

2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

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

(5) A properly executed advance payment acceptance agreement has been obtained.

### Subpart B—Claims Arising From Activities of Military or Civilian Personnel or Incident to Non-combat Activities

#### § 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of 10 August 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Public Law 90-522, 26 September 1968 (82 Stat. 875), Public Law 90-525, 26 September 1968 (82 Stat. 877), Public Law 91-312, 8 July 1970 (84 Stat. 412) and Public Law 93-336, 8 July 1974 (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90-521, 26 September 1968 (82 Stat. 874) and Public Law 98-564, 30 October 1984 (98 Stat. 2918).

#### § 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

#### § 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the

substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

#### § 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under