

claims payments by the Treasury; allows advance payments to commercial enterprises if severe financial loss would occur; specifies punitive damages are not payable; and requires faxing a copy of a complaint to AFLSA when an SJA learns of litigation. **Chapter 2** adds information on the scope of FTCA claims; clarifies settlement authorities; explains the statute of limitations; expands requirements for settlement agreements; and updates the address for payments over \$2500. **Chapter 3** denotes implementation of single service claims responsibility; explains the scope of the MCA; discusses the statute of limitations and lays out rules to interpret it; clarifies proper claimants; clarifies exceptions to payment under the MCA and adds new ones; eliminates the pure comparative negligence rule; and lists specific rules applicable to damage calculations. **Chapter 4** implements DoDD 5513.3; specifies claims are settled according to the regulations of the service having single service responsibility; explains the International Agreement Claims Act (IACA); requires IACA claims in the United States be sent to JACT before being sent to the Army; explains the purpose of the Foreign Claims Act (FCA); appoints AFSOC as a foreign claims commission; expands 12AF jurisdiction to include Central America and the Caribbean; discusses the statute of limitations and lays out rules to interpret it; excludes governments or political factions engaging in armed conflict with the United States as proper claimants; limits claims payments when actions are by local hire civilian employees; adds requirement of negligent or wrongful acts before payment is proper; clarifies exceptions to payment under the FCA and adds new ones; clarifies applicable law; specifies how payments are calculated and made; and adds a section on solatia. **Chapter 5** adds sections for claims under the Use of Government Property Claims Act, Claims by Members for Certain Losses of Household Effects Caused by Hostile Act, and claims of the US Postal Service; updates addresses for nonappropriated fund claims; explains settlement of golf ball claims; clarifies improper nonappropriated fund claims; discusses the statute of limitations under the NGCA and lays out rules to interpret it; clarifies proper claimants under the NGCA; clarifies exceptions to payment under the NGCA and adds new ones; lists specific rules applicable to damage calculations under the NGCA; expands the explanation of Civil Air Patrol claims; expands the scope of admiralty claims; and discusses the statutes of limitation for admiralty claims.

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Chapter 1

TORT CLAIMS PROCESSING

1.1. Scope of this Chapter . This chapter tells how to process tort claims in accordance with:

- 1.1.1. The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671-2680.
- 1.1.2. The Military Claims Act (MCA), 10 U.S.C. 2733.
- 1.1.3. The Foreign Claims Act (FCA), 10 U.S.C. 2734.
- 1.1.4. The International Agreement Claims Act (IACA), 10 U.S.C. 2734a and 2734b.
- 1.1.5. The Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801-9804, 9806.
- 1.1.6. The National Guard Claims Act (NGCA), 32 U.S.C. 715.
- 1.1.7. Claims arising from the activities of the Civil Air Patrol when performing Air Force-assigned missions, 10 U.S.C. 9441.
- 1.1.8. The Advance Payments Act, 10 U.S.C. 2736.
- 1.1.9. Use of Government Property Claims Act (UGPCA), 10 U.S.C. 2737.
- 1.1.10. Claims by Members for Certain Losses of Household Effects Caused by Hostile Act, 10 U.S.C. 2738.
- 1.1.11. United States Postal Service Agreement with the Department of Defense, February 1980.

1.2. Responsibilities of Tort Claim Authorities.

- 1.2.1. The Judge Advocate General (TJAG):
 - 1.2.1.1. Develops tort claims and litigation policies and procedures.
 - 1.2.1.2. Trains claims officers, Medical Law Consultants (MLCs), and paralegals.
 - 1.2.1.3. Denies or approves settlement of tort claims.
 - 1.2.1.4. Establishes geographic areas of claims responsibility.
- 1.2.2. Tort Claims and Litigation Division (AFLSA/JACT):
 - 1.2.2.1. Implements tort claims and litigation policies and procedures for claims and MLC offices.
 - 1.2.2.2. Provides guidance to claims and MLC offices.
 - 1.2.2.3. Supervises worldwide tort claims and litigation activities.
 - 1.2.2.4. Recommends the settlement of tort claims to TJAG, the Secretary of the Air Force (SAF), and the Department of Justice (DoJ).
 - 1.2.2.5. Coordinates with the DoJ, the Department of Defense (DoD), and other Government agencies on tort claims and litigation matters, when appropriate.
 - 1.2.2.6. Denies or negotiates settlement of tort claims.

- 1.2.2.7. Provides support to DoJ in Air Force tort litigation, and concurs on behalf of the Air Force in the proposed disposition of tort litigation.
- 1.2.2.8. Maintains historical records on all Air Force tort claims and litigation.
- 1.2.2.9. Conducts tort claims and litigation training.
- 1.2.3. Environmental Law and Litigation Division (AFLSA/JACE):
 - 1.2.3.1. Implements environmental tort claims and litigation policies and procedures.
 - 1.2.3.2. Recommends the settlement of environmental tort claims to TJAG, the SAF and the DoJ.
 - 1.2.3.3. Coordinates with the DoJ, DoD, and other Government agencies on environmental tort claims and litigation matters, when appropriate.
 - 1.2.3.4. Denies or negotiates settlement of environmental tort claims.
 - 1.2.3.5. Provides support to DoJ in environmental tort litigation, and concurs on behalf of the Air Force in the proposed disposition of environmental tort litigation.
- 1.2.4. Major Command Staff Judge Advocate (MAJCOM/JA):
 - 1.2.4.1. Provides general supervision of claims activities within the command.
 - 1.2.4.2. Acts as a foreign claims commission if assigned claims responsibility in foreign countries.
 - 1.2.4.3. Reimburses, pays a pro rata share, or objects to claims in any amount under applicable Status of Forces Agreements (SOFA).
 - 1.2.4.4. Advises AFLSA/JACT of actions by foreign countries affecting claims policies.
- 1.2.5. SJAs of 3AF, 5AF, 9AF (for USCENTCOM), AFSOC (for USSOCOM), and 12AF:
 - 1.2.5.1. Notify AFLSA/JACT (AFLSA/JACE for environmental) of serious incidents having potential tort liability or adverse publicity.
 - 1.2.5.2. Investigate incidents with potential tort liability, which occur in areas where they have geographic claims responsibility.
 - 1.2.5.3. Deny or negotiate settlement of tort claims that are within their settlement authority in areas where they have geographic claims responsibility. **EXCEPTION:** See restrictions on settlement authorities under paragraph **1.7.5.**
- 1.2.6. Installation Staff Judge Advocate (SJA):
 - 1.2.6.1. Notifies AFLSA/JACT of serious incidents having potential tort liability or adverse publicity.
 - 1.2.6.2. Investigates incidents with potential tort liability and tort claims, which arise in assigned geographic areas.
 - 1.2.6.3. Denies or negotiates settlement of tort claims that are within the SJA's settlement authority. **EXCEPTION:** See restrictions on settlement authorities under paragraph **1.7.5.**

1.3. Presenting Tort Claims:

1.3.1. Filing a claim. A claimant or authorized agent must present to the Air Force a properly signed SF 95, **Claim for Damage, Injury, or Death**, or other signed writing for money damages in a sum certain for damage to or loss of property, personal injury, or death. **EXCEPTION:** For claims presented under the Foreign Claims Act (FCA), a claim may be presented orally if oral claims are the custom in the country where the incident occurred.

1.3.2. Amending a Claim. A claimant may amend the amount of a claim in writing at any time before final action is taken on the claim.

1.3.3. Transferring a Claim. Claims personnel receiving a claim from an incident that did not occur within their assigned geographic area transfer it to the appropriate legal office or Government agency.

1.3.4. Taking Immediate Action on a New Claim. Upon receipt of a new tort claim, claims personnel must mark the date received and the designation of the receiving office on the tort claim, even if the document is deficient. Claims personnel send a written acknowledgment of receipt of the claim to the claimant or authorized agent.

1.4. Substantiating Tort Claims . Claimants must substantiate their claims by submitting documentation in accordance with 28 Code of Federal Regulations (CFR), Part 14.4, *Administrative Claims, Evidence and Information to be Submitted*.

1.4.1. Costs of preparing and presenting a claim, such as copying charges, appraisals, and attorneys' fees, are not payable, except when adjudicated and paid by a foreign country under a Status of Forces Agreement and payment by the US is under the International Agreement Claims Act.

1.4.2. When a claimant fails to provide substantiation, claims personnel immediately notify the claimant (or attorney) in writing. If the claimant fails to provide the requested documentation after claims personnel send a follow-up letter, claims personnel continue investigating and processing the claim in accordance with paragraph [1.8](#).

1.5. Who are Proper Claimants:

1.5.1. Owners of property for property damage.

1.5.2. Injured persons for personal injury.

1.5.3. Executors or administrators of estates or personal representatives of deceased personnel based on the applicable state wrongful death statute or foreign law or custom, or by any other person legally entitled to assert such a claim in accordance with applicable law.

1.5.4. The subrogor (insured) and the subrogee (insurer), jointly or individually.

1.5.5. Other persons authorized by law.

1.6. Signatures on Tort Claims:

1.6.1. Claimant or Agent. The claimant or authorized agent signs the claim. If an authorized agent signs the claim on behalf of a claimant, the authorized agent must attach a power of attorney, retainer agreement, or other evidence of authority.

1.6.2. Owners of Property. All owners, or their authorized agents, having an interest in property that is the subject of a claim sign a claim.

1.6.3. Corporation. An authorized corporate representative, showing the capacity to file claims on behalf of the corporation, must sign the claim.

1.7. Tort Claims Settlement Authorities. Settlement authorities may pay or deny tort claims.

1.7.1. Settlement authorities include:

1.7.1.1. Installation SJAs.

1.7.1.2. The SJAs of PACAF, USAFE, AFSOC (for USSOCOM), 3AF, 5AF, 9AF (for USCENT-COM), and 12AF.

1.7.1.3. The Chief and Tort Branch Chiefs of AFLSA/JACT.

1.7.1.4. The Chief and Environmental Litigation and Torts Branch Chief of AFLSA/JACE (for environmental torts).

1.7.1.5. The Director, Civil Law and Litigation (AFLSA/JAC).

1.7.1.6. The Deputy Judge Advocate General (DJAG).

1.7.1.7. TJAG.

1.7.1.8. The SAF.

1.7.2. Dollar Limitations. Authority to pay or deny tort claims is subject to dollar limitations as specified in [Chapter 2](#), [Chapter 3](#), [Chapter 4](#) and [Chapter 5](#).

1.7.3. Redelegating Authority. Settlement authorities may redelegate their full authority, in writing, to a subordinate judge advocate or civilian attorney.

1.7.4. Negotiating Settlements. A settlement authority may pay a tort claim for any sum within its delegated authority, regardless of the amount being claimed.

1.7.5. Restrictions on settlement authority. Settlement authorities below JACT may not deny or pay the following types of tort claims and must send them to AFLSA/JACT for final action after completion of their investigation:

1.7.5.1. Medical malpractice. **Exception:** Settlement authorities may be authorized by AFLSA/JACT to pay claims within the requestor's settlement authority.

1.7.5.2. Legal malpractice.

1.7.5.3. On-the-job personal injury or death of an employee of a Government contractor.

1.7.5.4. Admiralty and maritime claims.

1.7.5.5. Civil Air Patrol (CAP) claims.

1.7.6. Multiple claims arising from a single incident.

1.7.6.1. If the aggregate of claims arising from one incident exceeds the base settlement authority limits, consult AFLSA/JACT before paying any claim.

1.7.6.2. If a single incident results in five or more claims (exclusive of derivative claims), prepare one completely documented master file and two copies, cross-referencing all claims arising from the incident to the master file. Maintain the master files in the following manner:

1.7.6.2.1. Base retains one copy and AFLSA/JACT retains the original and one copy.

1.7.6.2.2. Retain all copies until all possible claims arising from the incident are processed.

1.7.7. Splitting a claim. Even if state or foreign law permits a claimant to file separate claims for property damage and personal injury arising out of the same incident, do not settle or pay a separate or split claim without prior approval of AFLSA/JACT.

1.7.7.1. Making an advance payment does not constitute splitting a claim.

1.7.7.2. Do not settle a claim filed by a subrogee (insurer) prior to settling the claim of the subrogor (insured) without prior approval of AFLSA/JACT.

1.8. Investigating and Processing Tort Claims. Claims personnel investigate and process tort claims as follows:

1.8.1. Witness Interviews. Interview principal witnesses promptly and summarize the interview in a memorandum for record, beginning with the required language: "This memorandum has been prepared by an Air Force Judge Advocate (or paralegal) while investigating a claim or potential claim for damages against the United States. The attorney's (or paralegal's) impressions and observations summarized herein were obtained in anticipation of future litigation involving the same incident, and this memorandum would not have been prepared in the normal course of Air Force business activities, but for the possibility that litigation might ensue."

1.8.2. Witness Locator Chart. List each witness on a locator chart and keep it current. Include the following for each witness:

1.8.2.1. Full name.

1.8.2.2. Social security number (for military and federal civilian employees).

1.8.2.3. Current work and home address.

1.8.2.4. Duty/work and home phone (commercial and DSN).

1.8.2.5. Expected PCS transfer or completion of service date.

1.8.2.6. Address for future contact.

1.8.2.7. For medical providers, state of licensure.

1.8.2.8. Short description of witness' involvement.

1.8.3. Documents. Obtain copies of all relevant documents, and for each document identify the name, duty address, and telephone number of the custodian of the original document.

1.8.4. Photographs. Take photographs as soon as possible.

1.8.4.1. On the back of the photographs, note:

1.8.4.1.1. The name, grade, and duty organization of the photographer (if military), or permanent address (if civilian).

- 1.8.4.1.2. Social Security number of the photographer (if military or federal civilian employee).
- 1.8.4.1.3. The date and time the photograph was taken.
- 1.8.4.1.4. The orientation of the photograph to the place of the incident. The face of the print must not be marked unless the negative or slide is in the claim file.
- 1.8.4.2. If possible, photographs should be 35mm.
- 1.8.4.3. Digital images have not been widely accepted by courts as the best evidence. If digital images are taken, accomplish the following:
 - 1.8.4.3.1. Print two copies of the image.
 - 1.8.4.3.2. Copy the data to a disk.
 - 1.8.4.3.3. Record the name and identifying information of the photographer and the computer operator.
 - 1.8.4.3.4. Record the program on the computer, which is interpreting the image.
 - 1.8.4.3.5. For each printed image, record on the image the date and time taken.
 - 1.8.4.3.6. Keep all data and one copy of the image with the disk in a safe, with chain of custody documentation.
 - 1.8.4.3.7. Use the second printed image for the claim file.
- 1.8.5. Seven Point Memorandum. Prepare a Seven Point Memorandum for all tort claims and include:
 - 1.8.5.1. The claimant's name, the claim number, the amount of the claim, the date and place it was presented, and the amount and date of any amendments.
 - 1.8.5.2. The type of claim (cite appropriate statute).
 - 1.8.5.3. The date, time, and place of the incident.
 - 1.8.5.4. Address of claimant (if represented by an attorney, the name, address and telephone number of the attorney).
 - 1.8.5.5. Facts of the incident.
 - 1.8.5.6. Brief of the applicable law (federal and state and/or local law).
 - 1.8.5.7. Liability and damage analysis and a recommendation as to disposition of the claim.
- 1.8.6. Assembling Tort Claim Files. Assemble and tab all tort claim files in accordance with [Attachment 2](#).
- 1.8.7. Central Data Base Reporting. Claims personnel immediately enter all tort claims data into AFCIMS.

1.9. Action by Settlement Authorities. A settlement authority takes final action on all claims where the amount claimed or the negotiated settlement is within its delegated settlement authority, unless concurrence of a higher settlement authority is obtained to forward the claim, or the claim falls within a special exception in this instruction.

1.9.1. Forwarding Claims. SJAs forward claims they cannot take final action on to the next higher settlement authority within 120 days of receipt. For medical malpractice claims, see the additional requirements in paragraph 1.15. Submit:

1.9.1.1. The original file and one copy for FTCA claims.

1.9.1.2. Only the original file for all other claims.

1.9.2. Paying Claims. The settlement authority informs the claimant of the amount and basis of the offer. Any offer letter must contain the citation to the statute under which the claim was adjudicated.

1.9.2.1. Before the settlement authority pays the claimant, the claimant must accept the amount offered in full satisfaction of the claim, and sign a settlement agreement.

1.9.2.2. If the claimant rejects the offer, further negotiations may be conducted. In the event there is an outstanding offer on the claim and the claimant is given a specific date by which to accept the offer and it is not accepted, a separate denial letter must be sent; do not send offer letters containing self-executing denials at some time in the future. Do not put a contingent denial in the settlement offer, e.g., "If this offer is not acceptable, your claim is denied."

1.9.3. Denying Claims. The settlement authority sends a final denial letter to the claimant or authorized agent by certified or registered mail, return receipt requested. The letter must be mailed the same day as the date that appears on the letter. The letter must state:

1.9.3.1. The full title and legal citation of the statute under which the settlement authority considered the claim.

1.9.3.2. The reasons for denial.

1.9.3.3. For FTCA claims, the letter must include the following language: "If [you/your client/John Doe] is dissatisfied with this decision, [you/he/she/they/John Doe] may file suit in an appropriate United States District Court not later than six months after the date of mailing of this letter."

1.9.3.4. For MCA and NGCA claims, and Claims by Members for Certain Losses of Household Effects Caused by Hostile Act, the letter must contain the following language: "This is the final denial of [your/your client's/John Doe's] claim under the [appropriate act, e.g. Military Claims Act, etc.]. However, if [you/your client/John Doe] so desire[s], [you/he/she/John Doe] may appeal this decision. No particular form is necessary, but the appeal should be in writing, describe the reasons for the appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter."

1.10. Acting on Reconsiderations. Claimants may request reconsideration under the FTCA and other claims statutes, unless a statutory appeal is provided (appeals are provided under the MCA, NGCA, and Claims by Members for Certain Losses of Household Effects Caused by Hostile Act).

1.10.1. In its regulations (28 CFR, Part 14), the DoJ provides a claimant the opportunity to request reconsideration of the denial of a claim under the FTCA. Those regulations are controlling. The request for reconsideration must be received by the Air Force not later than 6 months after the date of the mailing of the denial letter. Upon receipt of a request for reconsideration under the FTCA:

1.10.1.1. The settlement authority reviews the claim and any new evidence submitted to determine if an offer is appropriate. If so, and if the offer is within its settlement limits, the settlement authority makes an offer.

1.10.1.2. If the claim is not settled, or the settlement authority recommends denial of the claim, the settlement authority forwards the claim, as soon as possible after receipt, to AFLSA/JACT or AFLSA/JACE (for environmental tort claims). No settlement authority below AFLSA/JACT or JACE may deny a claim on reconsideration under the FTCA.

1.10.1.3. Settlement authorities do not mention reconsideration in the original denial letter.

1.10.1.4. An FTCA claim may only be reconsidered once.

1.10.2. For other claims statutes (when there is no statutory appeal), a settlement authority has the inherent authority to reconsider a final decision. The request for reconsideration should be received within 60 days of the date of the mailing of the denial letter unless good cause is shown.

1.10.2.1. The mere fact that a request for reconsideration is received (other than under the FTCA) does not obligate the settlement authority to reopen the claim.

1.10.2.2. Reconsideration is not mentioned in the original letter of denial.

1.10.2.3. A settlement authority reconsiders the final action on a non-FTCA claim when there is:

1.10.2.3.1. New and material evidence concerning the claim.

1.10.2.3.2. Obvious errors in the original decision.

1.10.2.4. A settlement authority must document in the claim file its reason for reconsideration.

1.10.2.5. A settlement authority above the original settlement authority may direct a claim be forwarded to a higher settlement authority for reconsideration.

1.11. Acting on Appeals. A claimant has a statutory right to appeal the denial of claims under the MCA, the NGCA, and Claims by Members for Certain Losses of Household Effects Caused by Hostile Act. A settlement authority receiving a timely appeal (within 60 days after the date of mailing of the final denial, unless the claimant provides good cause):

1.11.1. Reviews the appeal.

1.11.2. Reaches a final settlement with the claimant, or forwards the file to the next higher appellate authority with a recommendation for final action.

1.11.3. No settlement authority below AFLSA/JACT or JACE may deny an appeal.

1.11.4. The following are appellate authorities:

1.11.4.1. For claims denied below AFLSA/JACT or JACE, a Branch Chief at AFLSA/JACT or JACE designated as a settlement authority under this instruction.

1.11.4.2. For claims denied by a Branch Chief, AFLSA/JACT or JACE, the Chief, AFLSA/JACT or JACE (as appropriate).

1.11.4.3. For claims denied by the Chief, AFLSA/JACT or JACE, the Director, AFLSA/JAC.

1.11.4.4. For claims denied by the Director, AFLSA/JAC, the DJAG.

1.11.4.5. For claims denied by the DJAG, the TJAG.

1.11.4.6. For claims denied by the TJAG, the SAF, or the SAF's designee.

1.11.5. Any higher appellate authority may act upon an appeal, e.g. the TJAG may act upon an appeal of a claim denied by AFLSA/JAC. However, it is solely within the discretion of the higher appellate authority to do so.

1.12. Handling Requests for Tort Claim Files. Tort claim files are the property of the Air Force and are protected from disclosure under the attorney work-product privilege.

1.12.1. Do not give claim files to claimants or their agents for review or reproduction.

1.12.2. Process Freedom of Information Act or Privacy Act requests for files in accordance with DoD 5400.7-R/Air Force Supplement and AFI 33-332, respectively.

1.12.3. Never release, outside the US government, these documents from the claim file:

1.12.3.1. Legal memoranda containing opinions, conclusions, and recommendations.

1.12.3.2. Attorneys' and paralegals' written summaries of witness interviews.

1.12.3.3. Experts' written reports and evaluations (including engineering reports on sonic boom complaints), without approval of AFLSA/JACT.

1.12.3.4. Medical Quality Assurance documents (10 U.S.C. 1102). See further restrictions at paragraph [1.20.2](#).

1.12.3.5. Other material acquired as part of the deliberative process, including legal research.

1.13. Prohibited Actions. Claims personnel must not:

1.13.1. Give any opinion to the claimant about an anticipated approval or disapproval of the claim.

1.13.2. Reveal the recommendations of a settlement authority outside claims channels.

1.14. Avoiding Conflicting Interests. Air Force personnel must not represent any claimant or potential claimant in a claim against the United States. Responding to claimant inquiries on the policies and procedures for filing a claim is not considered to be representing a claimant. At the same time, claims personnel must be mindful that their client is the Air Force and avoid actions which are adverse to those of their client.

1.15. Handling Medical Malpractice Claims.

1.15.1. Claims personnel conduct interviews of each significantly involved provider and other relevant witnesses to the incident, and annotate the DD Form 2526, **Case Abstract for Malpractice Claims**, for each provider significantly involved in a claim of negligent treatment. See AFI 44-119, *Clinical Performance Improvement*, paragraph 8.7, and Attachment 22.

1.15.2. Claims personnel:

1.15.2.1. Contact the servicing MLC for initial advice. See AFI 51-302.

1.15.2.2. Contact the risk manager and assist in completing the responsibilities in AFI 44-119.

1.15.2.3. Retrieve all original medical records from the medical treatment facility and ensure the original records are numbered prior to copying.

1.15.2.4. Number all medical records on the bottom right hand side. Number outpatient records sequentially, from earliest entry to the latest. Number inpatient records from the latest entry to the earliest.

1.15.2.5. Records must be copied on one side only. Each lab slip must be copied separately.

1.15.2.6. Ensure each page is legible.

1.15.3. Claims personnel investigate the claim and send the original file and two copies to the MLC within 75 days of the filing of the claim to obtain a medical review.

1.15.4. The MLC completes a medical-legal report and returns the original file to the installation within 45 days of receipt. The SJA promptly forwards the original and one copy (in FTCA cases) or the original (in MCA cases) to AFLSA/JACT, including in the file any supplemental information identified by the MLC. EXCEPTION: If the claim is settled at the installation level pursuant to paragraph 1.7.5., forward one copy of the entire claim file to AFLSA/JACT after taking final action.

1.15.5. MLCs forward a complete copy of the case file to AFMOA/SGOC pursuant to AFI 44-119, paragraph 8.9.5.3.

1.16. Making Payments. Settlement authorities pay approved settlements directly to the claimant. **EXCEPTION:** If an attorney represents the claimant, settlement authorities name both the claimant and the attorney as payees on the payment voucher, using the attorney's address.

1.16.1. Settlement authorities sending claims to the Department of the Treasury for payment (claims under the FTCA for payment over \$2500 (see paragraph 2.5.), or MCA, NGCA or FCA claims over \$100,000), use:

1.16.1.1. FMS Form 195, **Judgment Fund Payment Request.**

1.16.1.2. FMS Form 196 (front and back), **Judgment Fund Award Data Sheet.**

1.16.1.3. FMS Form 197a, **Voucher for Payment.**

1.16.2. Settlement authorities use SF 1034, **Public Voucher for Purchases and Services Other Than Personal**, to make all other claims payments.

1.17. Making Advance Payments :

1.17.1. If all of the following are present, settlement authorities may make an advance payment:

1.17.1.1. The claimant requests it.

1.17.1.2. The claimant appears to have a valid MCA, FCA, or NGCA claim that will exceed the amount of the advance payment.

1.17.1.3. The circumstances demonstrate an immediate need for food, shelter, medical or burial expenses, or other necessities. In the case of a commercial enterprise, if severe financial loss or bankruptcy will result if no advance payment is made, the Air Force may make an advance payment.

1.17.2. Settlement authorities may not make advance payments for FTCA claims.

1.17.3. TJAG may make an advance payment of \$100,000 or less.

1.17.4. The following settlement authorities may make an advance payment of \$25,000 or less:

1.17.4.1. The Chief and Branch Chiefs of AFLSA/JACT.

1.17.4.2. The Chief, AFLSA/JACE (for environmental torts).

1.17.4.3. The SJAs of USAFE, PACAF, AFSOC (for USSOCOM) and 9AF (for USCENTCOM).

1.17.5. Settlement authorities may delegate their authority to make advance payments orally. The delegation must be confirmed in writing.

1.17.6. Before making advance payments, settlement authorities first obtain from the aggrieved person a signed advance payment agreement which includes the requirements to:

1.17.6.1. Refund the money if the claimant does not file a claim within the statutory period.

1.17.6.2. Refund any portion of the advance payment that exceeds the final settlement.

1.18. Determining Attorney Fees. Attorney fees will not exceed 20 percent of any administrative settlement amount.

1.18.1. Attorney fees are calculated from the amount tendered in settlement and not in addition thereto.

1.18.2. In a structured settlement, the Air Force calculates attorney fees from the total cost of the settlement to the United States, and not on the payout value of the benefits under the settlement.

1.19. Punitive Damages Not Payable. Punitive or exemplary damages are not payable under any claims statute in this instruction.

1.20. Supporting Litigation. AFLSA/JACT and JACE:

1.20.1. Assist DoJ and US Attorneys during litigation of Air Force tort cases.

1.20.2. May delegate litigation responsibilities to installation SJAs. Do not release medical quality assurance documents (Tab M of the claim file) to US Attorneys or the Department of Justice without the express permission of AFLSA/JACT.

1.20.3. Notification Regarding Tort Litigation. SJAs must immediately notify AFLSA/JACT or JACE of new tort litigation against the US or its employees by faxing a copy of the complaint.

Chapter 2

FEDERAL TORT CLAIMS ACT CLAIMS

2.1. Scope of this Chapter . This chapter implements the FTCA, 28 U.S.C. 1346(b), 2671-2680, and 28 CFR, Part 14, *Administrative Claims Under Federal Tort Claims Act*.

2.1.1. The federal government may be held liable for the negligent or wrongful acts or omissions of its employees while acting within the scope of their office or employment, to the extent the United States has waived its sovereign immunity.

2.1.2. Government liability is similar to that of a private person and is determined by the law of the place where the act or omission occurred.

2.2. FTCA Settlement Authority :

2.2.1. TJAG, DJAG, AFLSA/JAC, and AFLSA/JACT may:

2.2.1.1. Deny claims in any amount.

2.2.1.2. Pay claims filed in any amount when payment is for \$200,000 or less.

2.2.1.3. Negotiate settlements exceeding \$200,000, subject to approval of the US Attorney General or designee.

2.2.2. AFLSA/JACE may:

2.2.2.1. Deny environmental tort claims in any amount.

2.2.2.2. Pay environmental tort claims filed in any amount when payment is for \$200,000 or less.

2.2.2.3. Negotiate environmental tort claims settlements exceeding \$200,000, subject to approval of the US Attorney General or designee.

2.2.3. The SJA of each Air Force installation may:

2.2.3.1. Deny claims of \$25,000 or less.

2.2.3.2. Pay claims filed in any amount when payment is for \$25,000 or less.

EXCEPTION: See restrictions on settlement authority at paragraph **1.7.5**.

2.3. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within two years after it accrues. A claim normally accrues at the time of injury when essential operative facts are apparent. Federal, not state law, determines the time of accrual.

2.4. Reconsidering Denied FTCA Claims. A claimant may request in writing within six months of final action that an FTCA claim be reconsidered. See paragraph **1.10**.

2.5. Paying FTCA Claims. Settlement authorities pay claims as follows:

2.5.1. To receive payment, claimants must sign a settlement agreement in the format designated by the DoJ. The Air Force attorney signs the settlement agreement after receiving a fully executed agreement from the claimant and the Air Force settlement authority approves the agreement. In settlements

exceeding \$200,000 the Air Force attorney signs the settlement agreement after DoJ approval of the settlement.

2.5.2. Payments for \$2,500 or Less. Use Air Force claims funds (SF 1034) for settlements of \$2,500 or less.

2.5.3. Payments Exceeding \$2,500. For payments in excess of \$2,500, the settlement authority sends payment documents directly to: Judgment Fund Group, Department of the Treasury, Financial Management Service, Prince George's Metro Center 2, 3700 East-West Highway, Rm 6F03, Hyattsville, MD 20782, for payment under 31 U.S.C. 1304. The payment documents must include:

2.5.3.1. A signed original and six unsigned copies of the payment voucher (FMS Form 197A). The voucher must contain the payee's taxpayer identification number (social security number for individuals). If an attorney represents the claimant, the voucher must contain the taxpayer identification numbers of both the claimant and the attorney. Do not provide a fund cite.

2.5.3.2. A completed FMS Form 195 (Administrative Award).

2.5.3.3. A completed FMS Form 196, front and back.

2.5.3.4. Two signed originals of the settlement agreement. If an attorney represents the claimant, the settlement agreement must state that attorneys fees will not exceed 20% of the settlement amount per 28 U.S.C. 2678.

2.5.3.5. Two signed copies of the SF 95 or other written demand.

2.5.3.6. A cover letter stating the officer signing the payment voucher has the requisite authority to act under the provisions of the Federal Tort Claims Act.

2.5.3.7. Evidence that the agent may act in the claimant's name, when applicable.

2.5.3.8. Written approval of the US Attorney General or designee when the payment exceeds \$200,000.

Chapter 3

MILITARY CLAIMS ACT CLAIMS

3.1. Scope of this Chapter. This chapter implements DoD Directive 5515.3, *Settlement of Claims Under 10 U.S.C. 2733 and 2734*, 18 August 1965; DoD Directive 5515.8, *Single Service Assignment of Responsibility for Processing of Claims*, 9 June 1990; and the MCA, 10 U.S.C. 2733.

3.1.1. For single service claims responsibility, see [Chapter 4, Section 4A](#).

3.1.2. The MCA allows the military services to settle claims for death, personal injury, or property damage arising from the negligent or wrongful acts by members or employees of the armed forces acting within the scope of employment, and for losses sustained as a result of the noncombat activities of the military services. The MCA applies worldwide. However, for claims arising in the United States, the MCA only applies to noncombat activities and incident to service property damage claims of military members. The statute prohibits payment if the claim is payable under the FTCA or the FCA. Payment under the Act is made “[u]nder such regulations as the Secretary concerned may prescribe...” This instruction prescribes how the MCA is implemented. The Act allows only an administrative determination of claims. There is no judicial remedy.

3.2. MCA Settlement Authority:

3.2.1. The SAF may:

3.2.1.1. Deny claims in any amount.

3.2.1.2. Approve claims in any amount.

3.2.2. TJAG may:

3.2.2.1. Deny claims in any amount.

3.2.2.2. Approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.

3.2.3. The DJAG; Director, AFLSA/JAC; Chief and Branch Chiefs, AFLSA/JACT; Chief and Environmental Litigation and Torts Branch Chief, AFLSA/JACE (for environmental torts) may:

3.2.3.1. Deny claims in any amount.

3.2.3.2. Approve claims in an amount not to exceed \$25,000, notwithstanding the amount claimed.

3.2.4. The SJAs of 3AF, 5AF and 9AF (for USCENCOM) and the SJAs of each Air Force installation may:

3.2.4.1. Deny claims filed for \$25,000 or less.

3.2.4.2. Pay claims filed in any amount when payment is for \$25,000 or less. **EXCEPTION:** See restrictions on settlement authority at paragraph [1.7.5](#).

3.3. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual, unless the United States is at war or in an armed conflict when the claim

accrues, or the United States enters a war or armed conflict after the claim accrues, and good cause is shown. Congress or the President establishes the beginning and ending of an armed conflict.

3.3.1. A claim normally accrues at the time of injury when essential operative facts are apparent. Apply the same rules governing accrual pursuant to the FTCA with respect to the MCA.

3.3.2. In computing the statutory time period, the date of the incident is excluded and the date the claim is presented is included.

3.4. Who are Proper Claimants:

3.4.1. Citizens and inhabitants of the United States. However, a person who is an inhabitant of a foreign country, even if a citizen of the United States, is not a proper claimant under the MCA.

3.4.2. US military personnel and federal civilian employees. **EXCEPTION:** US military personnel and federal civilian employees may not be paid under the MCA for personal injury or death incident to service.

3.4.3. Foreign military personnel when the damage or injury occurs in the United States. **EXCEPTION:** Foreign military personnel may not be paid under the MCA for personal injury or death incident to service.

3.4.4. States, state agencies, counties, municipalities, and their political subdivisions.

3.4.5. Subrogees (insurers) of proper claimants to the extent they have paid the claim.

3.5. Who are Not Proper Claimants:

3.5.1. Governments of foreign nations, their agencies, and political subdivisions.

3.5.2. Agencies and NAFIs of the federal government.

3.5.3. Inhabitants of foreign countries for damages or injuries incurred in a foreign country.

3.6. Payable MCA Claims:

3.6.1. Negligent or Wrongful Act or Omission Claims. Settlement authorities pay claims resulting from negligent or wrongful acts or omissions of military or civilian personnel of the US Armed Forces while acting within the scope of their employment, unless an exclusion listed in paragraph 3.7. applies.

3.6.2. Noncombat Activity Claims. Claims caused by the noncombat activities of the US Armed Forces, whether or not such injuries or damages arose out of negligent or wrongful acts or omissions, unless an exclusion listed in paragraph 3.7. applies.

3.7. MCA Exclusions. Settlement authorities cannot pay claims described in paragraph 3.6. under the MCA if the claim:

3.7.1. Is cognizable under the FTCA, FCA, IACA, AFACA, NGCA, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

3.7.1.1. **EXCEPTION:** Claims arising in the United States from noncombat activities may be paid under the MCA, even if the claim is also cognizable under the FTCA.

- 3.7.1.2. **EXCEPTION:** Incident-to-service damage to vehicles caused by the negligence of a member or employee of the armed forces acting in the scope of employment are paid under the MCA, instead of the MPCECA, unless the damage occurs because of contact with quarters (including the landscaping at quarters).
- 3.7.2. Arises with respect to the assessment or collection of any customs duty, or the detention of any goods or merchandise by any US officer of customs or excise, or any other US law enforcement officer.
- 3.7.3. Is cognizable under United States admiralty and maritime law, to include:
- 3.7.3.1. The Suits in Admiralty Act, 46 U.S.C., Appendix 741 and following.
 - 3.7.3.2. The Death on the High Seas Act, 46 U.S.C. Appendix 761 and following.
 - 3.7.3.3. The Public Vessels Act, 46 U.S.C., Appendix 781 and following.
- 3.7.4. Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. **EXCEPTION:** Unless such actions were committed by an investigative or law enforcement officer of the United States who is empowered by law to conduct searches, seize evidence, or make arrests for violations of federal law.
- 3.7.5. Arises out of libel, slander, misrepresentation, or deceit.
- 3.7.6. Arises out of an interference with contract rights.
- 3.7.7. Arises out of the combat activities of US military forces.
- 3.7.8. Is for the personal injury or death of a member of the Armed Forces of the United States incident to service.
- 3.7.9. Is for the personal injury or death of any person for whom benefits are available under the Federal Employees' Compensation Act, 5 U.S.C. 8101, and following.
- 3.7.10. Is for the personal injury or death of any employee of the United States, including nonappropriated fund employees, for whom benefits are available under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, and following.
- 3.7.11. Is for a taking of property, e.g. by technical trespass or overflight of aircraft.
- 3.7.12. Is for patent or copyright infringement.
- 3.7.13. Results wholly from the negligent or wrongful act of the claimant.
- 3.7.14. Is for the reimbursement of medical, hospital, or burial expenses furnished at the expense of the United States, either directly or through contractual payments.
- 3.7.15. Arises from contractual transactions, express or implied (including rental agreements, sales agreements, leases, and easements), that:
- 3.7.15.1. Are payable or enforceable under oral or written contracts.
 - 3.7.15.2. Arise out of an irregular procurement or implied contract.
- 3.7.16. Is for the personal injury or death of military or civilian personnel of a foreign government incident to service.

- 3.7.17. Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of AFLSA/JACT. **EXCEPTION:** Claims under the noncombat activities provision may be paid even if this subparagraph applies.
- 3.7.18. Is based on the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of AFLSA/JACT. **EXCEPTION:** Claims under the noncombat activities provision may be paid even if this subparagraph applies.
- 3.7.19. Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA. Do not deny claims solely on this exception without prior approval of AFLSA/JACT.
- 3.7.20. Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act, 50 U.S.C. App. 1-44.
- 3.7.21. Is for damages caused by the imposition or establishment of a quarantine by the United States.
- 3.7.22. Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.
- 3.7.23. Arises from the activities of the Tennessee Valley Authority.
- 3.7.24. Arises from the activities of the Panama Canal Company.
- 3.7.25. Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives.
- 3.7.26. Is for the personal injury or death of any government contractor employee for whom benefits are available under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the United States pays insurance either directly or as part of the consideration under the contract. Only AFLSA/JACT may act on these claims.
- 3.7.27. Is for damage, injury or death from or by flood or flood waters at any place.
- 3.7.28. Is for damage, injury or death occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty by any federal agency or employee of the government in carrying out the provisions of the Federal Civil Defense Act of 1950 during the existence of a civil defense emergency.
- 3.7.29. Is for damage to property or other losses of a state, commonwealth, territory, or the District of Columbia caused by ANG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia.
- 3.7.30. Is for damage to property or for any death or personal injury arising out of the activities of any federal agency or employee of the government in carrying out the provisions of the Federal Disaster Relief Act of 1954.
- 3.7.31. Arises from activities that present a political question.
- 3.7.32. Arises from private, as distinguished from government, transactions.

- 3.7.33. Is based solely on compassionate grounds.
- 3.7.34. Is for rent, damage, or other expenses or payments involving the regular acquisition, use, possession, or disposition of real property or interests therein by and for the United States.
- 3.7.35. Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable. Claims considered not payable under this subparagraph are forwarded with recommendations for disposition, through claims channels, to AFLSA/JACT.
- 3.7.36. Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter by the U.S. Postal Service or its agents or employees.
- 3.7.37. Is for damage to or loss of bailed property when the bailor specifically assumes such risk.
- 3.7.38. Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of a foreign country.
- 3.7.39. Is for interest incurred prior to the payment of a claim.
- 3.7.40. Arises out of matters which are in litigation against the United States.
- 3.7.41. Is for attorney fees or costs in connection with pursuing an administrative or judicial remedy against the United States or any of its agencies.
- 3.7.42. Is for bail, interest or inconvenience expenses incurred in connection with the preparation and presentation of the claim.
- 3.7.43. Is for a failure to use a duty of care to keep premises owned or under the control of the United States safe for use for any recreational purpose, or for a failure by the United States to give any warning of hazardous conditions on such premises to persons entering for a recreational purpose unless there is a willful or malicious failure to guard or warn against a dangerous condition, or unless consideration was paid to the United States (including a nonappropriated fund instrumentality) to use the premises.

3.8. Interpretation of the MCA: The meaning and construction of the MCA is a federal question to be determined by federal law. Many of the exceptions to payment under the MCA are based upon the wording of 28 U.S.C. 2680, or on other statutes or court cases. Federal case law interpreting the same exclusion under the FTCA is applied to the MCA. Where state law differs with federal law, federal law prevails.

3.9. Applicable Law for Determining Liability under the MCA:

- 3.9.1. For tort claims arising from negligent or wrongful acts or omissions, settlement authorities apply these rules:
- 3.9.1.1. When a claim arises in the United States or its territories or possessions, settlement authorities follow the law of the place where the alleged negligent or wrongful act or omission occurred.

3.9.1.2. In claims arising in foreign countries, settlement authorities use the general principles of American tort law as evidenced by case law and standard legal publications to evaluate the liability of the United States. The following specific rules apply:

3.9.1.2.1. Contributory or comparative negligence is interpreted and applied according to the place of the occurrence. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, contributory negligence bars the claim.

3.9.1.2.2. Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by United States military traffic regulations.

3.9.1.3. The principle of absolute or strict liability does not apply.

3.9.2. For tort claims arising from noncombat activities, the claimant does not need to show negligence or fault, but must establish causation and damages.

3.10. Applicable Law for Damages:

3.10.1. To measure damages in claims arising in the United States or its possessions, the settlement authority follows the law of the place where the alleged negligent or wrongful act or omission occurred.

3.10.2. In claims arising in foreign countries, settlement authorities use the general principles of American tort law as evidenced by case law and standard legal publications to evaluate damages, and the following specific rules apply:

3.10.2.1. Hedonic damages are not payable.

3.10.2.2. The collateral source doctrine does not apply.

3.10.2.3. Joint and several liability does not apply. Payment is made based only upon the portion of loss, damage, injury or death, which is attributable to the Armed Forces of the United States.

3.10.2.4. Future economic losses must be discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

3.11. Paying MCA Claims. Settlement authorities:

3.11.1. Pay settlements of \$100,000 or less, per claimant, from Air Force claims monies.

3.11.2. Pay settlements exceeding \$100,000 by paying the first \$100,000, per claimant, with Air Force claims monies and sending the remainder to the Department of the Treasury for payment under 31 U.S.C. 1304. See paragraph [1.16](#).

Chapter 4

INTERNATIONAL AGREEMENT AND FOREIGN CLAIMS

Section 4A—Single Service Claims Responsibility (SSCR)

4.1. Scope of this Chapter. This chapter implements DoD Directive 5515.3, *Settlement of Claims Under 10 U.S.C. 2733 and 2734*, 18 August 1965; DoD Directive 5515.8, *Single Service Assignment of Responsibility for Processing of Claims*, 9 June 1990; the FCA, 10 U.S.C. 2734; and the IACA, 10 U.S.C. 2734a and 2734b.

4.2. Assignment of Single Service Claims Responsibility. DoD Directive 5515.8 assigns single service claims responsibility under various applicable claims statutes for processing and settling claims against the United States arising in foreign areas.

4.2.1. Claims are settled in accordance with the regulations of the armed service which has single service claims responsibility.

4.2.2. DoD Directive 5515.8 authorizes the General Counsel of DoD to change single service assignments, and to assign claims responsibility to an armed service for a country not previously assigned. Contact AFLSA/JACT if there are questions about the assignment for any particular country.

Section 4B—The International Agreement Claims Act

4.3. General Discussion. The IACA is the implementing act for the payment of claims under international agreements including Status of Forces Agreements (SOFAs) when there is a pro-rata sharing arrangement. SOFAs are not self-executing, and without this act no payment could be made under the various international agreements to which the US is a party.

4.4. Reimbursement Authority. The SAF; TJAG; DJAG; Director, AFLSA/JAC; the Chief, AFLSA/JACT; the Chief, International Torts Branch, AFLSA/JACT; and the SJAs of PACAF, USAFE, 3AF, 5AF, Lajes Field, and 9AF (for USCENCOM) may:

4.4.1. Reimburse a claim paid by the receiving State.

4.4.2. Pay a pro rata share of a claim (e.g. payment of a share of a claim for non-military property of a receiving State).

4.4.3. Object to any claim on a bill from the receiving State.

4.5. Claims Arising in a Foreign Country. If a third party claimant tries to present an international agreement claim with the Air Force, direct that person to the appropriate receiving State office. If the Air Force actually receives a claim, send it to the United States sending State office for delivery to the receiving State.

4.6. Claims Arising in the United States.

4.6.1. Claimants may file tort claims arising from the acts or omissions of the military or civilian personnel of another SOFA contracting party at any Air Force claims office.

4.6.2. The installation with claims jurisdiction over the area where the incident arose:

4.6.2.1. Investigates the claim, and prepares a claim file in accordance with [Attachment 2](#).

4.6.2.2. Sends the claim to AFLSA/JACT for review. AFLSA/JACT forwards the claim to the US Army Claims Service for adjudication (Army has single service claims responsibility for all SOFA claims arising in the US).

4.7. Claims Processing. When the Air Force has single service claims responsibility, the sending State office:

4.7.1. Coordinates with the receiving State office on claims investigations.

4.7.2. Reviews receiving State bills to ensure that all paid claims properly fall within the agreement, and objects when the claims do not.

4.7.3. Processes under the FCA those tort claims arising from the conduct of US personnel while acting outside of the scope of their official duties.

4.7.4. Arranges for payment of the US' pro rata share of claims.

Section 4C—The Foreign Claims Act

4.8. General Discussion. The purpose of the FCA is to promote friendly relations with foreign countries and their inhabitants by paying proper claimants for death, personal injury, or property damage, caused by military members or civilian employees of the US Armed Forces, or arising out of the noncombat activities of such forces.

4.9. Settlement Authority. The SAF may deny or approve claims for any amount. For claims approved for more than \$100,000, the SAF reports the amount in excess of \$100,000 to the Department of the Treasury for payment.

4.9.1. The TJAG; DJAG; and Director, AFLSA/JAC are foreign claims commissions (FCC), and may:

4.9.1.1. Deny claims in any amount.

4.9.1.2. Pay claims filed in any amount when payment is for \$100,000 or less.

4.9.2. The Chief, AFLSA/JACT; and the Chief, International Torts Branch, AFLSA/JACT, are FCCs who may:

4.9.2.1. Deny claims in any amount.

4.9.2.2. Pay claims filed in any amount when payment is for \$50,000 or less.

4.9.3. The SJAs of PACAF, USAFE, 9AF (for USCENCOM), AFSPACECOM (for Greenland and Canada), and AFSOC (for USSOCOM) are FCCs who may:

4.9.3.1. Deny claims of \$50,000 or less.

4.9.3.2. Pay claims filed in any amount when payment is for \$50,000 or less.

4.9.4. The SJAs of the numbered air forces in PACAF and USAFE; the SJA of 12AF (for South America, Central America, and the Caribbean); and the SJAs of Lajes AB, Azores, and Patrick AFB, FL, are FCCs who may:

4.9.4.1. Deny claims of \$50,000 or less.

4.9.4.2. Pay claims filed in any amount when payment is for \$25,000 or less.

4.9.5. The SJAs of each Air Force installation in PACAF, USAFE, and 9AF (for USCENTCOM) are FCCs who may:

4.9.5.1. Deny claims of \$25,000 or less.

4.9.5.2. Pay claims filed in any amount when payment is for \$25,000 or less.

4.10. Appointing FCCs. Any settlement authority in this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs. The appointment will be in writing.

4.11. Statute of Limitations. A claimant must present a claim to the United States in writing (or orally if based on local custom) within two years after it accrues. War or armed conflict does not toll the statute of limitations. In computing the statutory time period, the date of the incident is excluded and the date the claim is filed is included.

4.12. Who are Proper Claimants. Proper claimants include inhabitants of a foreign country who are:

4.12.1. Foreign nationals.

4.12.2. Foreign military personnel, for property damage or loss.

4.12.3. US nationals, unless they reside in a foreign country primarily because they are: employed directly by the United States, or sponsored or accompanying such a person; or employed by a US civilian contractor to further the performance of a contract with the United States, or sponsored by or accompanying such a person.

4.12.4. US corporations with a place of business in the country in which the claim arose.

4.12.5. Foreign governments and their political subdivisions, including a municipal and prefectural government.

4.12.6. Foreign companies and business entities.

4.13. Who are Not Proper Claimants:

4.13.1. Insurers and other subrogees.

4.13.2. Dependents accompanying either US military or US national civilian employees.

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

4.13.4. National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies. This includes factions, which have not necessarily been recognized by the international community as a legitimate nation state.

4.13.5. A national or nationally controlled corporation of a country engaging in war or armed conflict with the United States or its allies, unless the FCC determines the claimant is friendly with the United States.

4.13.6. Foreign military personnel for personal injury or death arising incident to service, or pursuant to joint military operations. Joint military operations include exercises and United Nations and NATO peacekeeping and humanitarian missions.

4.14. Application of the FCA. The incident forming the basis of the claim must:

4.14.1. Arise in a foreign country.

4.14.2. Be caused by noncombat activities of the US Armed Forces or by the negligent or wrongful acts of civilian employees or military members of the Armed Forces.

4.15. Scope of Employment. A settlement authority may pay a claim even if the injury results from a criminal act clearly outside the scope of employment. **EXCEPTION:** Do not pay claims arising outside the scope of employment resulting from the acts of local hire civilian employees, whether those persons are indigenous or US citizens. However, claims arising from the operation of U.S. Armed Forces vehicles or other U.S. Armed Forces equipment by local hire civilian employees are payable, provided that the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

4.16. Claims Not Payable. A claim is not payable when it:

4.16.1. Is waived under the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), or any similar treaty, or is cognizable under such treaty as a claim involving the performance of official duty or for which the United States is legally responsible under receiving State law, as in claims under Article VIII, paragraphs 1-5 of the NATO SOFA. However, AFLSA/JACT may authorize payment of a claim where the foreign government disputes its legal responsibilities and the claimant has no other means of compensation.

4.16.2. Is purely contractual in nature.

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

4.16.4. Arises from a private contractual relationship between US personnel and third parties, e.g. property leases (including damage covered by a lease of real property), public utilities, hiring of domestic servants, and debts of any description, including damage to rental vehicles or payment for rental vehicles.

4.16.5. Is based solely on compassionate grounds.

4.16.6. Is a paternity claim.

4.16.7. Is for patent or copyright infringement.

4.16.8. Is for rent, damage or other payments involving the regular acquisition, possession, and disposition of real property by or for the United States.

4.16.9. Arises from a contractual relationship between the United States and third parties, e.g. damage to rental vehicles, office equipment, etc.

4.16.10. Is for real property taken by a continuing trespass.

4.16.11. Is for personal injury or death of a person covered by the Federal Employees' Compensation Act (5 U.S.C. 8101, et seq.); the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.); or a United States contract or agreement providing employee benefits through insurance, local law, or custom, where the United States pays for them either directly or as part of the consideration under the contract. (See 42 U.S.C. 1651 and 42 U.S.C. 1701.) AFLSA/JACT may authorize an award where local benefits under a US contract or agreement are not adequate. Local benefits are deducted from any award.

4.16.12. Results from an action by an enemy, or directly or indirectly from an act of the US Armed Forces in combat. **EXCEPTION:** A claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the Armed Forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

4.16.13. Is based on the negligence of a concessionaire or other independent contractor.

4.16.14. Arises out of personal activities of family members, guests, servants, or activities of the pets of members and employees of the US Armed Forces.

4.16.15. Results wholly from the negligent or wrongful act of the claimant or agent.

4.16.16. Is not in the best interests 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). Claims considered not payable for these reasons will be forwarded to AFLSA/JACT for final decision.

4.16.17. Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the settlement authority determines the claimant is, and at the time of the incident was, friendly to the United States. **EXCEPTION:** A prisoner of war or interned enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the US Armed Forces' custody if the claim is otherwise payable.

4.16.18. Is the subject of litigation against the United States or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign court. Claims settlement may be authorized by AFLSA/JACT in appropriate cases on request.

4.16.19. Is covered under United States admiralty and maritime laws, unless authorized by AFLSA/JACT.

4.16.20. Is filed by a Communist country or its inhabitants, unless authorized by AFLSA/JACT.

4.17. Applicable Law. A settlement authority:

4.17.1. Follows the law, customs and standards of the country where an incident occurs.

4.17.1.1. **EXCEPTION:** The determination of causation is based upon general principles of US tort law as evidenced by federal case law and standard legal publications.

4.17.1.2. **EXCEPTION:** Joint and several liability does not apply. Payment is made based only upon the portion of loss, damage, injury or death, which is attributable to the Armed Forces of the United States.

4.17.2. Does not deduct compensation from collateral sources. **EXCEPTION:** Does deduct any direct payments by a member or civilian employee of the US Armed Forces for damages (not solatia), and any payments recovered or recoverable from an insurance policy when premiums were paid, directly or indirectly, by the United States, or by a member or civilian employee of the US Armed Forces, or when the member or employee has the benefit of the insurance (e.g. US member or employee borrows a vehicle of a local national, and the vehicle carries insurance for the benefit of any driver with permission to drive the vehicle).

4.18. Rights of Subrogation, Indemnity, and Contribution. The Air Force has the rights of subrogation, indemnity, and contribution, as local law permits. Settlement authorities do not seek contribution or indemnity:

4.18.1. From US military personnel or civilian employees whose conduct gave rise to US government liability.

4.18.2. When it would be harmful to international relations.

4.19. Payments Under the FCA. Payments under the FCA are *ex gratia*, and are within the discretion of the SAF (or designee).

4.19.1. Claims are adjudicated, approved, and paid in the currency of the country where the incident occurred. **EXCEPTION:** If the claimant is a foreign inhabitant of another country, payment may be made in the country of claimant's residence or in some other currency in exceptional circumstances. Do not pay in a currency other than that of the country where the incident occurred without permission of AFLSA/JACT.

4.19.2. Do not approve claims in a foreign currency that is the equivalent of US dollars on the date of exchange without permission of AFLSA/JACT.

Section 4D—Solatia

4.20. General Discussion. A solatium payment is a nominal payment made immediately to a victim or the victim's family to express sympathy, when local custom exists for such payments.

4.21. Settlement Authority. Solatia payments are made from the personal funds of a tortfeasor, or from Operation and Maintenance appropriations (other than claims funds) by the military department or DoD agency involved in an incident, regardless of the assignment of SSCR. The local commander determines the appropriate amount if it is not specified in local regulations.

4.22. When To Pay. Solatia are known to be a custom in Japan, Korea and Thailand. In other countries, the SJA consults AFLSA/JACT before the United States pays solatia. If claims personnel become aware of another service making a solatium payment outside these three named countries, immediately report the payment to AFLSA/JACT.

Chapter 5

NONAPPROPRIATED FUND, AIR NATIONAL GUARD, CIVIL AIR PATROL, ADMIRALTY, AND MISCELLANEOUS CLAIMS

Section 5A—General

5.1. Scope of this Chapter.

5.1.1. This chapter contains procedures for settling:

5.1.1.1. Nonappropriated fund instrumentality (NAFI) claims.

5.1.1.2. Civil Air Patrol (CAP) claims.

5.1.1.3. Claims under the NGCA, 32 U.S.C. 715.

5.1.1.4. Claims under the AFACA, 10 U.S.C. 9801-9804, 9806.

5.1.1.5. Claims under the UGPCA, 10 U.S.C. 2737.

5.1.1.6. Claims by Members for Certain Losses of Household Effects Caused by Hostile Act, 10 U.S.C. 2738.

5.1.1.7. Claims of the United States Postal Service.

5.1.2. Air Force claims personnel receiving tort-type claims outside the coverage of this instruction coordinate with AFLSA/JACT to determine:

5.1.2.1. Which federal agency should process the claim.

5.1.2.2. Under which statute the claim should be adjudicated.

Section 5B—Nonappropriated Fund Claims

5.2. Scope of this Section. This section implements DoD Directive 5515.6, *Processing Tort, Contract and Compensation Claims Arising Out of Operations of Nonappropriated Fund Activities*, dated 3 November 1956.

5.3. Settling NAFI Claims. Settle NAFI claims in accordance with [Chapter 2](#), [Chapter 3](#), [Chapter 4](#), and [Chapter 5](#).

5.4. Settlement Authority. The settlement authority for NAFI tort claims is the same as the authority listed in the particular chapter of this instruction under which the Air Force settles claims alleging negligence by appropriated fund employees (e.g. FTCA, MCA). However, claims are not sent to the Department of the Treasury for payment. See paragraph [5.6](#). for payment of NAFI claims. The decision of the settlement authority is binding upon the NAFI.

5.5. Notice of Claim. Upon receiving a NAFI tort claim, the claims office sends a copy of the claim to Headquarters, Army and Air Force Exchange Service, General Counsel's Office: HQ AAFES, P.O. Box 650062, ATTN: GC-G&C, Dallas TX 75265-0062; or to Headquarters, Air Force Services Agency, Office

of Legal Counsel (AFSVA/SVL), 10100 Reunion PL, Ste 503, San Antonio, TX 78216-4138, as appropriate.

5.6. Payment of Claims.

5.6.1. Claims are paid from the fund source which pays the individual whose conduct gave rise to the claim.

5.6.1.1. Only nonappropriated funds may be used to pay an administrative settlement, or a judgment resulting from a lawsuit, when the alleged negligent conduct was that of a nonappropriated fund employee.

5.6.1.2. Settlement agreements for claims involving NAFIs contain a release of nonappropriated fund employees, as well as the United States of America, its agents, servants, and employees.

5.6.1.3. Military personnel or appropriated fund civilian employees performing off-duty, part-time work, and receiving NAFI pay for their duties, are nonappropriated fund employees for claims arising out of their off-duty work.

5.6.2. Claims involving errant golf balls.

5.6.2.1. Pursuant to 10 U.S.C. 2246, appropriated funds may not be used to equip, operate or maintain golf courses in the United States (with limited exceptions). However, this does not mandate that all golf ball claims will be paid from nonappropriated funds.

5.6.2.2. Settlement authorities decide each claim on a case-by-case basis. Liability for golf ball damage normally results from some hazardous condition that has gone uncorrected. Golf course and other NAFI employees have a responsibility to remediate known hazards. At the same time, if they take appropriate steps to remediate and are prevented from doing so by the action, inaction, or decisions of appropriated fund personnel (military or civilian), then they cannot be faulted for failing to correct a hazard.

5.6.2.2.1. For example, if a NAFI golf course manager has knowledge of a dangerous condition requiring netting, and fails to take action to get the netting, then any claim arising out of the failure is to be paid with nonappropriated funds. If the manager attempts to get the netting, but is not successful because the project is disapproved by the civil engineer, commander, or other appropriated fund official, then any such claim is to be paid with appropriated funds.

5.6.2.2.2. Report to AFLSA/JACT and AFSVA/SVL any instances where NAFI personnel attempted to remedy a hazard and were prevented from doing so by appropriated fund personnel.

5.6.3. Send claims for payment involving the Army and Air Force Exchange Service (AAFES) to: HQ AAFES, ATTN: GC-Z/CC, P.O. Box 660602, Dallas, TX 75266-0202.

5.6.4. Send claims for payment involving all other Air Force NAFIs to the following: For payments over \$50.00, send to HQ AFSVA/SVXBC, 10100 Reunion Place, Ste. 502, San Antonio, Texas 78216-4138. For payments of \$50.00 and under, send to the local NAFI, which employs the NAFI employee whose conduct gave rise to the claim.

5.7. Claims Not Payable with Nonappropriated Funds:

5.7.1. Claims arising out of the operation of a NAFI activity which are caused by military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI activity.

5.7.2. Claims of NAFI employees for personal injury or death arising out of performance of their duties.

5.7.3. Claims arising out of the activities of Air Force volunteers. See AFI 34-262.

5.7.4. Claims that NAFI concessionaires or other contractors cause.

5.7.5. Claims arising out of the activities of private organizations.

5.7.6. Claims arising out of NAFI activities involving contract disputes, dishonored checks, debts to NAFIs, or third party workers' compensation claims.

5.8. Customer Complaints. Complaints or claims for personal property loss or damage by NAFI customers that the local NAFI activity can satisfactorily resolve should not be processed under this section.

5.9. NAFI Insurance Claims. AFLSA/JACT may settle claims arising out of the activities of the authorized users of a NAFI program, such as an aero club or marina, under this chapter on behalf of the NAFI self-insurance program.

Section 5C—Air National Guard Claims

5.10. Scope of this Section. Settlement authorities may settle claims for death, personal injury, or property damage arising out of the authorized noncombat activities of the Air National Guard (ANG) under the NGCA, 32 U.S.C. 715.

5.11. Settlement Authority:

5.11.1. The SAF may:

5.11.1.1. Deny claims in any amount.

5.11.1.2. Approve claims filed in any amount.

5.11.2. TJAG may:

5.11.2.1. Deny claims in any amount.

5.11.2.2. Approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.

5.11.3. The DJAG; Director, AFLSA/JAC; the Chief and Branch Chiefs, AFLSA/JACT; and the Chief and Environmental Torts Branch Chief, AFLSA/JACE (for environmental torts) may:

5.11.3.1. Deny claims in any amount.

5.11.3.2. Approve claims in an amount not to exceed \$25,000, notwithstanding the amount claimed.

5.11.4. The SJAs of each Air Force installation may:

5.11.4.1. Deny claims filed for \$25,000 or less.

5.11.4.2. Pay claims filed in any amount when payment is for \$25,000 or less. **EXCEPTION:** See restrictions on settlement authority at paragraph [1.7.5](#).

5.12. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual, unless the United States is at war or in an armed conflict when the claim accrues, or the United States enters a war or armed conflict after the claim accrues, and good cause is shown. Congress or the President establishes the beginning and ending of an armed conflict.

5.12.1. A claim normally accrues at the time of injury when essential operative facts are apparent. Apply the same rules governing accrual pursuant to the FTCA with respect to the NGCA.

5.12.2. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented is included.

5.13. Required Status of National Guard Personnel for Payable NGCA Claims:

5.13.1. ANG members must be performing duty under 32 U.S.C. 316, 502, 503, 504, or 505.

5.13.2. ANG members and employees must be acting within the scope of their employment, or the activity must be otherwise caused by the authorized noncombat activities of the ANG.

5.13.3. Settlement authorities settle claims involving ANG personnel, other than claims arising out of noncombat activities, in accordance with [Chapter 2](#), [Chapter 3](#), or [Chapter 4](#).

5.13.4. Settlement authorities process claims arising out of the activities of ANG technicians employed under 32 U.S.C. 709 under the FTCA, or the MCA (if a noncombat activity).

5.13.5. Claims arising out of the activities of ANG personnel while under state orders are not cognizable under federal claims statutes. SJAs refer such claims to state authorities.

5.14. Who are Proper Claimants. Refer to paragraph [3.4](#) for proper claimants.

5.15. Who are Not Proper Claimants. Refer to paragraph [3.5](#) for entities which are not proper claimants.

5.16. NGCA Exclusions. Refer to paragraph [3.7](#) for exclusions from payment under the NGCA.

5.17. Interpretation of the NGCA . The NGCA is interpreted the same way as the MCA. Refer to paragraph [3.8](#).

5.18. Applicable Law for Determining Liability under the NGCA. Use the same principles as are used under the MCA. See paragraph [3.9](#).

5.19. Applicable Law for Damages. Use the same principles as are used under the MCA. See paragraph [3.10](#).

5.20. Paying NGCA Claims. Refer to paragraph [3.11](#) for payment of NGCA claims.

Section 5D—Civil Air Patrol Claims

5.21. Scope of this Section. The federal government may be held liable for the negligent or wrongful acts or omissions of the CAP or its members performing Air Force-assigned missions causing personal injury, death, or property damage.

5.21.1. Air Force-assigned missions may include those in support of other federal agencies.

5.21.2. Instrumentality Status. The CAP and its members are an instrumentality of the United States when they are performing Air Force-assigned missions under the Cooperative Agreement between the United States Air Force and the Civil Air Patrol. When the CAP engages in activities other than Air Force-assigned missions, it is acting as a private corporation.

5.22. Settling Claims. Settlement authorities (SAF; TJAG; DJAG; Director AFLSA/JAC; and the Chief and Branch Chiefs, AFLSA/JACT) settle CAP tort claims arising out of Air Force-assigned missions in accordance with the appropriate claims statute and **Chapter 2, Chapter 3, Chapter 4, and Chapter 5.**

5.23. Notice of Claim. Upon receiving a claim arising out of any CAP activity, the SJA contacts HQ CAP-USAF/JA, 105 South Hansell St, Maxwell AFB AL 36112-6332, for a determination as to whether the activity in which the CAP member was engaged was an Air Force-assigned mission.

5.24. Proper Claims. Proper claims include those in which the negligence of CAP members performing Air Force-assigned missions causes personal injury, death, or property damage.

5.25. Improper Claims:

5.25.1. Claims arising out of CAP corporate activities.

5.25.2. Claims of CAP members, 18 years of age or older, whose personal injury or death is covered under FECA.

5.25.3. Claims for use of privately owned property that the CAP or its members utilize on Air Force-assigned missions.

5.25.4. Claims for expenses that the CAP or its members incur while engaged in Air Force-assigned missions.

Section 5E—Admiralty Claims

5.26. Scope of this Section. This section implements the Air Force Admiralty Claims Act, 10 U.S.C. 9801-9804, 9806, and the Admiralty Extension Act, 46 U.S.C. App. 740.

5.27. Settlement Authority:

5.27.1. The SAF may:

5.27.1.1. Deny claims in any amount.

5.27.1.2. Pay claims in an amount not to exceed \$500,000, notwithstanding the amount claimed.

5.27.1.3. Approve claims in excess of \$500,000 and certify the claims to Congress.

5.27.2. TJAG; the DJAG; the Director, AFLSA/JAC; the Chief, AFLSA/JACT; and the Chief, Aerospace and Admiralty Law Branch, AFLSA/JACT, may:

5.27.2.1. Deny claims in any amount.

5.27.2.2. Approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.

5.27.3. The SAF may settle claims asserted for \$500,000 or less in favor of the United States for damage to property under the jurisdiction of the Air Force.

5.27.4. TJAG; the DJAG; the Director, AFLSA/JAC; and the Chief, General Claims Division (AFLSA/JACC), may settle claims asserted for \$100,000 or less in favor of the United States.

5.27.5. The SAF settles claims in any amount in favor of the United States for salvage services that the Air Force performs.

5.27.6. TJAG; the DJAG; the Director, AFLSA/JAC; and the Chief, General Claims Division (AFLSA/JACC) may settle claims for \$10,000 or less for salvage services that the Air Force performs.

5.28. Statute of Limitations.

5.28.1. Claims Against the United States.

5.28.1.1. A claimant must agree to accept a settlement, and the settlement must be approved for payment by the appropriate settlement authority, within two years from the date the cause of action accrued. The Air Force has no authority to settle or pay any claim under the AFACA after the expiration of this two-year period.

5.28.1.2. The filing of a claim or its consideration by the Air Force, to include settlement negotiations or related correspondence, neither waives nor extends the two-year statute of limitation period for filing suit under the Suits in Admiralty Act or the Public Vessels Act.

5.28.1.3. Filing an administrative claim prior to suit is required only when the damage or injury to person or property is caused by a vessel on navigable water, but the damage or injury is done or consummated on land. A claimant must wait six months after filing a claim in writing with the federal agency owning or operating the vessel before filing suit.

5.28.2. Claims in Favor of the United States. Claims in favor of the United States are barred unless a complaint is filed within:

5.28.2.1. Three years for tort actions (28 U.S.C. 2415(b)).

5.28.2.2. Six years for contract actions (28 U.S.C. 2415(a)).

5.29. Payable Claims:

5.29.1. Property damage, personal injury, or death caused by a maritime tort by any agent or employee of the Air Force, or by a vessel or other property under Air Force jurisdiction or control.

5.29.2. Compensation for towage and salvage services, including contract salvage that the claimant provides to disabled Air Force vessels or other property under Air Force jurisdiction or control.

5.30. Claims Not Payable:

- 5.30.1. Claims resulting directly or indirectly from combat.
- 5.30.2. Personal injury or death of US Armed Forces members incident to their service.
- 5.30.3. Personal injury or death of federal civilian employees (including nonappropriated fund employees) incurred in the performance of their duties.
- 5.30.4. Claims payable under the IACA.

5.31. Claims Assertable by the United States:

- 5.31.1. Damage to property under Air Force jurisdiction caused by a vessel or floating object, or of a kind that is within the admiralty jurisdiction of a federal court.
- 5.31.2. Towage or salvage services that the Air Force performs.

Section 5F—Use of Government Property Claims Act

5.32. Scope of this Section. This section implements 10 U.S.C. 2737, and explains how to settle claims against the United States for property damage, personal injury, or death incident to the use of a government vehicle, or by the use of any other government property on a government installation, when the claim is not payable under any other statute. Claims may be paid under this section whether or not the member or employee is acting in the scope of employment.

5.33. Settlement Authority. The Chief and Branch Chiefs, AFLSA/JACT, the SJAs of 3AF, 5AF, AFSOC (for USSOCOM), and 9AF (for USCENTCOM) and the SJAs of each Air Force installation may:

- 5.33.1. Deny claims in any amount.
- 5.33.2. Pay claims filed in any amount but with payment not to exceed \$1,000.

5.34. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual. A claim normally accrues at the time of injury when essential operative facts are apparent. In computing the statutory time period, the date of the incident is excluded and the date the claim is presented is included.

5.35. Payable Claims. When all of the following are present, payment of a claim in the amount of \$1,000 or less is authorized:

- 5.35.1. The claim is for property damage, personal injury, or death. Payment for a personal injury or death claim is limited to costs of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.
- 5.35.2. A military member or civilian employee of the Air Force caused the damage, injury or death, whether acting within or outside the scope of employment.
- 5.35.3. The damage, injury or death arose from the use of a government vehicle at any place or from the use of other government property on a government installation.
- 5.35.4. The claim is not payable under any other provision of law except Article 139, Uniform Code of Military Justice.

5.36. Claims Not Payable. A claim is not payable if it is:

- 5.36.1. Payable under any other provision of the law.
- 5.36.2. Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant's agent, or employee.
- 5.36.3. A subrogated claim.
- 5.36.4. Recoverable from other sources such as an insurance policy, or recovered from action under Article 139, Uniform Code of Military Justice.
- 5.36.5. For pain and suffering.

Section 5G—Claims by Members for Certain Losses of Household Effects Caused by Hostile Act

5.37. Scope of this Section. This section implements 10 U.S.C. 2738, which allows Air Force members to be reimbursed for household effects which are lost during a move incident to a permanent change of station. The SAF must determine the loss of the household effects is due to a hostile action incident to war or a warlike action by a military force.

5.38. Settlement Authority.

- 5.38.1. The SAF may:
 - 5.38.1.1. Deny claims in any amount.
 - 5.38.1.2. Approve claims in any amount.
- 5.38.2. TJAG; DJAG; Director, AFLSA/JAC; Chief and Branch Chiefs, AFLSA/JACT may:
 - 5.38.2.1. Deny claims in any amount.
 - 5.38.2.2. Approve claims in an amount not to exceed \$25,000, notwithstanding the amount claimed.

5.39. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual, unless the United States is at war or in an armed conflict when the claim accrues, or the United States enters a war or armed conflict after the claim accrues, and good cause is shown. Congress or the President establish the beginning and ending of an armed conflict.

- 5.39.1. A claim normally accrues at the time of injury when essential operative facts are apparent.
- 5.39.2. In computing the statutory time period, the date of the incident is excluded and the date the claim is presented is included.

5.40. Who are Proper Claimants:

- 5.40.1. Members of the Armed Forces of the United States.
- 5.40.2. A member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps is treated as if he were a member of that Armed Force.

5.41. Payable Claims. Losses of household effects sustained during a move made incident to a permanent change of station when, as determined by the SAF, the loss was caused by a hostile action incident to war or a warlike action by a military force. A claim is payable only to the extent the loss is not reimbursed under insurance or under the authority of another provision of law.

5.42. Substantiation. Claimants substantiate their claims as required for MPCECA claims for transportation loss of personal property under AFI 51-502.

5.43. Payment.

5.43.1. Pay settlements of \$100,000 or less from Air Force claims funds.

5.43.2. Pay settlements exceeding \$100,000 by paying the first \$100,000 with Air Force claims monies and sending the remainder to the Department of the Treasury for payment under 31 U.S.C. 1304.

Section 5H—Claims of the United States Postal Service (USPS)

5.44. Scope of this Section. The Air Force reimburses the USPS for the loss of postal funds, property and accountable mail due to negligence, error or theft by Air Force postal personnel. This section implements the *Postal Agreement Between the United States Postal Service and the Department of Defense*.

5.44.1. Claims are submitted by the USPS through the Military Postal Service Agency, which forwards the claims directly to AFLSA/JACT.

5.44.2. TJAG and the Chief and Branch Chiefs, AFLSA/JACT are authorized to settle USPS claims in any amount, and to seek recovery from the offender.

5.44.3. Claims involving third party mail loss or damage caused by other Air Force personnel, such as unit mail clerks or truck drivers, are processed under the MCA or FTCA.

Section 5I—Forms Adopted

5.45. Forms Adopted in this Publication. Standard Form 95, *Claim for Damage, Injury, or Death*. Standard Form 1034, *Public Voucher for Purchases and Services*. Financial Management Service Form 195, *Judgment Fund Payment Request*. Financial Management Service Form 196, *Judgment Fund Award Data Sheet*. Financial Management Service Form 197a, *Voucher for Payment*. Department of Defense Form 2526, *Case Abstract for Malpractice Claims*.

THOMAS J. FISCUS, Maj Gen, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- 5 U.S.C. 8101, and following, *Federal Employees' Compensation Act*
- 10 U.S.C. 2246, *Department of Defense Golf Courses*
- 10 U.S.C. 2733, *Military Claims Act*
- 10 U.S.C. 2734, *Foreign Claims Act*
- 10 U.S.C. 2734a, 2734b, *International Agreement Claims Act*
- 10 U.S.C. 2736, *Advance Payments Act*
- 10 U.S.C. 2737, *Use of Government Property Claims Act*
- 10 U.S.C. 2738, *Property Loss: Reimbursement for certain losses of household effects caused by hostile action.*
- 10 U.S.C. 9441, 9442, *Status of the Civil Air Patrol*
- 10 U.S.C. 9801-9804, 9806, *Air Force Admiralty Claims Act*
- 28 U.S.C. 1346(b), 2671-2680, *Federal Tort Claims Act*
- 31 U.S.C. 1304, *Judgments, Awards, and Compromise Settlements*
- 31 U.S.C. 3701, 3721, *Military Personnel and Civilian Employees' Claims Act*
- 32 U.S.C. 316, 502, 503, 504, 505, *National Guard Training*
- 32 U.S.C. 709, *Technicians: Employment, Use, Status*
- 32 U.S.C. 715, *National Guard Claims Act*
- 33 U.S.C. 901, and following, *Longshore and Harbor Workers' Compensation Act*
- 36 U.S.C. 201, and following, *Civil Air Patrol Corporation*
- 46 U.S.C. Appendix 740, *Extension of Admiralty and Maritime Jurisdiction*
- 46 U.S.C. Appendix 741, and following, *The Suits in Admiralty Act*
- 46 U.S.C. Appendix 761, and following, *The Death on the High Seas Act*
- 46 U.S.C. Appendix 781, and following, *The Public Vessels Act*
- 50 U.S.C. Appendix 1, and following, *Trading with the Enemy Act.*
- 28 C.F.R. 14.1-14.11, *Administrative Claims Under the Federal Tort Claims Act*
- DoD Directive 5515.3, *Settlement of Claims Under 10 U.S.C. 2733 and 2734*
- DoD Directive 5515.6, *Processing Tort, Contract and Compensation Claims Arising Out of Operations of Nonappropriated Fund Activities*
- DoD Directive 5515.8, *Single Service Assignment of Responsibility for Processing of Claims*

DoD Regulation 5400.7-R, *DoD Freedom of Information Act Program, including AF Supplement*

AFI 33-332, *Air Force Privacy Act Program*

AFI 34-262, *Services Programs and Use Eligibility*

AFI 44-119, *Clinical Performance Improvement*

AFI 51-302, *Medical Law*

AFI 51-502, *Personnel Claims*

AFI 51-503, *Aerospace Accident Investigations*

AFI 44-119, *Medical Services Clinical Quality Management*

Abbreviations and Acronyms

AAFES—Army and Air Force Exchange Service

AB—Air Base

AEA—Admiralty Extension Act

AFACA—Air Force Admiralty Claims Act

AFB—Air Force Base

AFCIMS—Armed Forces Claims Information Management System

AFI—Air Force Instruction

AFLSA/JAC—Air Force Legal Services Agency/Civil Law and Litigation Directorate

AFLSA/JACC—Air Force Legal Services Agency/General Claims Division

AFLSA/JACE—Air Force Legal Services Agency/Environmental Law and Litigation Division

AFLSA/JACT—Air Force Legal Services Agency/Tort Claims and Litigation Division

AFSOC—Air Force Special Operations Command

AFSVA/SVL—Air Force Services Agency/Office of Legal Counsel

AFSPACECOM—Air Force Space Command

ANG—Air National Guard

APA—Advance Payments Act

CAP—Civil Air Patrol

CAP-USAF—Civil Air Patrol, United States Air Force

CFR—Code of Federal Regulations

CONUS—Continental United States

DJAG—Deputy Judge Advocate General

DoD—Department of Defense

DoJ—Department of Justice

FCA—Foreign Claims Act

FCC—Foreign Claims Commission

FECA—Federal Employees' Compensation Act

FMS 195—Financial Management Service Form 195

FMS 196—Financial Management Service Form 196

FMS 197a—Financial Management Service Form 197a

FTCA—Federal Tort Claims Act

IACA—International Agreement Claims Act

LHWCA—Longshore and Harbor Workers' Compensation Act

MAJCOM—Major Command

MCA—Military Claims Act

MLC—Medical Law Consultant

MPCECA—Military Personnel and Civilian Employees' Claims Act

NAFI—Nonappropriated Fund Instrumentality

NATO—North Atlantic Treaty Organization

NGCA—National Guard Claims Act

PVA—Public Vessels Act

SAF—Secretary of the Air Force

SF 95—Standard Form 95

SF 1034a—Public Voucher for Purchases and Services Other Than Personal

SIAA—Suits in Admiralty Act

SJA—Staff Judge Advocate

SOFA—Status of Forces Agreement

SSCR—Single Service Claims Responsibility

TJAG—The Judge Advocate General

UGPCA—Use of Government Property Claims Act

US—United States

USC—United States Code

USCENTCOM—United States Central Command

USSOCOM—United States Special Operations Command

Terms

Air Force Assigned Mission for Civil Air Patrol—Any mission assigned to the CAP for which the Air

Force is tasked by statute, instruction, or higher authority, which does not involve actual combat, combat operations, or combat training.

Air National Guard (ANG)—The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. ANG Duty Status is of three types: (1) active federal service; (2) federally funded training; or (3) state duty. In active federal service, ANG members may serve on active federal duty under Title 10 to augment the active Air Force under certain circumstances or for certain types of duty or training. During federally funded training, ANG members perform specified federally funded training under Title 32 such as: weekend drills; annual training; field exercises; range firing; military schooling; full-time unit support; and recruiting duties. State duty is that which the governor of the state requires and pays for with state funds.

ANG Members—Military personnel of the ANG who perform duty under 32 U.S.C. 316, 502, 503, 504, or 505, for which they receive pay from the United States or waive pay from the United States.

ANG Technicians—Federal employees employed under 32 U.S.C. 709. A technician who is not employed under 32 U.S.C. 709 is a state employee.

Appeal—Under the MCA, NGCA and 10 U.S.C. 2738, a request by the claimant to reevaluate the final agency action on the claim.

Appellate Authority—Under the MCA, NGCA and 10 U.S.C. 2738, the individual (determined by job title) who makes the final determination regarding an appeal.

Army and Air Force Exchange Service (AAFES)—A joint command of the Army and Air Force that provides exchange and motion picture services to authorized patrons.

Authorized Agent—Any person or corporation, including a legal representative, with the authority to act on a claimant's behalf.

CAP Members—Private citizens who volunteer their time, services, and resources to meet CAP objectives and purposes. The two primary categories of members are cadets and seniors. Cadets are youths, 13 years (or having satisfactorily completed the sixth grade) through 17 years of age, who meet the requirements set by the CAP corporation. Cadets may keep their status until age 21. Seniors are adults, 18 years of age or older, who meet the requirements set by the CAP corporation, and who have not kept their cadet status.

Civil Air Patrol—A federally chartered, civilian nonprofit corporation which is designated as a volunteer civilian auxiliary of the Air Force.

Civilian Component—Civilian personnel accompanying and employed by an international agreement contracting force. Local employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

Civilian Personnel—Civilian employees of the US Government who are paid from appropriated or nonappropriated funds. Civilian employees may include volunteer workers.

Claim—Any signed, written demand made upon or by the Air Force for the payment of a specific sum. It does not include any obligations that the Air Force acquires in the regular procurement of services, supplies, equipment, or real estate. Under the FCA, a claim need not be in writing if that is the custom of the country in which the incident occurred.

Contracting Party—A nation signing the governing international agreement.

Final Denial—A letter from the settlement authority to claimant, his or her attorney, or legal representative sent by certified or registered mail advising that the Air Force denies the claim.

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

Foreign Claims Commission—The claims settlement authority under the Foreign Claims Act. Under the FCA, only Foreign Claims Commissions (FCCs) or the Secretary may settle claims. The Secretary concerned or designee appoints FCCs.

Geographic Area of Claims Responsibility—An SJA's jurisdiction for claims. As authorized by TJAG, AFLSA/JACC assigns CONUS claims areas. The SJAs of HQ PACAF, HQ USAFE, and HQ 9AF (for USCENTCOM) designate the areas within their jurisdictions. The DoD assigns areas of single service responsibility to each military department.

Inhabitant of a Foreign Country—A person, corporation, or other business association whose usual place of abode is in a foreign country. The term "inhabitant" has a broader meaning than such terms as "citizen" or "national," but does not include persons who are merely temporarily present in a foreign country. The term does not require foreign citizenship or permanent, legal residence. Members of the US Military are not considered inhabitants of a foreign country. Whether dependents of US Military personnel are considered inhabitants of a foreign country is determined on a case by case basis.

Legally Responsible—A term of art providing for settlement of claims under cost sharing international agreements in accordance with the law of the receiving State. Often, employees who are local inhabitants, not part of the civilian component of the force, could cause the sending State to be legally responsible under a *respondeat superior* theory.

Maritime Tort—A tort committed in navigable waters or on land or in the air where a substantial element of the damage, personal injury, or death occurred in or over navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

Morale, Welfare, Recreation, and Services (MWRS) Activities—Activities operated directly or by contract, which provide programs to promote the morale and well being of the Air Force's military and civilian personnel and their dependents which are funded wholly with appropriated funds, primarily with nonappropriated funds, or with a combination of appropriated and nonappropriated funds.

Nonappropriated Funds—Funds that DoD military and civilian personnel and their dependents generate and that the DoD uses in addition to congressionally appropriated funds to provide a comprehensive morale building, welfare, religious, educational, and recreational program, designed to improve the well being of military and civilian personnel and their dependents.

Nonappropriated Fund Instrumentality—A federal government instrumentality established to generate and administer nonappropriated funds for programs and services for the morale and well being of authorized personnel.

Noncombat Activity—A term of art which is defined as activity, other than combat, war, or armed conflict, that is particularly military in nature, has little parallel in civilian pursuits, and has been historically considered as furnishing the proper basis for payable claims. "Noncombat activity" should not be interpreted as simply meaning, "not combat."

Receiving State—The country where the force or civilian component of another contracting party is temporarily located. It is often thought of as the "host nation."

Reconsideration Authority—Under claims statutes, which do not grant the right of appeal, the individual (determined by job title) who makes the final determination regarding a claim for which reconsideration has been requested.

Recreational Purpose—The use of recreational facilities for the enjoyment of people, including, but not limited to, activities such as fishing, hunting, camping, ball playing, golf, water sports, beach activities, hiking, animal riding, off-road vehicle riding, bicycling, skating, skate-boarding, picnicking, sledding, skiing, and visiting or photographing historical, archeological, scenic, natural, and scientific sites.

Sending State—The country sending the force or civilian component to the receiving State. In cases where US personnel are stationed in a foreign country, the United States is the sending State.

Settle—To consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

Settlement Authority—The individual or Foreign Claims Commission (for claims under the FCA) who has the authority under this instruction to pay or deny a claim. An individual occupying an office in an “acting” capacity has the settlement authority of that office.

Third Parties—A term of art used in International Agreements. Third parties are parties other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties (and therefore can generally make a claim under a SOFA) unless the international agreement, or an understanding between the countries involved, specifically excludes them.

Table A1.1. *Addresses*

AFLSA/JACE

1501 Wilson Blvd., Ste. 629

Arlington VA 22209-2403

AFLSA/JACT

1501 Wilson Blvd. Rm. 835

Arlington VA 22209-2403

AFMOA/SGZC

110 Luke Avenue, Rm 405

Bolling AFB DC 20332-7050

Judgment Fund Group

Department of the Treasury

Financial Management Service

Prince George's Metro Center 2

3700 East West Highway, Rm. 6F03

Hyattsville, MD 20782

Attachment 2

PREPARING, ARRANGING, AND ASSEMBLING TORT CLAIM FILES

A2.1. Order of Tabs . Claims personnel arrange all tort claim files under these tabs, from top to bottom: **Exception:** *Claims involving property damage only which are settled locally and never forwarded to JACT do not have to be tabbed.*

A2.1.1. TAB A Seven Point Memorandum.

A2.1.2. TAB B Claim (SF 95 or other notice of claim) and any supporting documents presented with it.

A2.1.3. TAB C Expert or consultant opinions (e.g. Medical Law Consultant's report, Civil Engineer reports, accident reconstruction reports).

A2.1.4. TAB D Witness locator information.

A2.1.5. TAB E Memoranda of witness interviews.

A2.1.6. TAB F Photographs.

A2.1.7. TAB G Technical information on devices and equipment.

A2.1.8. TAB H Instructions, regulations, directives and standard operating procedures.

A2.1.9. TAB I Extracts from books or journals.

A2.1.10. TAB J Applicable state and local statutes and case law.

A2.1.11. TAB K Correspondence with claimant or claimant's attorney (latest on top).

A2.1.12. TAB L Miscellaneous correspondence (latest on top).

A2.1.13. TAB M Miscellaneous records (e.g. base-level medical quality assurance (QA), including peer review statements and medical incident investigations; training; repair; maintenance; etc.).

A2.1.14. TAB N Medical records.

A2.1.15. TAB O Investigations by others (e.g. accident, police, reports of survey, AFI 51-503 accident reports, etc.). Do not include medical quality assurance (QA) documents.

A2.1.16. TAB P Applicable contractual provisions.

A2.2. Tabs Not Used. Not every investigative file will contain every item on the list, however, the specific sequence of tabs should be included in every file. If you do not use a particular tab, place a sheet of paper behind it stating, "This tab not used."

A2.3. Separate Listing of Tabs E, H, M, N, O and P. Whenever more than one item appears under tabs E, H, M, N, O and P, provide a separate index listing the documents under the tab, including name, address, and telephone number of the custodian of the original of each document, if applicable. Separately identify each item under a tab. For example, several witness interviews would be labeled as tab E1, E2, E3, etc.

A2.4. Placement of Tabs. Do not place tabs directly on to documents; use a separate sheet of paper.