

CLAIMS ARISING IN CANADA

1. Purpose: The purpose of this Claims Instruction is to outline the procedures to be utilized for investigating, processing and reporting incidents and/or claims arising in Canada.

2. Scope:

a. The provisions of this Claims Instruction are applicable to all U.S. military units, installations and agencies in Canada.

b. The provisions of this Claims Instruction are applicable to the following type claims (and incidents giving rise to possible claims):

- (1) Claims cognizable under The Foreign Claims Act (Act of 2 January 1942; 31 U.S.C. 224d) as amended.
- (2) Claims cognizable under the Act of 3 July 1943 (31 U.S.C. 223b) as amended.
- (3) Claims coming within the provisions of Article VIII of the Agreement Between the Parties to the North Atlantic Treaty Regarding their Status of Forces, 19 June 1951. (Including claims in favor of the United States in which the "waiver" provisions of paragraph 1 or 2, Article VIII, may be applicable.)
- (4) Claims which arise as the result of acts or omissions of employees of nonappropriated fund activities and which are otherwise included within this claims instruction.

c. The provisions of this Claims Instruction are not applicable to claims cognizable under other statutes or regulations. Specifically, this Claims Instruction is not applicable to claims cognizable under the Military Personnel Claims Act of 1945 (31 U.S.C. 222c) as amended, the Act of 20 October 1951 (10 U.S.C. 1861-1866), and Article 139, UCMJ (50 U.S.C. 551-736).

* This Instruction supersedes NEAC Claims Instruction (Canada), dated 2 February 1954.

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3. References:

a. Article VIII of the Agreement Between the Parties to the North Atlantic Treaty Regarding their Status of Forces, signed 19 June 1951, and ratified by the U.S. Senate on 15 July 1953.

b. Resolution, North Atlantic Council of Deputies, Document No. (52)26, 23 January 1953, Implementation of Article VIII.

c. Department of Defense Directive No. 5515.3, dated 14 September 1953.

d. Letters, Headquarters, USAF, Subject: NATO Status of Forces Agreement, dated 11 and 23 September 1953; Subject: Proposed Implementing Arrangements on Claims in Canada Under the NATO SOF Agreement, dated 13 November 1953, and Subject: Proposed NEAC Claims Instruction No. 54-4 - Claims Arising in Canada, dated 27 January 1954.

e. Letter, Headquarters, USAF, Subject: Disposition of Claims Arising from Acts or Omissions of Employees of Nonappropriated Fund Activities in Foreign Countries, dated 20 December 1954.

4. Authority:

Pursuant to the referenced Department of Defense Directive, Headquarters, USAF has selected Headquarters, NEAC as the coordinating and responsible major command for claims arising in Canada, and has assigned to Headquarters, NEAC complete jurisdiction insofar as the following types of claims, arising anywhere in Canada, are concerned:

a. Claims cognizable under The Foreign Claims Act and under the Act of 3 July 1943. (Foreign Claims Commission No. AF 14, Headquarters, NEAC has exclusive jurisdiction to settle such claims for all U.S. military services).

b. Claims coming within the provisions of Article VIII, NATO SOF Agreement. (The Office of the Staff Judge Advocate, Headquarters, NEAC, is the "Sending State Office" with respect to all claims arising out of the activities of U.S. forces in Canada).

5. Claims Under Foreign Claims Act and Act of 3 July 1943:

Claims cognizable under either of these statutes will be investigated and reported in accordance with service directives, and, upon completion of the action by the officer appointing the claims investigating officer, will be transmitted directly to Headquarters, NEAC, Attention: Staff Judge Advocate. This procedure will be followed with respect to all such claims that have not been finally settled, regardless of the date the claim arose.

6. Claims Under NATO SOF Agreement:

a. Definition:

For the purpose of this Claims Instruction, a claim and/or incident will be deemed to come within the provisions of Article VIII, NATO SOF Agreement, (1) if it arose in Canada after 0001 hours, 27 September 1953, (2) if the incident involved U.S. Armed Forces military personnel or civilian employees (whether within the scope of their employment or not) and (3) if property damage, personal injury or death was caused to non-U.S. personnel.

b. Functions of the Office of the Staff Judge Advocate, Headquarters, NEAC:

- (1) It will serve as the sole U.S. office of record for all reports of incident and reports of investigation submitted by units or agencies of the U.S. Army, Navy and Air Force pertaining to accidents causing property damage, personal injury or death to non-U.S. personnel in Canada.
- (2) It will maintain liaison as the sole U.S. technical representative on claims matters with the appropriate authorities of the Government of Canada charged with the responsibility for settling or recommending settlement of claims filed against the United States as the result of the acts or omissions of U.S. Armed Forces personnel which cause property damage, personal injury, or death in Canada.
- (3) It will supervise the collection and distribution of all information required by the Canadian Claims authorities from the United States Army, Navy and Air Force for the determination of liability and damages on each claim filed against the United States Government.

c. Responsibility for Investigation and Reports:

The Commander of the U.S. unit, installation or agency most directly involved will be responsible for investigating and reporting all incidents or accidents out of which a claim, coming within the provisions of Article VIII, NATO SOF Agreement, may arise.

d. Preliminary Report:

Immediately following such accident, a preliminary report, in triplicate, will be transmitted directly to Headquarters, NEAC, Attention: Staff Judge Advocate. This preliminary report will include the following information:

- (1) Date and place of the accident;
- (2) Name, grade, organization and APO of each member or civilian employee of the U.S. Armed Forces involved;
- (3) Names and addresses of all other parties concerned, including an indication of those who are prospective claimants;
- (4) Identification of the U.S. Armed Force vehicles, aircraft, vessel, or equipment involved, if any, by number, type, organization and APO;
- (5) A brief description of what occurred and of the resultant damage, injury or death.
- (6) A statement as to whether or not the responsible U.S. unit has the facilities and capabilities to make the complete formal investigation. If it does not, the reasons therefor should be stated, with an indication of the type of evidence that cannot be reasonably obtained.

e. Formal Report:

Within thirty (30) days following the preliminary report, a formal report of investigation with a Report of Claims Officer (Standard Form 93 or AF Form 1156), both in triplicate, will be sent directly to Headquarters, Northeast Air Command, Attention: Staff Judge Advocate. This report will be complete in all details and will include all available evidence from both U.S. and Canadian sources, unless the responsible U.S. unit does not have the facilities and capabilities to make the complete investigation.

- (1) If the responsible U.S. unit has the facilities and capabilities to make a complete investigation, the report and supporting exhibits will be submitted in the following manner:
 - (a) The Report of Claims Officer will be completed except for that portion of the form pertaining to recommendations. The officer appointing the Claims Investigation Officer will take action at some place on the form indicating his approval or disapproval of the Report of Investigation.
 - (b) The following evidence will normally be submitted as exhibits to the Report of the Claims Officer: Affidavit of the operator of the U.S. vehicle, aircraft, vessel, or equipment involved; affidavit of claimant;