continuously available by running predefined queries of the databases. The personnel claims database is also Web-based and has some limited capability to produce continuously available reports by running predefined queries. Claims offices which have active files on the old PC CLAIMS database must upload data to the USARCS Budget and Information Management Office when changes are made to those records, in accordance with the instructions in paragraph b, below, and error reports will be reviewed and acted on in accordance with c, below.

*b. Monthly information upload for personnel claims.* Each CONUS ACO and OCONUS CPO with approval authority must submit a monthly claims data upload to USARCS when changes are made to existing records in the old database. OCONUS ACOs and FCCs with a supervising CCS will submit monthly claims data uploads through their respective CCS. The monthly data upload for each claims office (except COE claims offices) is transmitted electronically. The personnel claims monthly data upload will be prepared by each claims office on the first working day of the month. The data upload will be forwarded to USARCS budget and information management office (or to the appropriate OCONUS CCS in accordance with local directives) on the first working day of the month.

*c. Monthly error reports for personnel claims.* USARCS will provide field claims offices with monthly error reports listing claims records that cannot be loaded into the old USARCS database due to data entry errors or omissions. Errors

listed on the error reports must be corrected before the next regular monthly reporting cycle. No such requirements exist for the old PC database.

*d. Financial forecasting reports.* Current and historical financial data contained in reports is used to forecast claims open allotment expenditures for each fiscal year. Budget estimates are based upon such factors as projected Army strength; the number of expected permanent change of station moves; planned major maneuvers, exercises, and deployments; base and unit realignment; and other information from field claims offices.

*e. Claims expenditure report.* The command expenditure report (CER) is prepared monthly by the Defense Finance and Accounting Service-Indianapolis (DFAS-IN) and examined by the USARCS budget office to ascertain whether collections and disbursements have been transacted in accordance with AR 27-20 and are appropriate for the claims open allotment. Field claims offices notified of discrepancies MUST make corrections and return revised statistics to USARCS within 5 working days.

*f. Consolidated financial report.* USARCS produces a monthly consolidated financial report for the Office of the Judge Advocate General (OTJAG) and OA22, based on the data received from field claims offices and the CER.

## **Chapter 14**

### **Affirmative Claims**

#### **14-1. Statutory authority**

The following Acts of Congress and United States Code sections form the statutory authority for affirmative claims:

*a. The Federal Claims Collection Act.* The FCCA, set forth at 31 U.S.C. §§ 3711-3720E, as amended by the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749 (25 October 1982), Pub. L. No. 101-552, 104 Stat. 2746 (15 November 1990).

*b. Federal Medical Care Recovery Act.* The FMCRA, set forth at 42 U.S.C. §§ 2651-53, as amended by the National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-202, §1075, 110 Stat. 2422.

*c. Title 10 United States Code Section 1095.* 10 U.S.C. § 1095, Pub. L. No. 101-510, §713, 107 Stat.1547, 1689 (1993), as amended by Pub. L. No. 103-160, 104 Stat. 1485 (5 November 1990)

#### **14-2. Scope**

*a. Recovery for Government property loss or damage.* The FCCA, originally passed in 1966, gives Federal agencies the authority to collect a claim of the U.S. Government for money or property arising out of the activities of the agency in question. However, the broad authority is limited for purposes of this regulation to claims for loss of or damage to property, as the FMCRA takes precedence for medical care recoveries.

*b. Recovery for medical expenses and lost military pay.*

(1) The FMCRA, passed in 1962, authorizes recovery from a third person of the expenses for medical care the United States furnishes to a person who is injured or suffers a disease when such care is authorized or required by law. Likewise, the United States is authorized to recover the cost of pay for members of the uniformed services unable to perform duties. Recovery normally arises out of a third-party tort under local law as to which the United States has an independent cause of action.

(2) Under 10 U.S.C. § 1095, the United States is also deemed a third-party beneficiary or subrogee under an alternative system of computations, such as workers' compensation; hospital lien laws; contract rights under the terms of insurance policies, including medical payment coverage; uninsured, underinsured and no-fault coverage; and no-fault laws.

*c. Recovery of health insurance.* 10 U.S.C. § 1095 permits recovery of health insurance for medical care furnished at MTFs, including supplemental policies. This third-party collection program has been delegated to The Surgeon General of the Army by the Judge Advocate General (TJAG).

*d. Worldwide applicability.* The foregoing authorities are worldwide in application, except for intergovernmental claims waived by treaty (for example, the North Atlantic Treaty Association Status of Forces Agreement (NATO SOFA), Article VIII, paragraph 1).

#### **14-3. Claims collectible**

*a. Claims for medical expenses.* Claims for the value of medical care furnished to active or retired members of the uniformed services, Family members of either category, employees of DA or DOD, or other persons to whom care was furnished because authorized or required by law and resulting in injury, death, or disease, including those—

(1) Arising out of a tort under local law.

(2) Arising out of an on-the-job injury compensable under workers' compensation law except for FECA recoveries.

(3) Based on the United States being a third-party beneficiary of the insurance contract of the injured party, to include medical payment coverage, lost wages, as well as uninsured, underinsured, and no-fault coverage.

*b. Claims for lost military pay.* Claims for the value of lost pay of active members of the uniformed services arising out of a tort under local law resulting in injury, death, or disease.

*c. Claims for property loss.* Claims arising out of a tort under local law for the value of lost or missing DA or DOD property, including NAFI property, or for the cost of repairs of such property, including damage to assigned quarters, are not collectable under 10 U.S.C. § 2775 (see para 14–4).

#### **14–4. Claims not collectible**

Claims are not collectible under the following conditions:

*a.* Where the tortfeasor is a department, agency, or instrumentality of the United States (see para 2–6g).

*b.* Where the tortfeasor is a member of the uniformed services or an employee of the DA or DOD, acting within the scope of employment, who damages or loses property (see AR 735–5, chap 13).

*c.* Where the damage or loss of property falls under a contractor bill of lading and recovery is pursued by the contracting agency (for example, the Surface Deployment and Distribution Command (SDDC), formerly the Military Traffic Management Command (MTMC), for lost or destroyed shipments).

*d.* Where damage to assigned quarters, or equipment or furnishings therein, is collectible from a member or the uniformed services under 10 U.S.C. § 2775.

*e.* Where the medical care is furnished by a Department of Veterans Affairs facility to other than active duty members of the uniformed services for service-connected disabilities.

*f.* Where the claim arises out of the admiralty jurisdiction of the United States and falls under chapter 8, 10 U.S.C. §§ 4803 and 4804 (maritime affirmative claims), or the Rivers and Harbors Act, 33 U.S.C. §§ 408 and 412.

#### **14–5. Applicable law**

*a. Basis for recovery.*

(1) Most recovery assertions are based on the negligence or wrongful acts or omissions of the person or entity that caused the loss. These actions or omissions must constitute a tort as determined by the law of place of occurrence, except in no-fault jurisdictions where the no-fault law permits recovery. Where the tort is not complete within the jurisdiction where it originally occurred, the law of the original jurisdiction is nevertheless applicable. For example, if a plane crashes in Virginia due to the negligence of a Federal Aviation Administration controller in Maryland, Maryland law determines the extent and nature of the tort. However, as to what law of damages is applicable, Maryland or Virginia depepage (choice of law) theory may apply. For example, if the flight originated in Indiana and the destination was Virginia, the conflict law of both Maryland and Virginia must be applied (see DA Pam 27–162, para 2–35).

(2) Recovery assertions based on the United States being a third-party beneficiary or subrogee are not based on tort, but on the right to recover under local law. For example, the right of a third party to recover workers' compensation benefits is based on local law. However, the right of a third-party beneficiary to recover under an insurance contract may turn on whether an exclusionary clause is valid under the law of the jurisdiction where the contract was made.

*b. Statute of limitations.*

(1) Federal law determines when a recovery assertion must be made. Assertions for the value of medical expenses, lost military pay, or property loss or damage based on a tort must be made not later than 3 years from the date of accrual, 28 U.S.C. § 2415(b). The date of accrual is usually the date of the occurrence giving rise to the recovery, for example, the date of injury or death for medical expenses and lost military pay or the date of damage or loss for a Government property assertion. There are exceptions. For example, the loss of property in rightful possession of another accrues when that person claims ownership or converts the property to his own use.

(2) Recovery assertions based on an implied-in-law contract against a no-fault or personal-injury-protection insured must be brought no later than 6 years from the date of accrual, 28 U.S.C. § 2415(a), *United States v. Limbs*, 524 F.2d 799 (9th Cir. 1975). The date of accrual is usually the date of occurrence.

(3) Actions asserted on a third-party beneficiary basis against an insurer or workers compensation fund must comply with the state notice requirement, which varies from 1 to 6 years, or the insurer's notice requirement set forth in the policy. *United States v. Hartford Acci. & Indem. Co.*, 460 F.2d 17 (9th Cir. 1972), cert. den. 409 U.S. 979 (1972).

(4) The SOL is tolled or does not start running until the responsible Federal official is notified of the existence of a recoverable loss, *Jankowitz v. United States*, 533 F.2d 538 (D.C. Cir. 1976), *United States v. Golden Acres, Inc.*, 684 F. Supp. 96 (D. Del. 1986). The responsible Federal official can be the ACO, the CPO, a CCS, or USARCS, depending on who receives the notice under this regulation. However, because of the responsibility to notify the MTF or TRICARE fiscal intermediary, and by regulation the notice must be expeditious, delayed notification could start the SOL running. Additionally, when an ACO or CPO discovers the existence of an assertion, the SOL will begin to run regardless of when the MTF or the TRICARE intermediary sends a notice. The date of receipt of a notice must be entered into the affirmative claims management program/database (ACMP) and the notice must be date-stamped and initialed.

#### **14–6. Identification of recovery incidents**

*a. Responsibilities.* Each CCS and ACO will develop means to identify recovery incidents arising in its geographic



area of responsibility (see DA Pam 27–162, para 2–2). This requires publication of a claims directive to all DOD and Army installations, units and activities in its area, emphasizing the importance of reporting serious incidents to recovery judge advocates (RJAs) or civilian recovery attorneys.

*b. Screening procedures.*

(1) A point of contact will be established in each unit and activity in the area of responsibility and their sources will be screened periodically, including motor pools, Family housing, departments of public works, safety offices, provost marshals, and criminal investigation divisions. Civilian news and police reports, military police blotters and reports, court proceedings, line of duty and AR 15–6 investigations, and similar sources will be reviewed to identify potential medical care recovery claims.

(2) The MTF commander will ensure that the claims office is notified of instances in which the MTF provides, or is billed by a civilian facility for, inpatient or outpatient care resulting from injuries (such as broken bones or burns arising from automobile accidents, gas explosions, falls, civilian malpractice, and similar incidents) that do not involve collections from a health benefits or Medicare supplemental insurer. Claims personnel will coordinate with MTF personnel to ensure that inpatient and outpatient records and emergency room and clinic logs are properly screened to identify potential cases. The RJA or recovery attorney will screen the MTF comptroller records database and division records as well as ambulance logs to identify potential medical care recovery cases. The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel.

(3) The MTF commander will also ensure that the MTF does not release billings or medical records, or respond to requests for assistance with workers' compensation forms, without coordinating with the RJA or recovery attorney.

(4) The TRICARE fiscal intermediary is required to identify and mail certain information promptly to the claims office designated as the state point of contact. The fiscal intermediary must mail the TRICARE Explanation of Benefits, showing the amount TRICARE paid on the claim along with what diagnostic codes were used, and DD Form 2527 (Statement of Personal Injury). A sample Statement of Personal Injury (DD Form 2527) is posted on the USARCS Web site at "Claims Resources," IV, f.

(5) The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel, AR 40–400, paragraph 13–5.

*c. When to open a recovery file.*

(1) Upon identification of a potential recovery incident or upon receipt of a billing from a TRICARE Fiscal Intermediary or an MTF, a file will be opened and entered into the ACMP by the first ACO or CPO that learns of the event, even if liability has not been established. Incidents under Navy, Air Force, or Coast Guard jurisdiction will not be so entered but referred to the responsible service. Complete listings of claims/recovery offices worldwide are posted on the USARCS Web site at "Claims Resources," VI.

(2) Army responsibility for affirmative claims is as follows:

(a) Damage to or loss of real or personal property of the DOD or the Army even if located at installations or activities under the jurisdiction of other uniformed services.

(b) Personal injury to persons whose primary care for an accident-related injury is furnished at an Army MTF, regardless of the uniformed services affiliation of the person or sponsor, but not to those treated at another uniformed service's MTF, even if the person is an active duty Army member.

(c) Personal injury to an active duty or retired Army member or a Family member of either category treated under TRICARE.

(d) A lead agency will be established whenever:

1. Property damaged or lost belonging to more than one service is involved in the same incident.
2. Personal injury victims are treated at MTFs of more than one service.
3. Personal injury victims with affiliations to more than one service are treated under TRICARE.
4. Lead agencies may be established locally for claims valued at \$50,000 or less. For claims greater than \$50,000 USARCS will be notified and will deal with the other service at headquarters level (see para 2–13).

#### **14–7. Notice to U.S. Army Claims Service**

Upon receipt of notice of a claim involving either actual or potential amounts within USARCS' monetary jurisdiction, that is, where final action will be taken by USARCS or the Department of Justice, immediate notice will be given to USARCS. Forwarding a copy of the serious incident report, discussed in paragraph 2–1c, to USARCS, will meet this requirement. Thereafter, mirror file copies will be furnished to USARCS in accordance with paragraph 2–12. This allows for continuous monitoring and discussion between the ACO and the USARCS area action officer (AAO).

#### **14–8. Investigation**

*a. Claims over \$50,000.* Hands-on investigation will be conducted by claims personnel as set forth in DA Pam 27–162, chapter 2, section IV, regardless of the amount of insurance coverage immediately available, with a view to discovery of other sources of recovery (for example, vehicle defects or improper maintenance, road design and absence of warning signs, products liability, medical malpractice in civilian treatment facilities). Where the employment of

experts is indicated, the procedures in paragraph 2–21 will be followed. No attorney representation agreement will be sent to the injured party’s representative without USARCS approval.

*b. Claims of \$50,000 or less.* The amount of hands-on investigative effort is directly related to the amount of insurance coverage that the tortfeasor possesses and the amount of coverage that the injured party has. Where the injured party is represented, information from his lawyer or insurer will be requested, in addition to the documents obtained in initial screening. The ACO should be able to form an independent opinion as to liability on the basis of the investigation of the Government, and not solely on that of the injured party’s attorney.

*c. Claims of \$5,000 or less.* Small claims procedures are applicable to the extent feasible (see para 2–14). Investigation, assertion and settlement by e-mail, phone or fax is encouraged. The investigation and action should be recorded. DA Form 1668 (Small Claims Certificate), may be used as a model, modifying it as needed. A sample completed Small Claims Certificate is posted on the USARCS Web site at “Claims Resources,” II, a, no. 29.

*d. Relations with injured party.*

(1) When the injured party becomes known and an interview can be conducted locally, all relevant facts will be obtained unless the injured party is represented by a lawyer. In this latter event, basic information as set forth on DD Form 2527 (a completed sample posted on the USARCS Web site at “Claims Resources,” IV, f) can be obtained without violating lawyer-client privilege. If the injured party is not immediately available, the information can be obtained by requesting assistance from another ACO, a unit claims officer, a reservist or ARNG member, another Federal agency, or another means.

(2) When the injured party is represented, a HIPAA medical release form (sample posted on the USARCS Web site at “Claims Resources,” IV, p) permitting USARCS to send out the medical records of the injured party for claims purposes will be sent to the injured party’s lawyer for completion and return.

(3) When the injured party or his lawyer refuses to furnish necessary information, it can usually be obtained by other means (for example, from an accident report or investigation). A notice will be furnished to all parties that the Government has been assigned the right to bring a claim for the value of medical care furnished, lost pay, or value of property lost or destroyed, and that the United States has the right to bring an independent cause of action. In absence of timely and appropriate response, a discussion should be held with the AAO to determine what action should be taken.

#### **14–9. Assertion**

*a. Asserting demands.* If a prima facie claim exists under state law, a written demand will be made against all the tortfeasors and insurers. This includes demands against the injured party’s own insurance coverage, no-fault coverage and workers’ compensation carrier. The earlier the demand the better. A demand will not be delayed until the exact amount of medical expenses or lost pay is determined. The demand letter will state that the amount will be furnished when known. A copy of the demand will be furnished to the injured party or, if represented, his lawyer. Two sample demand (or assertion) letters are posted on the USARCS Web site, at “Claims Resources,” IV, i, and j. Demand letters are for initial contact with insurance companies. One of the posted samples is for a medical assertion for a Soldier (that includes wages). The other is for a medical assertion for a civilian (that does not include wages). Remember the following points when asserting demands:

(1) The fact that the medical expenses have been assigned to the United States, and as a result the United States has a cause of action in Federal or state court. All parties will be notified that if the insurer pays the amount to another party, the United States has the right to collect from the insurer.

(2) Demands for third-party torts are under the authority of the FMCRA; demands where there is no tortfeasor are under the authority of 10 U.S.C. § 1095; demands for property loss or damage are under the authority of the FCCA.

*b. Documentation of damages.* Medical treatment facilities are required by AR 40–400, chapter 13, to furnish complete billing documents to RJAs.

(1) TRICARE bills are obtained from the fiscal intermediary servicing the ACO. The amounts are based on the amount TRICARE pays and not the amount the patient is billed by the provider. TRICARE bills must be screened to ensure that the care is incident- or accident-related, as the demand is limited to that amount.

(2) The MTF bills, both outpatient and inpatient, are obtained from either the MTF co-located with the ACO, or if another MTF is involved, from that MTF, regardless of uniformed service affiliation. Outpatient bills include not only the cost of the visit but also the cost of each procedure, such as x-rays or laboratory tests. Inpatient billing is not based on services rendered, but on a diagnostic group. Charges for professional inpatient services will be itemized the same as outpatient care. Charges for prescription services will be included. Screening to ensure that only incident- or accident-related care is claimed is essential. The cost of ambulance services, ground or air, will be calculated with MTF assistance and demanded. Burial expenses are obtained from the local mortuary affairs office on DD Form 2063, but they will be demanded only when the insurance coverage includes such expenses.

(3) Lost pay will be obtained from the leave or earnings statement or the active duty pay chart for the year or years in question and will include special and incentive pay unless the injured Service member did not receive either owing to the length of time off assigned duty. The time off duty will be based on the time Service members are unable to

perform duties for which they have been trained (their military occupational specialty). It will not be limited to inpatient time. Time in a medical holding or convalescent leave will be lost time.

(4) The amount recoverable for personal property losses is limited to its value at the time of loss. Depreciation charts may be used to determine the reduction from the value at purchase. Replacement value will not be used. Both real and personal property damage will be on the value of labor and cost of material, including the use of heavy equipment. When the cost of repairs is greater than \$50,000, 10 percent overhead will be added. This can be substantiated using case law and by seeking documentation from the repair facility.

*c. Double collections prohibited.* When the cost of medical care is recoverable by the MTF from medical care insurance, both primary and supplemental under 10 U.S.C. § 1095, an assertion under FMCRA will be made, including a demand for lost pay not recoverable out of health insurance. While the United States is entitled to recover costs of medical care from both the injured party's medical insurance and from the third-party tortfeasor, USARCS policy is not to collect twice. RJAs will carefully coordinate with the MTF to ensure that double collection does not occur. Demand for lost pay should be enforced, as it is not recoverable from medical care insurance.

#### **14-10. Recovery procedures**

*a.* Recovery personnel have three means of enforcing recovery following initial assertion:

(1) There may be a referral to litigation pursuant to paragraph 14-11;

(2) The head of an ACO should request Chief, Litigation Division, OTJAG to have the RJA appointed as a SAUSA when the following criterion are met:

(a) Filing suit is a frequent necessity (for example, insurance companies are refusing payment on small claims either by raising issues well settled or by regularly reducing the amount of medical care as not fair and reasonable);

(b) The local U.S. Attorney's office is in favor of such appointment due to his previous experience with the RJA and the additional burden of affirmative claims litigation on his staff;

(c) The RJA has at least 2 years experience and is likely to continue in the RJA assignment for at least 1 year; and

(d) The Commander, USARCS concurs in the appointment and is willing to furnish support.

(3) The RJA may request that the attorney representing the injured party include the amount asserted by the United States as part of special damages. The injured party's attorney may not represent the United States nor may the United States pay attorney fees because this would be in violation of 5 U.S.C. § 3106. Where indicated, this arrangement should be reduced to writing. Be mindful that the attorney's duty to the injured party is in conflict with the interests of the United States where the amount potentially recoverable is small in comparison to the amount asserted by the United States. In this event, the RJA should pursue recovery independently.

*b.* Careful monitoring of all assertions is required to ensure timely follow-up resulting in collection or suit where indicated. Installation of a suspense system to avoid the expiration of the SOL is essential. Recommendations to file suit should be forwarded by the RJA well prior to the expiration of the SOL. Within 6 months prior to the running of the SOL, USARCS must be notified of the status of the claim or potential claim. Follow-up demands should precede filing suit to create a written record of efforts to avoid suit. Personal contact with all parties is encouraged. When an injured party is represented, contact the representative.

*c.* Sources other than vehicle liability coverage should be exhausted in cases where the amount of the potential recovery exceeds \$50,000 and the coverage is small. Coordination with USARCS is required. USARCS can obtain expert witnesses for medical malpractice cases, products liability cases, or other cases in which another tortfeasor may be involved.

#### **14-11. Litigation**

*a.* If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the Government's interests are not adequately represented on a claim over \$25,000.

*b.* RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases.

*c.* In order to directly initiate or intervene in litigation, a RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27-40, chap 5), to the U.S. Attorney. While the RJA or recovery attorney, in conjunction with the Litigation Division Torts Branch, should attempt to have the U.S. Attorney's Office initiate litigation at least 6 months before the expiration of the SOL, the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the Government's interest in litigation without any special coordination.

#### **14-12. Settlement authority**

*a.* *Assertions for \$50,000 or less.*

(1) *Approval authority.* An RJA or civilian recovery attorney, if delegated authority by his or her ACO or CPO, may compromise a collection on a claim asserted for \$50,000 or less, unless recovery action is reserved by a CCS.

(2) *Final action authority.*

(a) An ACO, or CPO if delegated authority by its ACO, may terminate collection action on a claim asserted for \$50,000 or less, unless action is reserved by a CCS.

(b) The foregoing authorities may waive a claim asserted for \$50,000 or less where undue hardship exists.

(c) The amount of \$50,000 is determined totaling the amounts for medical care, lost military wages, lost earnings or Government property damage arising from the same claims incident.

b. *Assertions over \$50,000.* USARCS retains final authority over assertions over \$50,000. By use of the mirror file system and through a dialogue between USARCS and the field during the course of the assertion, USARCS will decide whether it or the RJA or civilian recovery attorney will conduct the negotiations. To help it decide, the RJA or civilian recovery attorney will forward a memorandum for either medical or property recovery approval, in the format of the samples posted on the USARCS Web site at "Claims Resources," IV, a and b. USARCS may waive the requirement to submit a memorandum.

c. *Appeals.*

(1) *Assertion for \$50,000 or less.* Where the assertion is made by an RJA or civilian recovery attorney, the appeal will be determined by the SJA, the medical center judge advocate, or head of the ACO or CPO. Otherwise, the appeal will be determined by the Commander, USARCS.

(2) *Assertion over \$50,000.* Where the assertion is made by a CJA or CA, the appeal will be determined by the Commander, USARCS.

d. *Compromise or waiver.* Any assertion may be compromised, waived, or terminated in whole or in part, if for example:

(1) The cost to collect does not justify the cost of enforcement.

(2) There is evidence of fraud or misrepresentation.

(3) The United States cannot locate the tortfeasor.

(4) Legal merit has not been substantiated.

(5) The SOL has run and the debtor refuses to pay.

(6) Collection of all or part of the amount of funds demanded would create inequity. The following criteria apply:

(a) Detailed information on what funds are available for recovery.

(b) Reasonable value of the injured party's claim for permanent injury, pain and suffering, decreased earning power, and any other special damages.

(c) Military, Department of Veterans Affairs, Social Security disability, and any other Government benefits accruing to the injured party.

(d) Probability and amount of future medical expenses of the Government and the injured party.

(e) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(f) The financial condition of the debtor.

(g) The degree and nature of contributory negligence on the part of the injured party in causing his injury or death.

(h) The percentage of attorney's fees that his attorney is willing to reduce.

(i) The willingness of the tortfeasor to enter into an installment agreement.

e. *Releases.* The RJA or recovery attorney may execute a release for affirmative claims in the pre-litigation stage acknowledging that the Government has received payment in full of the amount asserted or the compromised amount agreed upon, or the final installment payment. The format of the release should be similar to the sample posted on the USARCS Web site at "Claims Resources," IV, h. However, the RJA or recovery attorney may not execute either an indemnity agreement or a release that prejudices the Government's right to recover on other claims arising out of the same incident without the approval of USARCS. In addition, the RJA or recovery attorney may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA or recovery attorney will not execute a release if the Government's claim is waived or terminated.

#### **14-13. Enforcement of assertions**

Meritorious assertions that do not result in collections should be enforced as follows:

a. Where the debtor is a business or corporation otherwise financially capable, the RJA or equivalent should forward a recommendation to bring suit or intervene in an existing suit regardless of the amount of the debt. As authorized by 28 U.S.C. § 3011, the demand amount in the complaint will include an additional 10 percent of the original claimed amount, to cover the administrative costs of processing and handling the enforcement of the debt.

b. Where the debtor is an individual rather than a business, an asset determination should be made both as to existing assets or prospective earnings. If the injured party's attorney has made an assets search that is reliable, review the search before requesting a new one. Such a search can be paid for out of existing collections.

(1) If the debtor has assets, refer to USARCS for transfer to a debt collection contractor or an agency debt collection center as determined by USARCS.

(2) If the debtor has no assets, but prospective future earnings, RJA may seek a confession of judgment and maintain contact with the debtor for future collection where authorized by state law and filing of suit is not required. If the amount is less than \$5,000, enter into an installment payment arrangement.

#### **14-14. Depositing of collections**

##### *a. Depositing property damage recovery.*

(1) *Machines, supplies, watercraft, aircraft, vehicles other than General Services Administration-owned.* Recovered money must be deposited into the General Treasury Account 21R3019. This account remains the same every fiscal year. It was established in accordance with 31 U.S.C. § 3302(b) and by Comptroller General Decision (B-205508), 64 Comp. Gen. 431.

(2) *Real property.* Collection for damage to real property must be deposited into an escrow account on behalf of the installation or activity at which the loss occurred. This escrow account must be set up at the request of the CCS, ACO, or CPO with the local finance office or resource management office with responsibility for department of engineering and housing or department of public works funds. The escrow account must be set up and managed by the department of engineering and housing or the department of public works to (1) temporarily hold deposits, and (2) to “roll over” deposits each fiscal year in order to avoid reversion of these deposits to the General Treasury at the end of each fiscal year. If the escrow account is not set up and managed in this manner, it is operating in violation of 10 U.S.C. § 2782.

(3) *Non-appropriated funds instrumentality property.* The RIMP often reimburses local NAFIs for property loss or damage to facilitate return of equipment to daily use. When money is recovered from tortfeasors and their insurance carriers, the NAFI involved will be contacted for instructions on the current procedures as to where the recovered money is to be forwarded and deposited.

(4) *Army Stock Fund or Defense Business Operations Fund property.* Monies recovered for damage to property belonging to one of these funds will be returned to that fund unless the fund has charged the cost of repair or replacement to an APF account. The Defense Business Operations Fund replaced the Army Industrial Fund.

(5) *Government housing in cases of abuse or neglect by Soldiers or families.* Monies recovered for damage to Government housing caused by a Soldier’s abuse or negligence (or by that of a Soldier’s Family member or guest of the Soldier) will be deposited into that installation’s Family housing operations and maintenance (O&M) account.

(6) *Government housing in cases of negligence by nonresidents.* Government housing caused by the negligence of a nonresident must be asserted against the nonresident directly or through his/her insurer. Settlement checks must be deposited into the real property escrow account in accordance with 10 U.S.C. § 2782.

*b. Depositing recovery of pay provided to a Soldier while incapacitated.* Monies recovered for the costs of pay provided to a Soldier injured by the tortious acts of another will be credited to the local O&M account that supports the command, activity, or other unit to which the Soldier was assigned at the time of the injury.

##### *c. Depositing medical care recovery.*

(1) *To a medical treatment facility account.* Continental United States and OCONUS claims offices, and command claims services will deposit money recovered from an automobile insurer for medical care provided, paid for by, in or through an MTF to the O&M account of the Army, Navy, or Air Force MTF that provided the care. CONUS and OCONUS claims offices and command claims services will deposit money recovered from any payor, under any provision of law, for medical care provided or paid for by, in or through an MTF into the MTF’s O&M account.

(2) *When TRICARE paid directly for treatment.* The account in which to deposit affirmative claims recoveries when TRICARE has paid directly for the medical treatment is a Defense Health Program (DHP) account for reallocation to the services. This replaces the general treasury miscellaneous receipts account published in the obsolete AR 37-100. Deposit to TRICARE using this new account for recoveries pending deposit, and recoveries for any claim settled on or after 1 Oct. 2002. Retroactive claims depositing is not necessary.

(3) *Apportionment of medical care recovery between accounts.* Claims offices will often have to apportion recovered money among different accounts.

*(a) Apportioning money between accounts.* If care was provided by an MTF and paid for by or through the MTF and/or directly by TRICARE and/or a unit account for military lost wages if any, and the amount recovered is less than the amount asserted, a prorated amount of money will be deposited into each TRICARE account.

*(b) Apportioning money between two or more medical treatment facility accounts.* If care was provided by two or more MTFs and the claims office recovers less than the amount asserted, the claims office should give each MTF a pro rata share of the money recovered. For example, if MTF one provided \$2,000 worth of care and MTF two provided \$1,000 worth of care, the claims office will deposit \$800 of a \$1,200 recovery to MTF one’s account and the remaining \$400 to MTF two’s account. Similarly, if the claims office recovers an amount less than that asserted for medical care expenses and costs of pay provided, the claims office should give a pro rata share of the money recovered to both the MTF and the appropriation account that supports the injured Soldier’s unit.

*d. Fiscal integrity.* Field claims offices must reconcile the property damage and medical care recovery accounts with their servicing defense accounting office. Field claims offices must ensure that their deposits have been credited to the proper accounts and that these accounts have not been improperly charged. All accounts must be reconciled at the end of the fiscal year.

## Appendix A References

### Section I

#### Required Publications

Code of Federal Regulations references are available at <http://www.gpoaccess.gov/cfr/index.htm>. United States Code references are available at <http://www.gpoaccess.gov/uscode/index.html>. Copies of all of the Federal statutes authorizing claims processing under each chapter of this publication and DA Pam 27-162, as well as regulatory and administrative authorities and other supplementary materials, (such as formats for letters and releases, checklists, and sample completed forms) are posted on the "Claims Resources" page of the USARCS Web site (hosted by the U.S. Army's Judge Advocate General Corps) at <https://www.jagcnet.army.mil/> Users may also contact USARCS headquarters in Fort Meade, MD, to obtain a computer disk with copies of these additional materials, or they may be printed directly from the Web site. DA Pam 27-162, appendix B, provides a complete listing of all of the supplementary materials available and their locations for viewing.

#### **AR 215-1**

Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in paras 1-4, 12-3, 12-9.)

#### **AR 405-15**

Real Estate Claims Founded Upon Contract. (Cited in paras 1-12*b(4)(b)*, 2-15*m*.)

#### **AR 608-10**

Child Development Services. (Cited in paras 1-4, 12-9, 12-10.)

#### **28 CFR Pt. 14, including appendix**

Federal Tort Claims Act Implementation. (Cited in paras 1-4, 2-5*e*, 2-5*a*, 4-1, 4-7*b*.)

#### **31 CFR Pts. 900-904**

Federal Claims Collection Standards. (Cited in paras 11-1*b*, 11-23*b*, 11-34*d*, 11-37*a*.)

#### **DA Pam 27-162**

Claims Procedures. (Cited in paras 1-1, 2-1, 3-3, 4-2, 5-4, 7-13, 8-8, 9-8, 10-3, 11-3, 12-4, 13-1, 14-8.)

#### **10 U.S.C. § 939**

Uniform Code of Military Justice, Article 139. (Cited in paras 1-4, 2-15*d*, 9-1, 9-4, 9-5.)

#### **10 U.S.C. § 1054**

Authority for certain claims arising from legal malpractice. (Cited in paras 1-4, 3-9*a*.)

#### **10 U.S.C. § 1089**

Gonzales Act (Cited in paras 1-4, 2-15*f*, 3-8*a*.)

#### **10 U.S.C. § 1095**

Third-party claims for health care services costs. (Cited in paras 1-4, 14-1*c*, 14-2, 14-9*a(2)*.)

#### **10 U.S.C. § 2733**

Military Claims Act. (Cited in paras 1-4, 1-19, 3-1, 3-4*f*, 3-5*a*, 4-2*b*, 11-3*c*.)

#### **10 U.S.C. § 2734**

Foreign Claims Act. (Cited in paras 1-4, 1-19, 9-8*e*, 10-1, 10-4*h*.)

#### **10 U.S.C. §§ 2734a, 2734b**

International Agreements Claims Act. (Cited in paras 1-4, 1-9*h*, 1-19, 7-1*a*.)

#### **10 U.S.C. § 2735**

Finality of settlements under Title 10. (Cited in paras 1-4, 2-47, 10-6*f(3)*, 10-9*d*.)

#### **10 U.S.C. § 2737**

Non-Scope Claims Act. (Cited in paras 1-4, 1-19, 5-1.)

**10 U.S.C. §§ 4801, 4802, 4806**

Army Maritime Claims Settlement Act. (Cited in paras 1-4, 2-15*h*, 8-1, 10-1*c*.)

**10 U.S.C. §§ 4803, 4804**

Third-party maritime claims. (Cited in para 14-4*f*.)

**28 U.S.C. § 1291**

Federal Tort Claims Act. (Cited in paras 1-4, 4-1.)

**28 U.S.C. § 1402**

Federal Tort Claims Act. (Cited in paras 1-4, 4-1.)

**28 U.S.C. §§ 2401-2402**

Federal Tort Claims Act (Cited in paras 1-4, 4-1, 4-7*g*.)

**28 U.S.C. §§ 2411-2412**

Federal Tort Claims Act. (Cited in paras 1-4, 4-1.)

**28 U.S.C. § 2415**

Federal Tort Claims Act. (Cited in para 11-24*a*.)

**28 U.S.C. §§ 2671-2680**

Federal Tort Claims Act. (Cited in paras 1-4, 2-24*d*, 2-24*a*, 2-28, 4-1, 4-3*b*, 4-7, 10-1*b*.)

**31 U.S.C. §§ 3711-3720E**

Federal Claims Collection Act. (Cited in paras 1-4, 1-19, 11-1*b*, 11-23*b*, 11-37, 14-1*a*, 14-2, 14-9*a*(2).)

**31 U.S.C. § 3721**

Personnel Claims Act. (Cited in paras 1-4, 9-8*e*, 11-1*a*, 11-2*d*, 11-3*b*, 11-6*e*, 11-6*d*, 11-22.)

**32 U.S.C. § 715**

National Guard Claims Act. (Cited in paras 1-4, 6-1, 7-1*a*.)

**39 U.S.C. § 411**

Postal Agency Agreements. (Cited in paras 1-4, 1-9*i*.)

**42 U.S.C. §§ 2651-2653**

Federal Medical Care Recovery Act. (Cited in paras 1-4, 1-19, 14-1*b*, 14-2, 14-9*a*(2).)

**46 U.S.C. § 30101**

Admiralty Extension Act. (Cited in paras 1-4, 2-15*h*, 2-28, 8-2.)

**Section II**

**Related Publications**

A related publication is a source of additional information. The user does not have to read it to understand this publication. Code of Federal Regulations references are available at <http://www.gpoaccess.gov/cfr/index.htm>; United States Code references are available at <http://www.gpoaccess.gov/uscode/index.htm> or <http://uscode.house.gov/>; DOD regulations, instructions, and directives are available at <http://www.dtic.mil/whs/directives/>; and international claims agreements are available from the USARCS Web site on JAGCNet..

**AAFES EOP 57-2**

Army Air Force Exchange Operating Procedures

**AFI (Air Force Instruction) 51-501**

Law/Tort Claims (Available at <http://www.e-publishing.af.mil/>.)

**AR 15-6**

Procedures for Investigating Officers and Boards of Officers



**AR 25-55**

The Department of the Army Freedom of Information Act Program

**AR 25-400-2**

The Army Records Information Management System

**AR 40-5**

Preventive Medicine

**AR 40-400**

Patient Administration

**AR 210-130**

Laundry and Dry Cleaning Operations

**AR 340-21**

The Army Privacy Program

**AR 385-40**

Accident Reporting and Records

**AR 735-5**

Policies and Procedures for Property Accountability

**32 C.F.R. Pts. 536-537**

Department of the Army, Claims for and Against the United States

**45 C.F.R. Pt. 160**

Department of Health and Human Services, General Administrative Requirements

**45 C.F.R. Pt. 164**

Department of Health and Human Services, Security and Privacy

**48 C.F.R. Pts. 1-99**

Federal Acquisition Regulation

**48 C.F.R. Pts. 200-299**

Federal Acquisition Regulations system, Department of Defense

**DA Pam 55-2**

It's Your Move

**DFAS-IN 37-1**

Finance and Accounting Policy Implementation (Available at <https://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/>)

**DOD 4500.9-R, Part IV, Appendix J**

Defense Transportation Regulation

**DOD 4525.6-M**

Postal Manual

**DODD 5515.6**

Processing Tort, Contract and Compensation Claims Arising out of Operations of Nonappropriated Fund Activities

**DODD 5515.9**

Settlement of Tort Claims

**DODD 5515.10**

Settlement and Payment of Claims Under 31 U.S.C. 3701 and 3721, "The Military Personnel and Civilian Employees' Claims Act of 1964"

**DODD 6025.18**

Privacy of Individually Identifiable Health Information in DOD Health Care Programs

**DODI 5515.08**

Assignment of Claims Responsibility

**DODI 6055.7**

Accident Investigation, Reporting, and Record Keeping

**FTCH**

Federal Tort Claims Handbook (Available on the "Claims Resources" page of the USARCS Web site on JAGCNet at II, a, no. 33.)

**FM 3-100.21**

Contractors on the Battlefield

**FM 27-100**

Legal Support to Operations

**FM 100-10-2**

Contracting Support on the Battlefield

**International Claims Agreement**

Compact of Free Association between the U.S. and the Marshall Islands and Micronesia (Available at <http://www.fm/jcn/compact/compact.pdf>.)

**International Claims Agreement**

German Supplemental Agreement to the NATO SOFA (Reciprocal)

**International Claims Agreement**

Memorandum of Understanding, U.S./Australia (Reciprocal) (Available from the U.S. Claims Service.)

**International Claims Agreement**

Partnership for Peace Agreement (Reciprocal) (Available from <http://www.nato.int/>.)

**International Claims Agreement**

Status of Forces Agreement, U.S./Japan (Available from <http://usfj.mil/>.)

**International Claims Agreement**

Status of Forces Agreement, U.S./Korea (Available from <http://www.usfk.mil/>.)

**International Claims Agreement**

Status of Forces Agreement, U.S./Kuwait (Available from Chief Judge Advocate, Central Command.)

**International Claims Agreement**

Status of Forces Agreement, North Atlantic Treaty Association (Reciprocal) (Available from <http://www.nato.int/docu/basicxt/b510619a.htm>.)

**International Claims Agreement**

Status of Forces Agreement, U.S./Romania (Available from [https://claimseurope.hqusareur.army.mil/pdf\\_docs/Romanian\\_Supplemental\\_Agreement.pdf](https://claimseurope.hqusareur.army.mil/pdf_docs/Romanian_Supplemental_Agreement.pdf).)

**International Claims Agreement**

Status of Forces Agreement, U.S./Singapore (Reciprocal) (Available from the U.S. Army Claims Service.)

**JAGINST 5890.1 (U.S. Navy publication)**

Administrative Processing and Consideration of Claims on Behalf of and Against the United States (Available from [http://www.lemoore.navy.mil/naslog/pp/jaginst5890\\_1.pdf](http://www.lemoore.navy.mil/naslog/pp/jaginst5890_1.pdf).)

**JFTR**

Joint Federal Travel Regulation (Available at <https://secureapp2.hqda.pentagon.mil/perdiem/trvlregs.html>.)

**JTR**

Joint Travel Regulation (Available at <https://secureapp2.hqda.pentagon.mil/perdiem/trvlregs.html>.)

**Manual for Courts–Martial**

Manual for Courts Martial (Available at <http://www.apd.army.mil/pdf/files/mcm.pdf>.)

**Manual of the Judge Advocate General (JAGMAN) (U.S. Navy publication)**

General Claims Provisions, Chapter VIII (Available at <http://stinet.dtic.mil/>.)

**MEDCOM Reg 40–41**

Medical Services, The Patient Safety Program (Available at <http://www.gprmc.amedd.army.mil/qm/documents/MEDCOMReg40–41.pdf>.)

**Treasury Financial Manual**

Financial Management Service (Available at <http://fms.treas.gov/tfm/index.html>.)

**1 U.S.C. § 4**

“Vehicle” as including all means of land transportation

**5 U.S.C. § 552**

Freedom of Information Act

**5 U.S.C. § 552a**

Privacy Act

**5 U.S.C. § 3106**

Employment of attorneys, restrictions

**5 U.S.C. § 8116**

Federal Employees Compensation Act

**5 U.S.C. § 8140**

Federal Employees Compensation Act

**10 U.S.C. § 456**

Defense Mapping Agency, civil actions barred

**10 U.S.C. § 932**

Uniform Code of Military Justice, Article 132

**10 U.S.C. § 934**

Uniform Code of Military Justice, Article 134

**10 U.S.C. § 1091**

Personal services contracts within medical treatment facilities

**10 U.S.C. § 2731**

Defines “settle”.

**10 U.S.C. § 2736**

Fund source authority

**10 U.S.C. § 2775**

Liability of members assigned to military housing

**10 U.S.C. § 2782**

Damage to real property, disposition of amounts recovered

**10 U.S.C. Chapter 1003**

Reserve Components Generally

**10 U.S.C. § 4837**

Settlement of accounts: remission of indebtedness of enlisted members

**10 U.S.C. § 7363**

Settlement of claims, maritime

**10 U.S.C. §§ 7621–7623**

Claims, maritime

**10 U.S.C. §§ 9801–9804 and 9806**

Military claims

**18 U.S.C. §§ 203, 205**

Compensation to members of Congress, etc.; Activities of officers and employees in claims against the government

**28 U.S.C. § 1346**

Tucker Act

**28 U.S.C. § 1491**

Certain claims considered by the Court of Federal Claims

**28 U.S.C. § 2409a**

Quiet Title Act

**28 U.S.C. § 2415**

Time for commencing actions brought by the United States

**28 U.S.C. § 3011**

Assessment of surcharge on debt

**31 U.S.C. § 1304**

Fund source authority

**31 U.S.C. § 3302**

Custodians of money

**31 U.S.C. § 3727**

Assignments of claims

**32 U.S.C. § 316**

Detail of members of Army National Guard for rifle instruction of civilians

**32 U.S.C. §§ 502–505**

Required drills and field exercises

**32 U.S.C. § 709**

Technicians: employment, use, status

**33 U.S.C. §§ 403, 406, 408, 409, 412, 414, 415**

Rivers and Harbors Act

**33 U.S.C. § 571**

Crediting reimbursements for lost, stolen, or damaged property

**33 U.S.C. § 702(c)**

Expenditures for construction work; conditions precedent; liability for damage from flood waters; condemnation proceedings; floodage rights

**36 U.S.C. § 2110**

American Battle Monuments Commission, claims against

**41 U.S.C. §§ 601–613**

Contract Disputes Act, definitions

**42 U.S.C. §§ 300aa–1 through 300aa–6**

National Vaccine Act

**42 U.S.C. § 5173**

Disaster relief indemnity by local governments, debris removal

**42 U.S.C. §§ 1651–1654**

Defense Bases Act, compensation authorized

**46 U.S.C. §§ 30501–30512**

Shipping, Limitation of vessel owners liability

**46 U.S.C. §§ 31101–31113**

Public Vessels Act

**46 U.S.C. §§ 30901–30918**

Suits in Admiralty Act

**50 U.S.C. app. §§ 1–44**

Trading with the Enemy Act

**USFK Regulation 526–11**

United States Forces Relations with Korean Nationals Condolence Visits and Solatia Payments (Available at <http://8tharmy.korea.army.mil/ClaimsSvc/>.)

**USAREUR Real Estate/Office of the Judge Advocate SOP**

Processing Claims Involving Real Estate during Contingency Operations (Available from the U.S. Army Claims Service Europe.)

**Section III**

**Prescribed Forms**

All prescribed forms used in claims processing are prescribed from DA Pam 27–162. Except where otherwise indicated below, forms are available as follows: DA forms are available on the Army Publishing Directorate Web site (<http://www.apd.army.mil>). DD forms are available from the OSD Web site (<http://www.dtic.mil/whs/directives/infomgt/imd.htm>). SF forms and OF forms are available from the GSA Web site (<http://www.gsa.gov/>); and FMS forms are available on The Department of the Treasury Web site (<http://fms.treas.gov/gov/judgefund>).

**DA Form 1666**

Claims Settlement Agreement (Prescribed in para 2–51.)

**DD Form 1840**

Joint Statement of Loss or Damage at Delivery (Normal forms supply channels) (Prescribed in para 11–28.)

**DD Form 1840R (reverse)**

Notice of Loss or Damage (Normal forms supply channels) (Prescribed in paras 11–21, 11–28, 11–28.)

**DD Form 1842**

Claims for Loss of or Damage to Personal Property Incident to Service (Prescribed in paras 2–15, 11–8, 11–11, 11–21, 11–28.)

**DD Form 1843**

Demand on Carrier/Contractor (Prescribed in para 11–24a(13).)

**DD Form 1844**

List of Property and Claims Analysis Chart (Prescribed in para 11–8.)

**Section IV****Referenced Forms****DA Form 11–2–R**

Management Control Evaluation Certification Statement

**DA Form 1668**

Small Claims Certificate

**DA Form 7500**

Tort Claim Payment Report (<http://www.usapa.army.mil/>, also available as a fillable form on the USARCS Tort and Special Claims database)

**DA Form 7501**

Personnel Claim Payment Report

**DD Form 619–1**

Statement of Accessorial Services Performed (SIT Delivery and Reweigh)

**DD Form 788**

Private Vehicle Shipping Document for Automobile

**DD Form 2063**

Record of Preparation and Disposition of Remains (within CONUS)

**DD Form 2526**

Case Abstract for Malpractice Claims

**DD Form 2527**

Statement of Personal Injury—Possible Third Party Liability—TRICARE Management Activity

**FMS Form 194**

Judgment Fund Transmittal

**FMS Form 196**

Judgment Fund Award Data Sheet

**FMS Form 197**

Judgment Fund Voucher for Payment

**SF 95**

Claim for Damage, Injury or Death

**SF 1203**

Government Bill of Lading

**Appendix B****Management Control Evaluation Checklist****B–1. Function.**

The function covered by this checklist is compliance with claims processing procedures pursuant to AR 27–20, Legal Services/Claims, and AR 11–2, Management Control.

**B–2. Purpose.**

The purpose of this checklist is to assist claims service and claims office supervisors in evaluating their key management controls. It is not intended to cover all controls. Additional controls are maintained pursuant to AR 27–20,

Legal Services/Claims, and DA Pam 27-162, Legal Services/Claims Procedures, both at paragraph 1-22, Claims Assistance Visits.

### **B-3. Instructions.**

Answers must be based on the actual testing of key management controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R (Management Control Evaluation Certification Statement).

### **B-4. Test questions.**

*a.* Do claims supervisors regularly monitor and report all obligations against their claims expenditure allowance (CEA), and, where necessary, take corrective action to ensure only authorized claims are charged against the claims open allotment?

*b.* Are claims payments made only to proper claimants with cognizable and meritorious claims?

*c.* Are procedures in place to ensure affirmative claims are asserted within the SOL and reviewed every 60 days?

*d.* Are demands for recovery against third parties properly documented, to include proper calculation of the liability, prior to dispatch to carriers?

### **B-5. Comments.**

Help make this a better tool for evaluating management controls. Submit comments to the U.S. Army Claims Service, ATTN: Commander, 4411 Llewellyn Avenue, Fort Meade, MD 20755-5360.

### **B-6. Supersession**

This checklist replaces the checklist for management control evaluation previously published in the 1 July 2003 edition of AR 27-20.

## **Glossary**

### **Section I Abbreviations**

**AAFES**

Army and Air Force Exchange Service

**AAO**

area action officer

**ACMP**

Affirmative claims management program (database)

**ACO**

area claims office

**ACOM**

Army Command

**AEA**

Admiralty Extension Act

**ALDG**

Allowance List Depreciation Guide

**AMCSA**

Army Maritime Claims Settlement Act

**APF**

appropriated funds

**ASCC**

Army Service Component Command

**AR**

Army regulation

**ARNG**

Army National Guard

**ARNGUS**

Army National Guard of the United States

**attn**

attention

**AWOL**

absent without leave

**BL**

bill of lading

**CBL**

Commercial bill of lading

**CEA**

claims expenditure allowance

**CER**

command expenditure report



**C.F.R.**

Code of Federal Regulations

**CJA**

claims judge advocate

**COE**

Corps of Engineers

**CONUS**

continental United States

**CPO**

claims processing office

**DA**

Department of the Army

**DAO**

Defense Accounting Office

**DECA**

Defense Commissary Agency

**DFAS**

Defense Finance and Accounting Service

**DFAS-IN**

Defense Finance and Accounting Service-Indianapolis

**DHP**

Defense Health Program

**DJAG**

Deputy Judge Advocate General

**DOD**

Department of Defense

**DODD**

Department of Defense Directive

**DODI**

Department of Defense Instruction

**DOJ**

Department of Justice

**DPM**

direct procurement method

**DRMO**

Defense Reutilization and Marketing Office

**DVA**

Department of Veterans Affairs

**EOP**

Exchange Operating Procedures

**FAR**

Federal Acquisition Regulation

**FCA**

Foreign Claims Act

**FCC**

Foreign Claims Commission

**FCCA**

Federal Claims Collection Act

**FECA**

Federal Employees Compensation Act

**FKJA-CL**

U.S. Forces Korea (Claims)

**FMCRA**

Federal Medical Care Recovery Act

**FMS**

Financial Management Service

**FOIA**

Freedom of Information Act

**FRCP**

Federal Rules of Civil Procedure

**FTCA**

Federal Tort Claims Act

**GBL**

Government bill of lading

**GCMCA**

General Court Martial Convening Authority

**GPC**

global privately owned vehicle contract

**GS**

general schedule

**HCP**

health care providers

**HIPAA**

Health Insurance Portability and Accountability Act

**HQDA**

Headquarters, Department of the Army

**IACA**

International Agreements Claims Act

**IME**

independent medical examination

**IO**

investigating officer

**ITGBL**

international through government bill of lading

**JA**

judge advocate

**JAGC**

Judge Advocate General's Corps

**JFTR**

Joint Federal Travel Regulations

**JTR**

Joint Travel Regulation

**LSHWCA**

Longshore and Harbor Workers' Compensation Act

**MCA**

Military Claims Act

**MCJA**

medical claims judge advocate

**MCSA**

Maritime Claims Settlement Act

**MEDCOM**

United States Army Medical Command

**MOA**

memorandum of agreement

**MOU**

memorandum of understanding

**MTF**

medical treatment facility

**NAF**

nonappropriated fund

**NAFI**

non-appropriated funds instrumentality

**NATO**

North Atlantic Treaty Organization

**NGCA**

National Guard Claims Act

**NGB**

National Guard Bureau

**NSCA**

Non-Scope Claims Act

**NTS**

nontemporary storage

**O&M**

operation and maintenance

**OCONUS**

outside the continental United States

**OSJA**

Office of the Staff Judge Advocate

**OTJAG**

Office of the Judge Advocate General

**Pam**

pamphlet

**para**

paragraph

**PCA**

Personnel Claims Act

**PCE**

potentially compensable event

**PCMS**

Personnel claims management system (database)

**PED**

pre-existing damage

**PFPP**

Partnership for Peace

**POV**

privately owned vehicle

**PPSO**

personal property shipping office

**Pub. L. No.**

Public Law Number

**PVA**

Public Vessels Act

**RCI**

residential communities initiative

**RCJA**

recovery judge advocate

**RCP**

replacement-cost protection

**RIMP**

Risk Management Program

**RJA**

recovery judge advocate

**ROTC**

Reserve Officer Training Corps

**RSMO**

Regional Storage Management Office

**SA**

Secretary of the Army

**SAUSA**

Special Assistant United States Attorney

**SDDC**

Surface Deployment and Distribution Command

**SF**

standard form

**SIAA**

Suits in Admiralty Act

**SJA**

staff judge advocate

**SOFA**

Status of Forces Agreement

**SOL**

statute of limitations

**SPCMCA**

Special Court Martial Convening Authority

**Stat.**

statute

**subpara**

subparagraph

**TDY**

temporary duty

**TGBL**

through government bill of lading

**T.I.A.S.**

Treaties and International Acts Series

**TJAG**

The Judge Advocate General

**TO**

transportation officer

**TSCA**

Tort and special claims application (database)

**UCMJ**

Uniform Code of Military Justice

**UPS**

United Parcel Service

**U.S.**

United States

**USACSEUR**

U.S. Army Claims Service, Europe

**USAR**

U.S. Army Reserve

**USARCS**

U.S. Army Claims Service

**U.S.C.**

United States Code

**U.S.T.**

United States Treaties and Other International Agreements

**VPC**

vehicle processing center

**Section II****Terms****Affirmative claims**

An assertion of the Government's statutory right to recover money, property, or repayment in kind, resulting from property loss, damage, or destruction by any individual, partnership, association, or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, an assertion of the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances), and the costs of pay provided to an injured Soldier during periods of incapacitation incurred under circumstances creating tort liability upon some third person or under circumstances permitting recovery from the injured party's insurer.

**Civilian employee**

A person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used. This term includes, but is not limited to, full-time Federal civilian officers and employees. The term "civilian employee" should be distinguished from "independent contractor," for whose actions the Government generally is not liable. The decision as to who is a civilian employee is a Federal question determined under Federal, not local law.

**Claim**

A demand for payment of a specified sum of money for personal injury, property damage, or wrongful death, singly or in combination, and unless otherwise specified in this regulation, in writing and signed by the claimant or a properly designated representative.

**Claimant**

An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country. It does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants, but individual Indians may be claimants.

**Claim approval authority**

Except for claims under chapters 7, 9, and 11, and subject to any limitations found in specific provisions of this regulation, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. Under chapter 11, the authority of a designated Government agent to adjudicate and pay a claim in a meritorious amount within the monetary limits prescribed in that chapter. A person

with approval authority may not disapprove a claim in its entirety or make a final offer subject to any limitations found in specific provisions of this regulation.

**Claim file**

A file containing the claim, the report of the claims officer or other report of claims investigation, supporting documentation, and pertinent correspondence.

**Claim settlement authority**

The authority to approve a claim, deny a claim in its entirety, or make a final offer subject to any limitations found in specific provisions of this regulation.

**Claims assistance visit**

Instruction and assistance provided by USARCS personnel on an official visit to a CCS, ACO, or CPO.

**Claims attorney**

A DA or DOD civilian attorney assigned to a judge advocate or legal office who has been designated by the Staff Judge Advocate or other appropriate authority to act as a claim settlement or approval authority.

**Claims judge advocate**

An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate to be in immediate charge of claims activities of the command.

**Claims officer**

A commissioned officer, warrant officer, or qualified civilian employee, detailed by the commander of an installation or unit, who is trained or experienced in the investigation of claims.

**Combat activities**

Activities resulting directly or indirectly from action by the enemy, or by the Armed Forces of the United States engaged in armed conflict, or in immediate preparation for impending armed conflict.

**Contingency operation**

A military operation in which the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy or an opposing force, which results in the call up to (or retention on) active duty of members of the uniformed services under certain provisions of Title 10 of the United States Code; or during war or national emergency declared by the President or Congress; or that is designated as such by the Secretary of Defense.

**Cross-servicing**

Transferring of a tort claim to another Armed Service either as a result of single service responsibility or when a claim alleges negligence by more than one Service and a lead agency is established.

**Depecage**

The process whereby different issues, such as damages or "who is a proper claimant," in a single case, arising out of a single set of facts, are decided according to the laws of different states.

**Disaster**

A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

**Drayage**

A charge for the local transportation of property.

**Ex gratia**

"As a matter of grace." In the case of ex gratia claims under the NATO SOFA, Article VIII, paragraph six, a claim considered by the sending State without legal obligation (under the Foreign Claims Act) to do so.

**Federal agency**

A Federal agency includes executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor working for or with, or supplying goods or services to, the United States.

**Final offer**

An offer of payment by a settlement authority in full and final settlement of a claim that, if not accepted, constitutes a final action for purposes of filing suit under chapter 4 or filing an appeal under chapters 3 or 6, provided such offer is made in writing and meets the other requirements of a final action, as set forth in this regulation.

**Government vehicle**

A vehicle owned or on loan to any agency of the U.S. Government, or privately owned and operated by a Soldier or civilian employee of the Army in the scope of his or her office or employment with the U.S. Government, including vehicles operated on joint operations of the Armed Forces of the United States.

**Medical claims investigator**

A senior legal specialist or qualified civilian assigned to assist a medical claims judge advocate on a full-time basis. A medical claims investigator is authorized to administer oaths under the provisions of Article 136(b)(4), UCMJ, when performing investigative duties.

**Medical claims judge advocate**

A judge advocate assigned to an Army Medical Center, under an agreement between TJAG and the Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

**Medical malpractice claim**

A claim arising out of substandard medical care.

**Military personnel**

Members of the Army on active duty for training or inactive duty training. This includes members of the Army National Guard of the various states, Puerto Rico, the Virgin Islands, and Guam while performing active duty for training, as well as members of the District of Columbia National Guard while on active duty or active duty for training.

**Noncombat activities**

Authorized activities essentially military in nature, having little parallel in civilian pursuits, which historically have been considered as furnishing a proper basis for payment of claims. Examples are practice firing of missiles and weapons, training, and field exercises, maneuvers that include the operation of aircraft and vehicles, use and occupancy of real estate in the absence of a contract or international agreement covering such use, and movement of combat or other vehicles designed especially for military use. Certain civil works activities such as inverse condemnation are also included. Activities excluded are those incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances.

**Personal property**

Property consisting solely of corporeal personal property, that is, tangible things.

**Single-service responsibility**

In an overseas area, the responsibility of one of the Armed Services (Army, Air Force, or Navy) for processing and settling all claims arising in that area, even when caused by the negligence of another Service.

**Solatia**

Solatia payments are nominal payments made immediately to a victim or the victim's Family to express sympathy when local custom exists for such payments. Solatia payments are made by a tortfeasor from personal funds, or by the Armed Forces of the United States from operations and maintenance appropriations other than claims funds.

**Structured settlement**

A settlement in which compensation is deferred in accordance with a particular plan rather than paid in one lump sum. Structured settlements may range from simple deferred payment plans to complex trusts financed by annuities or other financial instruments.

**Subrogated claim**

A claim based on a contract or statute that obligates payment to an insured. State law may prohibit subrogation of medical bills as a matter of public policy.

**Section III****Special Abbreviations and Terms**

This section contains no entries.



**UNCLASSIFIED**

**PIN 000309-000**