

experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

(G) *Example 7—(1)* The facts are the same as in paragraph (a)(2)(v)(F) of this section (*Example 6*), except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(2) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (a)(2)(iii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(b)(1) *Q-2* When are the rules in this § 1.402(c)-3 applicable to plan loan offset amounts, including qualified plan loan offset amounts?

(2) *A-2 Applicability date.* The rules provided in paragraph (a) of this section are applicable to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the adoption of these rules as final regulations in the **Federal Register**.

**Sunita Lough,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF DEFENSE

### Department of the Navy

#### 32 CFR Part 750

[Docket ID: USN-2018-HQ-0012]

RIN 0703-AB22

#### General Claims Regulations

**AGENCY:** Department of the Navy, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule updates and consolidates the Department of the Navy (DON) regulations concerning General Claims Regulations, and the processes and procedures to be used for filing specific claims against and in favor of the DON. Upon completion of this consolidation, the obsolete parts will be removed from the CFR.

**DATES:** Consideration will be given to all comments received by September 21, 2020.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this document. The general policy is for submissions to be made available for public viewing at <http://www.regulations.gov> without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Russell, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue SE, Washington Navy Yard, DC 20374, telephone: 202-685-4600.

#### SUPPLEMENTARY INFORMATION:

##### Purpose of the Proposed Rule

The revision clarifies the rule for public use and consolidates DON claims information into one part.

##### Revisions Implemented by This Rule

This rule consolidates 32 CFR parts 751, 752, 755, 756, and 757 and their underlying subparts into 32 CFR part 750. Primary revisions are deletion of

unnecessary information. Although there are no substantive changes, many of the sub-parts were clarified to allow a better understanding of the claims process.

#### Legal Authority for This Program

The Military Personnel and Civilian Employees' Claims Act (PCA) is codified at 31 U.S.C. 3721. Claims for Redress of injuries to property by service members are codified at Article 139 of the Uniform Code of Military Justice, 10 U.S.C. 939. Additional claims statutes are codified as follows: The Federal Claims Collection Act (FCCA): 31 U.S.C. 3711; Third Party Payers' Act (TPPA), 10 U.S.C. 1095; and Medical Care Recovery Act (MCRA), 42 U.S.C. 2651(a). DON's General Claims Regulations for implementing the Federal Tort Claims Act (FTCA): 28 U.S.C. 1346(b), 2671-2672, and 2674-2680; Military Claims Act (MCA), 10 U.S.C. 2733; and the Non-Scope Claims Act (NSCA), 10 U.S.C. 2737.

#### Regulatory History

The DON last updated 32 CFR parts 750 and 751 on October 15, 2008; part 752 on October 3, 2007; and parts 756 and 757 on September 19, 2007. The internal Navy document, JAG Instruction 5890.1A, "Administrative Processing and Consideration of Claims on Behalf and Against the United States" (available at [https://www.jag.navy.mil/library/instructions/5890\\_1a.pdf](https://www.jag.navy.mil/library/instructions/5890_1a.pdf)), was originally promulgated on January 17, 1991, and updated in February 1992. The JAG Instruction was slightly revised in 2005 with changes to the rule in 2007.

#### Regulatory Analyses

##### Regulatory Planning and Review Executive Orders 12866, 13563, and 13771

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation

issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.” This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review;” therefore, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” does not apply.

#### **Congressional Review Act (5 U.S.C. 801, *et seq.*)**

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

#### **Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will not impose any impacts on any entities. This means that there will be no economic impacts on any entities. Therefore, the DoD under 5 U.S.C. 605 certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140M. This rule will not mandate any requirements for State, local, or tribal governments or the private sector.

#### **Collection of Information**

It has been determined this regulation does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **Federalism**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final

rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule does not have federalism implications that warrant the preparation of a federalism assessment in accordance with Executive Order 13132.

#### **List of Subjects in 32 CFR Part 750**

Claims, Government employees, Health care, Military law, Military personnel, Vessels.

Accordingly, 32 CFR part 750 is proposed to be revised to read as follows:

### **PART 750—GENERAL CLAIMS REGULATIONS**

#### **Subpart A—General Provision for Claims**

Sec.

- 750.1 Scope of subpart A.
- 750.2 Statutory authority.
- 750.3 Claims: In general.
- 750.4 Claims: Proper claimants.
- 750.5 Claims: Presentment.
- 750.6 Claims: Responsibility.
- 750.7 Claims: Settlement and release.
- 750.8 Claims: Payment.
- 750.9 Claims: Denial.
- 750.10 Claims: Single service responsibility.

#### **Subpart B—Claims Under the Federal Tort Claims Act (FTCA)**

- 750.11 Scope of subpart B.
- 750.12 Statutory authority.
- 750.13 Exclusiveness of remedy.
- 750.14 Definitions.
- 750.15 Scope of liability.
- 750.16 Statute of limitations.
- 750.17 Delegations of adjudicating authority.
- 750.18 The administrative claim.
- 750.19 Information and supporting documents.
- 750.20 Damages.
- 750.21 Amendment of the claim.
- 750.22 Settlement and payment.
- 750.23 Denial of the claim.
- 750.24 Reconsideration.
- 750.25 Suits under the Federal Tort Claims Act.
- 750.26 Attorney fees.

#### **Subpart C—Claims Under the Military Claims Act (MCA)**

- 750.27 Scope of subpart C.
- 750.28 Statutory authority.
- 750.29 Claims payable.
- 750.30 Claims not payable.
- 750.31 Statute of limitations.
- 750.32 Filing the claim.
- 750.33 Applicable law.
- 750.34 Measure of damages for property claims.
- 750.35 Measure of damages in injury or death cases.
- 750.36 Delegations of adjudicating authority.
- 750.37 Advance payments.
- 750.38 Final disposition.

- 750.39 Appeal.
- 750.40 Cross-servicing.
- 750.41 Payments related to certain medical or legal malpractice claims.
- 750.42 Attorney fees.

#### **Subpart D—Claims Under the Foreign Claims Act (FCA)**

- 750.43 Scope of subpart D.
- 750.44 Statutory authority.
- 750.45 Scope of liability.
- 750.46 Statute of limitations.
- 750.47 Filing a claim.
- 750.48 The administrative claim.
- 750.49 Damages.
- 750.50 Foreign Claims Commissions.
- 750.51 Processing claims.
- 750.52 Action on forwarded claims.
- 750.53 Reconsideration, appeal, and suit.
- 750.54 Payment.

#### **Subpart E—Claims Under the Nonscope Claims Act (NSCA)**

- 750.55 Scope of subpart E.
- 750.56 Statutory authority.
- 750.57 Definitions.
- 750.58 Claim procedures.
- 750.59 Statute of limitations.
- 750.60 Officials with authority to settle.
- 750.61 Scope of liability.
- 750.62 Claims not payable.
- 750.63 Measure of damages.

#### **Subpart F—Claims Under the Personnel Claims Act (PCA)**

- 750.64 Scope of subpart F.
- 750.65 Statutory authority.
- 750.66 Adjudication authority.
- 750.67 Proper claimants.
- 750.68 Claims payable.
- 750.69 Claims not payable.
- 750.70 Statute of limitations.
- 750.71 Filing a claim.
- 750.72 Computation of payment.
- 750.73 Notice of decision.
- 750.74 Reconsideration.
- 750.74 Carrier recovery claims.

#### **Subpart G—Admiralty Tort Claims**

- 750.76 Scope of subpart G.
- 750.77 Statutory authority.
- 750.78 Organization.
- 750.79 Claims against the Navy.
- 750.80 Affirmative claims.
- 750.81 Salvage.

#### **Subpart H—Claims for Property Damage Under Article 139, Uniform Code of Military Justice**

- 750.82 Scope of subpart H.
- 750.83 Statutory authority.
- 750.84 Claims not cognizable.
- 750.85 Limitation on claims.
- 750.86 Complaint by the injured party and investigation.
- 750.87 Action where offenders are members of one command.
- 750.88 Action where offenders are members of different commands.
- 750.89 Reconsideration and appeal.

#### **Subpart I—Claims Involving Non-Appropriated Fund (NAFI) Activities and Their Employees**

- 750.90 Scope of subpart I.
- 750.91 Statutory authority.
- 750.92 Definitions.

- 750.93 Participation in insurance programs.
- 750.94 Responsibility.
- 750.95 Negotiation.
- 750.96 Payment.
- 750.97 Denial.
- 750.98 Claims by employees.

#### **Subpart J—Affirmative Claims Regulations (Property Damage Claims)**

- 750.99 Scope of subpart J.
- 750.100 Statutory authority.
- 750.101 Claims that may be collected.
- 750.102 Assertion of claims and collection procedures.
- 750.103 Waiver, compromise, and referral of claims.

#### **Subpart K—Affirmative Claims Regulations (Medical Care Recovery Act and Claims Asserted Pursuant to the Third Party Payers Act)**

- 750.104 Scope of subpart K.
- 750.105 Statutory authority.
- 750.106 Responsibility.
- 750.107 Claims asserted.
- 750.108 Assertion of claims.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552; 10 U.S.C. 939, 5013, 5148, and 7621–7623; 3 CFR, 1984 Comp., p. 201; Article 139, UCMJ; E.O. 11476; 3 CFR, 1969 Comp., p. 132.

#### **Subpart A—General Provisions for Claims**

##### **§ 750.1 Scope of subpart A.**

(a) *General.* (1) The Judge Advocate General of the Navy is responsible for the administration and supervision of the resolution of claims arising under the Federal Tort Claims Act (subpart B of this part), the Military Claims Act (subpart C of this part), the Foreign Claims Act and the International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements (subpart D of this part), the Nonscope Claims Act (subpart E of this part), the Personnel Claims Act (subpart F of this part), Admiralty tort claims (subpart G of this part), the Federal Claims Collection Act (subpart J of this part), and the Medical Care Recovery Act and Claims asserted pursuant to the Third Party Payers Act (subpart K of this part).

(2) The Director, Claims and Tort Litigation is the manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising under the acts listed above (except admiralty claims) and is responsible to the Judge Advocate General for the management of that system. The claims system consists of the Claims and Tort Litigation Division of the Office of the Judge Advocate General (Code 15) and three subordinate units: The Tort Claims Unit (TCU), Norfolk, Virginia; the Personnel Claims Unit (PCU), Norfolk, Virginia; and three Medical Care Recovery Units (MCRUs)

in Norfolk, Virginia; San Diego, California; and Pensacola, Florida.

(3) The Director, Admiralty and Maritime Law is the manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising in admiralty.

(b) This subpart delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this subpart conflict with the specific provisions of any subsequent section, the specific provisions govern.

(c) Additional guidance on the processing and adjudication of claims can be found in JAG Instruction 5800.7 series (JAGMAN) and JAGINST 5890.1 series [which may be retrieved at the official website of the United States Navy Judge Advocate General's Corps at <https://www.jag.navy.mil>].

##### **§ 750.2 Statutory authority.**

(a) *Authority applicable to entire part:* 5 U.S.C. 301, 5 U.S.C. 552, 10 U.S.C. 5013, and 5148.

(b) *History:* 57 FR 4722, Feb. 7, 1992; 72 FR 53417, Sept. 19, 2007, as confirmed at 73 FR 60948, Oct. 15, 2008.

##### **§ 750.3 Claims: In general.**

(a) *Claims against the United States.* Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, payment issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

(b) *Claims in favor of the United States.* Potential claims in favor of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued.

(c) *Assistance to claimants.* Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims should be referred to the responsible claims unit. The unit will provide claims forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims unit employees may provide advice on the claims process but shall not provide

advice or opinions about the merits or the wisdom of filing a particular claim.

##### **§ 750.4 Claims: Proper claimants.**

(a) *Damage to property cases.* A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(b) *Personal injury and death cases.* A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased's estate or survivor where authorized by State law.

(c) *Subrogation.* A subrogor and a subrogee may file claims jointly or separately. A medical expense subrogee may pursue a claim when permitted under applicable state law.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

##### **§ 750.5 Claims: Presentment.**

(a) *Written demand.* A claim shall be submitted by presenting a written statement with the amount of the claim expressed in a sum certain, and, as far as possible, describing the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, shall be used whenever practical for claims based in tort. Personnel Claims Act claims for loss and damage that occurred during a DoD contracted move (Household goods) shall be submitted electronically utilizing the USTRANSCOM approved claims management system. All other Personnel Claims Act claims shall be submitted in writing on the DD Form 1842 and 1844 [both forms are available at the website of the United States Navy

Judge Advocate General's Corps at [https://www.jag.navy.mil/organization/code\\_15.htm](https://www.jag.navy.mil/organization/code_15.htm). The claim and all other papers requiring the signature of the claimant shall be signed by the proper claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment. When more than one person has a claim arising from the same incident, each person shall file a claim separately.

(b) *Submission of claims.* Claims should be submitted to the appropriate claims unit (see subparts for addresses), or to the Office of the Judge Advocate General, Claims and Tort Litigation Division, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

#### **§ 750.6 Claims: Responsibility.**

(a) *Determining the sufficiency of the claim.* Once received, each claim will be reviewed and a determination of its sufficiency made. A claim is deemed sufficient if it presents a written statement, signed by the claimant, stating the amount of the claim in a sum certain and describing the facts and circumstances in enough detail to allow the Navy to identify the incident so that an investigation can be commenced. If the claim is not sufficient as received, it shall be immediately returned to the party who submitted it along with an explanation of the insufficiency. This does not constitute denial of the claim. The claim shall not be considered “presented” until it is received in proper form.

(b) *Adjudicating the claim.* The responsible unit shall evaluate every claim promptly and, where liability is established or payment deemed appropriate, attempt to settle claims for amounts within its adjudicating authority. Negotiation at settlement figures above a unit's payment limits may be attempted if the claimant is informed that the final decision on the claim will be made at a higher level.

#### **§ 750.7 Claims: Settlement and release.**

(a) *Fully and partially approved claims.* When a claim is approved for payment in the amount claimed, a settlement agreement may not be necessary. When a claim based in tort is approved for payment in a lesser amount than that claimed, the claimant must indicate in writing a willingness to accept the offered amount in full settlement and final satisfaction of the claim. No payment will be made until a signed settlement agreement has been

received. PCA claims do not require a settlement agreement.

(b) *Release.* (1) Acceptance by the claimant of an award or settlement made by the Secretary of the Navy or designees, or the Attorney General or designees, is final upon acceptance by the claimant. Acceptance is a complete release by claimant of any claim against the United States by reason of the same subject matter. Claimant's acceptance of an advance payment does not have the same effect.

(2) In the case of claims based in tort, the claimant's acceptance of an award or settlement made under the provisions governing the administrative settlement of Federal tort claims or the civil action provisions of 28 U.S.C. 1346(b) also constitutes a complete release of any claim against any employee of the Government whose act or omission gave rise to the claim.

#### **§ 750.8 Claims: Payment.**

Claims approved for payment shall be expeditiously forwarded to the appropriate payment authority for payment.

#### **§ 750.9 Claims: Denial.**

The final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative. The denial notification shall include a statement notifying the claimant of the right to appeal or request reconsideration of the decision.

#### **§ 750.10 Claims: Single service responsibility.**

(a) DoD Instruction (DoDI) 5515.08 (series), “Assignment of Claims Responsibility” (available at [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/551508\\_2016.pdf](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/551508_2016.pdf)) assigns “single-service claims responsibility” to individual military departments for processing claims in specified foreign countries. Claims arising in unassigned countries will be processed and adjudicated by the Service of the service member whose actions resulted in the claim.

(b) U.S. forces afloat cases under \$2,500.00. Notwithstanding the single service assignments above, DON may settle claims under \$2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

### **Subpart B—Claims Under the Federal Tort Claims Act (FTCA)**

#### **§ 750.11 Scope of subpart B.**

This subpart provides information regarding the administrative processing and consideration of claims against the United States under the FTCA. The FTCA is a limited waiver of sovereign immunity. Under the FTCA, an individual can seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of a Federal employee acting within the scope of employment. The FTCA also provides for compensation for injuries caused by certain intentional, wrongful conduct. The liability of the United States is determined in accordance with the law of the State where the act or omission occurred.

#### **§ 750.12 Statutory authority.**

The statutory provisions of the FTCA are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney General's regulations conflict, the Attorney General's regulations prevail.

#### **§ 750.13 Exclusiveness of remedy.**

(a) The Federal Employees Liability Reform and Tort Compensation Act of 1988, Public Law 100–694 (amending 28 U.S.C. 2679(b) and 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all employees of the Government acting within the scope of their employment will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts nor to allegations of violations of statutes specifically authorizing suits against individuals.

(b) Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct within the scope of their employment gives rise to claims against the Government. Department of Defense (DoD) health care providers are specifically protected by 10 U.S.C. 1089, the Gonzalez Act. DoD attorneys are specifically protected by 10 U.S.C. 1054.

#### **§ 750.14 Definitions.**

(a) *Negligent conduct.* Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under similar circumstances. Negligent

conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government.

(b) *Intentional torts.* Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An “investigative or law enforcement officer” is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(c) *Government employees.* (1) “Employee of the Government,” defined at 28 U.S.C. 2671, includes officers or employees of any Federal agency, members of the U.S. military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) “Government contractors” (also referred to as independent contractors) are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of “Federal agency,” found at 28 U.S.C. 2671, specifically excludes “any contractor with the United States,” the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions.

They are:

(i) Where the thing or service contracted for is deemed to be an “inherently dangerous activity”;  
 (ii) Where a nondelegable duty in the employer has been created by law; or  
 (iii) Where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner.

(3) Employees of nonappropriated-fund activities. Nonappropriated-fund (NAF) activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be “arms” of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund

activity not located in a foreign country acting within the scope of employment is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

(d) *Scope of employment.* “Scope of employment” is defined by the law of respondeat superior (master and servant) of the place where the act or omission occurred. Although 28 U.S.C. 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found “in the line of duty,” yet not meet the criteria for a finding of “within the scope of employment” under the law of the place where the act or omission occurred.

#### **§ 750.15 Scope of liability.**

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country.

(b) *Exclusions from liability.* Statutes and case law have established categories of exclusions from FTCA liability.

(1) *Statutory exclusions.* Title 28 U.S.C. 2680 lists claims not cognizable under the FTCA. They include:

(i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under subpart F of this part;

(iii) Claims arising from certain intentional torts enumerated in 28 U.S.C. 2680(h); and

(iv) Claims arising from the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(2) *Additional claims not payable.* Although not expressly statutorily excepted, the following types of claims will not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty;

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations (subpart E of this part);

(iii) Any claim by employees of nonappropriated-fund activities for personal property damage occurring

incident to Federal employment. These claims will be processed as indicated under subpart H of this part;

(iv) Any claim for personal injury or death covered by the Federal Employees’ Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

(vi) That portion of any claim for personal injury or property damage caused by the negligence or fault of a Government contractor to the extent such contractor may have assumed liability under the terms of the contract;

(vii) Any claim against the DON by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

#### **§ 750.16 Statute of limitations.**

An administrative claim against the United States under the FTCA must be presented in writing within 2 years after the claim accrues. Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

#### **§ 750.17 Delegations of adjudicating authority.**

(a) *Settlement authority.* (1) The Judge Advocate General; the Deputy Judge Advocate General; the Assistant Judge Advocate General (Civil Law); the Director, Claims and Tort Litigation; and the Head, Tort Claims Branch, Claims and Tort Litigation, have delegated authority to settle FTCA claims up to \$500,000. Any settlement, including aggregate settlements (*i.e.*, all claims arising from a single incident) in excess of OJAG’s settlement authority (\$500,000) require approval and written authorization from the Department of Justice—Torts Branch.

(2) Individuals with settlement authority under paragraph (a)(1) of this section may delegate all or part of their settlement authority. Such delegation shall be in writing.

(b) *Appeal authority.* Adjudicating authorities have the same authority as delegated on paragraph (a) of this section to act on appeals.

**§ 750.18 The administrative claim.**

(a) *Proper claimant.* See § 750.4 of this part.

(b) *Claim presented by agent or legal representative.* A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of the individual's authority to file a claim on behalf of the claimant.

(c) *Proper claim.* A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete.

(d) *Presentment.* A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. In such cases, a lead agency will be designated.

**§ 750.19 Information and supporting documents.**

(a) *Proper documentation.* Depending on the type of claim, claimants may be required to submit information, as follows:

(1) *Death.* (i) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(ii) Decedent's employment or occupation at time of death, including monthly or yearly earnings and the duration of last employment;

(iii) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors, including identification of survivors dependent for support upon decedent at the time of death;

(iv) Degree of support provided by decedent to each survivor at time of death;

(v) Decedent's general physical and mental condition before death;

(vi) Itemized bills for medical and burial expenses; and

(vii) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between injury and death.

(2) *Personal injury.* (i) A written report by attending physician or dentist on the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided;

(ii) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(iii) A statement of expected expenses for future treatment;

(iv) If a claim is made for lost wages, a written statement from the employer itemizing actual time and wages lost; and

(v) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost.

(3) *Property damage.* (i) Proof of ownership;

(ii) A detailed statement of the amount claimed for each item of property;

(iii) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs; and

(iv) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(b) *Failure to submit necessary documentation.* If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after a reasonable period of time the information is still not provided, the appropriate adjudicating authority should deny the claim.

**§ 750.20 Damages.**

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs.

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive

damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including TRICARE payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101–800) must be considered.

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentment of the claim or on intervening facts relating to the amount of the claim.

**§ 750.21 Amendment of the claim.**

Proper claim may be amended at any time prior to settlement, denial, or the filing of suit. An amendment must be submitted in writing and must be signed by the claimant or duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under § 750.24 may be amended. Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentment of an amendment.

**§ 750.22 Settlement and payment.**

(a) *Settlement agreement.* A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

(1) Settled for less than the full amount claimed, or

(2) The claim was not presented on a Standard Form 95.

(b) *Contents.* Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or

his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorney fees.

(c) *Payment of the claim.* Pursuant to 28 U.S.C. 2672 and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of \$500,000.00 may be effected only with the prior written approval of the Attorney General or designee.

#### **§ 750.23 Denial of the claim.**

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial may include the reasons for the denial. The notification shall include a statement informing the claimant of his right to file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification.

#### **§ 750.24 Reconsideration.**

(a) *Request.* Prior to the commencement of suit and prior to the expiration of the 6-month period for filing suit, a claimant or his duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request for reconsideration is presented on the date it is received by the DON.

(b) *Proper basis.* A request for reconsideration shall set forth claimant's reasons for the request and shall include any supplemental supporting evidence or information. Any writing communicating a desire for reconsideration that reasonably appears to have been presented solely for the purpose of extending the statutory period for filing suit, shall not be treated as a request for reconsideration. Claimant or claimant's authorized representative shall be notified promptly that the writing is not considered a proper request for reconsideration.

(c) *Effect of presentment of request.* The presentment of a proper request for reconsideration starts a new 6-month period for the DON to act on the request to reconsider. The claimant may not file suit until the expiration of the new 6-month period, or until after the date of mailing of the final denial of the request. Final denial of a request for reconsideration shall be accomplished in the manner prescribed in § 750.23.

#### **§ 750.25 Suits Under the Federal Tort Claims Act.**

(a) *Time limit for filing suit.* A civil action is barred unless suit is filed against the United States not later than 6 months after the date of mailing of notice of final denial of the claim. The failure of DON to make final disposition of a claim within 6 months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(b) *Venue.* Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred.

(c) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA.

(d) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA.

#### **§ 750.26 Attorney fees.**

Attorney fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award.

### **Subpart C—Claims Under the Military Claims Act (MCA)**

#### **§ 750.27 Scope of subpart C.**

(a) *General.* This section prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage, loss, or destruction of property under the MCA:

(1) Caused by military personnel or civilian employees of the DON (hereinafter DON personnel). For the purposes of this section, DON personnel include all military personnel of the Navy and Marine Corps, volunteer workers, and others serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON.

DON personnel does not include DON contractors or their employees; or

(2) Incident to noncombat activities of the DON. Claims for personal injury or death of a member of the Armed Forces or Coast Guard, or civilian officer or employee of the U.S. Government whose injury or death is incident to service, however, are not payable.

(b) *Territorial limitation.* There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act, the claim shall be processed under that statute.

(c) *Suit.* The MCA authorizes the administrative settlement and payment of certain claims. The United States has not consented to be sued.

#### **§ 750.28 Statutory authority.**

10 U.S.C. 2733, as amended, commonly referred to as the MCA.

#### **§ 750.29 Claims payable.**

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under this provision when:

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment; or

(2) Incident to noncombat activities of the DON. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the U.S. Government has historically assumed a broad liability, even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Activities incident to combat, whether or not in time of war, and use of DON personnel during civil disturbances are excluded.

(b) *Specific claims payable.* Claims payable by the DON under the MCA shall include, but not be limited to:

(1) *Registered or insured mail.* Claims for damage to, loss, or destruction, even if by criminal acts, of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that to which the claimant would be entitled from the Postal



Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees;

(2) *Property bailed to the DON.* Claims for damage to or loss of personal property bailed to the DON under an express or implied agreement are payable under the MCA, even though legally enforceable against the U.S. Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims;

(3) *Real property.* Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims;

(4) *Property of U.S. military personnel.* Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in § 750.29(a) (1) and (2), occurring incident to service, not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA;

(5) *Health care and Legal Assistance Providers.* Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements, or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See § 750.41.

#### **§ 750.30 Claims not payable.**

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or his agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by the law.

(b) Any claim resulting from action by the enemy or resulting directly or indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to

the extent already paid by the U.S. Government.

(d) Any claim cognizable under:  
(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

(2) Foreign Claims Act. 10 U.S.C. 2734.

(3) 10 U.S.C. 7622, relating to admiralty claims. See subpart G of this part.

(4) Federal Tort Claims Act. 28 U.S.C. 2671, 2672, and 2674–2680.

(5) International Agreements Claims Act. 10 U.S.C. 2734a and 2734b.

(6) Federal Employees' Compensation Act. 5 U.S.C. 8101–8150.

(7) Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 901–950.

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.29(b)(1) and (2)].

(f) Any claim for rent of real or personal property [except as provided in § 750.29(b) (1) and (2)].

(g) Any claim involving infringement of patents.

(h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.

(i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.

(j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service.

(k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.

(l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.

(m) Any claim based solely on compassionate grounds.

(n) Any claim to which the exceptions in 28 U.S.C. 2680 apply.

#### **§ 750.31 Statute of limitations.**

Claims against DON under the MCA must be presented in writing within 2 years after they accrue. In computing the 2 year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, an MCA claim, on good cause shown, may be presented within

2 years after the war or armed conflict is terminated. For the purposes of the MCA, the date of termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President.

#### **§ 750.32 Filing the claim.**

(a) *Who may file.* Under the MCA, specifically, the following are proper claimants:

(1) U.S. citizens and inhabitants;

(2) U.S. military personnel and civilian employees, except not for personal injury or death incident to service;

(3) Persons in foreign countries who are not inhabitants;

(4) States and their political subdivisions (including agencies);

(5) Prisoners of war for personal property, but not personal injury; and

(6) Subrogees, to the extent they paid the claim.

(b) *Who may not file.* (1) Inhabitants of foreign nations for loss or injury occurring in the country they inhabit; and

(2) U.S. Government agencies and departments.

(c) *Where to file.* The claim should be submitted by the claimant to the Office of the Judge Advocate General of the Navy, Claims and Tort Litigation (Code 15), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066, or to Tort Claims Unit Norfolk, 9620 Maryland Avenue, Ste. 205, Norfolk, VA 23434. Alternatively, the claim may be submitted to the commanding officer of the naval activity involved, if it is known, or to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred.

(d) *Claim form.* A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain and sufficient information so as to allow an investigation to commence. A Standard Form 95 is preferred. A claim should be substantiated as described in § 750.19 of this part in order to be paid.

(e) *Amendment of claim.* A proper claim may be amended by the claimant at any time prior to final denial or payment of the claim. An amendment shall be submitted in writing and signed by the claimant or a duly authorized agent or legal representative.

#### **§ 750.33 Applicable law.**

(a) *Claims arising within the United States or its territories, commonwealth, or possessions.* The law of the place



where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant's right of recovery.

(b) *Claims arising within foreign countries.* (1) Where the claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability of the United States will be assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Apply the law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant to determine the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, apply traditional rules of contributory negligence. Apply foreign rules and regulations on operation of motor vehicles (rules of the road) to the extent those rules are not specifically superseded or preempted by U.S. Armed Forces traffic regulations.

(c) *Principles applicable to all MCA claims.* (1) "Scope of employment" is determined in accordance with Federal law. Reported FTCA cases provide guidance on this determination;

(2) Claims for emotional distress will be considered only from the injured person or members of the injured person's immediate family. Claims from the injured person's immediate family will be considered only if such family member was within the "zone of danger" (i.e., immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress; and

(3) Claims under the MCA do not include the principles of absolute (strict) liability and punitive damages.

#### **§ 750.34 Measure of damages for property claims.**

(a) Where the property damage arises in the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the place where the incident occurred.

(b) Where the property damage arises overseas, determine the measure of damages under general principles of American tort law, stated as follows:

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to substantially restore the property to the

condition that existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs. The amount of any net depreciation in the value of the property shall be added to such gross cost of repairs if such adjustments are sufficiently substantial in amount to warrant consideration. Estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, for such period reasonably necessary for repairs, as long as idle property of the claimant was not employed as a substitute. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but not obtained and used by the claimant, loss of use is normally not payable.

#### **§ 750.35 Measure of damages in injury or death cases.**

(a) *Injury or death arising in the United States.* When the injury or death arises within the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the location where the injury arises.

(b) *Injury or death arising in a foreign country.* When the injury or death arises in a foreign country and is otherwise cognizable and meritorious under this provision, damages will be determined in accordance with general principles of

American tort law. The following is provided as guidance.

(1) Measure of damages for overseas personal injury claims. Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, compensation for lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) Wrongful death claims arising in foreign countries.

(i) Allowable compensation includes that in paragraph (b)(1) of this section, burial expenses, loss of support and services, loss of companionship, comfort, society, protection, and consortium, and loss of training, guidance, education, and nurturing, as applicable.

(ii) The claim may be presented by or on behalf of the decedent's spouse, parent, child, or dependent relative. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually.

#### **§ 750.36 Delegations of adjudicating authority.**

(a) *Settlement authority.* (1) The Secretary of the Navy may settle or deny claims in any amount. The Secretary may pay the first \$100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304.

(2) The Judge Advocate General has delegated authority to settle claims for \$100,000.00 or less.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Director, Claims and Tort Litigation, and Head, Tort Claims Branch, Claims and Tort Litigation, have delegated authority to settle claims for \$25,000.00 or less, and have denial authority in any amount.

(4) Individuals with settlement authority under paragraph (a)(3) of this section may delegate all or part of their settlement authority. Such delegation must be in writing.

(b) *Appellate authority.* Adjudicating authorities have the same authority as delegated in paragraph (a) of this section to act upon appeals. No appellate authority below the Secretary of the Navy may deny an appeal of a claim it had previously denied.

#### **§ 750.37 Advance payments.**

(a) *Scope.* This paragraph applies exclusively to the payment of amounts not to exceed \$100,000.00 under 10 U.S.C. 2736 in advance of submission of a claim.

(b) *Statutory authority.* Title 10 U.S.C. 2736 authorizes the Secretary of the

Navy or designee to pay an amount not in excess of \$100,000.00 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the MCA (10 U.S.C. 2733). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

(c) *Officials with authority to make advance payments.* (1) The Secretary of the Navy has authority to make advance payments up to \$100,000.00.

(2) The Judge Advocate General has delegated authority to make advance payments up to \$100,000.00.

(3) The Director, Claims and Tort Litigation and the Head, Tort Claims Branch, Claims and Tort Litigation have delegated authority to make advance payments up to \$25,000.00.

(d) *Conditions for advance payments.* Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA;

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, 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;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. 2736 may be made if the accident occurred in

a foreign country in which the NATO Status of Forces Agreement (4 U.S.C. 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss:

(i) Was caused by a member or employee of the DON acting within the scope of employment; or

(ii) Occurred "incident to noncombat activities" of the DON as defined in § 750.29(a)(2).

#### **§ 750.38 Final disposition.**

(a) *Claimant to be notified.* The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

(b) *Payment.* Claims approved for payment require a settlement agreement, signed by the claimant, in every case in which the MCA claim is settled for less than the full amount claimed or the claim was not presented on an SF95. The payment voucher will be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. If the Secretary of the Navy considers that an MCA claim in excess of \$100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and § 750.27 of this part, he may make a partial payment of \$100,000.00 and refer the excess to the Comptroller General for payment from appropriations provided therefore.

(c) *Final denial.* A final denial, in whole or in part, of any MCA claim shall be in writing and sent to the claimant, or his attorney or legal representative, by certified or registered mail, return receipt requested. The notification of denial may include a statement of the reason or reasons for denial and that the claimant may appeal. The notification shall also inform the claimant:

(1) The title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim.

(2) No form is prescribed for the appeal, but the grounds for appeal should be set forth fully.

(3) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

#### **§ 750.39 Appeal.**

(a) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal shall be in writing and state the grounds relied upon. An appeal is not an adversary

proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

(b) Upon receipt, the adjudicating authority examines the appeal, determines whether the appeal complies with this regulation, and reviews the claims investigative file to ensure it is complete. The claim, with the complete investigative file and a memorandum of law, will be forwarded to the appellate authority for action. If the evidence in the file, including information submitted by the claimant with the appeal, indicates the appeal should be approved, the adjudicating authority may treat the appeal as a request for reconsideration.

(c) Processing of the appeal may be delayed pending further efforts by the adjudicating authority to settle the claim. Where the adjudicating authority does not reach a final agreement on an appealed claim, it shall send the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The appellate authority shall notify the claimant in writing of the determination on appeal; that such determination constitutes the final administrative action on the claim; and there is no right to sue under the MCA.

#### **§ 750.40 Cross-servicing.**

(a) *Single service claims responsibility.* See § 750.10 for information about single-service claims responsibility under DoDI 5515.08 of 11 Nov 2006.

(b) *Claims settlement procedures.* Where a single service has been assigned a country or area claims responsibility, that service will settle claims cognizable under the MCA under the regulations of that service. The forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

#### **§ 750.41 Payments related to certain medical or legal malpractice claims.**

(a) *General.* Requests for reimbursement/indemnification of costs, settlements, and judgments cognizable under 10 U.S.C. 1089(f) [for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists)] or 10 U.S.C. 1054(f) [for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff] while acting as DON personnel will be paid if:

(1) The alleged negligent or wrongful actions or omissions arose in connection with either providing health care functions or legal services and within the scope of employment; and

(2) Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance as requested; and cooperate in defending the action on the merits.

(b) *Requests for indemnification.* All requests for indemnification for personal liability of DON personnel for acts or omissions arising out of assigned duties shall be forwarded to the Judge Advocate General for action.

#### **§ 750.42 Attorney fees.**

Attorney fees not in excess of 20 percent of any settlement may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. These fee limitations shall be incorporated in any settlement agreement secured from a claimant.

### **Subpart D—Claims Under the Foreign Claims Act (FCA)**

#### **§ 750.43 Scope of subpart D.**

This section provides information regarding the administrative processing of claims against the United States under the Foreign Claims Act (FCA). Foreign claims are demands for payment against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death occurring outside the United States caused either by the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of these forces in foreign countries. The statutory purpose of the FCA is to “promote and maintain friendly relations through the prompt settlement of meritorious claims” in foreign countries.

#### **§ 750.44 Statutory authority.**

(a) The statutory provisions of the Foreign Claims Act (FCA) are at 10 U.S.C. 2734. The FCA authorizes filing, investigating, processing, and settling foreign claims under such regulations as the service Secretary shall prescribe.

(b) The regulations implementing the FCA are separate and distinct from the procedures governing implementation of the International Agreement Claims Act (IACA), 10 U.S.C. 2734a and 2734b.

#### **§ 750.45 Scope of liability.**

(a) *General.* The Foreign Claims Act and its implementing regulations should be broadly construed to carry out the statutory purpose. The United States

generally accepts responsibility for damage, injury, or death to local inhabitants caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of our armed forces in foreign countries. Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or even criminal.

(b) *Claims Payable.* For a claim to be payable under the FCA, both the claimant and the incident giving rise to the claim must be covered by the statute (10 U.S.C. 2734).

(1) *Covered claimants.* The FCA applies only to inhabitants of foreign countries who are defined as persons, corporations, or other Government or business entities, whose usual place of abode or activity is in a foreign country. The claimant need not be an inhabitant of the particular country in which the claim arose. Examples of covered claimants include foreign nationals residing in a foreign country; foreign nationals visiting or traveling in a foreign country where they do not reside; U.S. citizens residing in a foreign country if they are inhabitants of a foreign country and are not there as U.S. Service members or civilian employees (or their sponsored dependents) or as U.S. civilian contractors performing work pursuant to an agreement with the U.S. Government; a corporation or other organization doing business in a foreign country on a permanent basis, even if organized under U.S. law, provided that the corporation or organization is not providing work pursuant to a contract with the U.S. Government; and foreign governments and their political subdivisions, including the equivalents of State, county, and city governments, unless excluded by waiver provisions of an international agreement.

(2) *Covered incidents.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property may be paid under these regulations if the incident occurred outside the U.S. and was caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or caused by the non-combat activities of these forces.

(3) *Scope of Employment.* As a general rule, scope of employment of the service member or civilian employee that allegedly caused the loss is immaterial. If, however, a claim arises from the act of a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien, scope of employment is a

prerequisite to United States responsibility. Claims arising from the operation of a U.S. Armed Forces vehicle by a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien are cognizable and may be paid if local law imposes liability on the owner of the vehicle under the circumstances.

(c) *Claims Not Payable.* (1) Claims of insurers and other subrogees.

(2) Claims of sponsored dependents accompanying members and civilian employees of the U.S. Armed Forces, or U.S. national civilians employed by either the U.S. Government or a civilian contractor performing under an agreement or contract with the U.S. Government.

(3) Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with U.S. Armed Forces, or as a result of the actions of a member or civilian employee of the U.S. Armed Forces, acting within the scope of employment, unless a treaty specifically provides for recovery.

(4) Claims of civilian employees of the U.S., including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

(5) Claims of national governments or their political subdivisions engaging in combat with the United States or its allies.

(6) Claims of a national or a corporation controlled by a national of a country engaging in combat with the United States or its allies, unless it is determined that the claimant is friendly.

(7) Claims resulting from combat activities, except that claims arising from an accident or malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.

(8) Claims previously paid or denied.

(9) Claims purely contractual in nature.

(10) Claims involving private contractual and domestic obligations of individuals.

(11) Claims based solely on compassionate grounds.

(12) Claims for paternity or illegitimacy.

(13) Claims payable under other Federal statutes.

(14) Claims for damage caused by naval vessels, unless payment is specifically authorized by the Office of the Judge Advocate General of the Navy (Code 11) in accordance with JAGINST 5800.7F, Chapter XI.

**§ 750.46 Statute of limitations.**

An FCA claim must be presented in writing to the appropriate U.S. military authorities within 2 years of the date it accrues. A claim accrues when the claimant discovers or reasonably should have discovered the personal injury or property damage giving rise to the claim. To compute the statutory time period, exclude the day the claim accrued and include the day the claim was filed.

**§ 750.47 Filing a claim.**

(a) *Presentation of the Claim.* An FCA claim may be presented to the Office of the Judge Advocate General, Tort Claims Unit (TCU) Norfolk, 9620 Maryland Ave, Suite 205, Norfolk, VA 23511–2949. In the alternative, the claim may be presented to any U.S. authority or to foreign government authorities if authorized under a Status of Forces Agreement (SOFA) or other applicable treaty or agreement. Claims shall be promptly transferred to the appropriate authorities for processing (see paragraph (b) of this section).

(b) *Appropriate Authorities—(1) General.* The commanding officer of the organization or individual(s) whose activities gave rise to the claim has authority to process claims under these regulations, subject to the restrictions of any SOFA provisions or DODI 5515.18 (series) which assigns single-service claims responsibility. A commander who receives a claim that is not under his cognizance shall forward the claim promptly to the appropriate authority and shall provide assistance necessary to investigate and adjudicate the claim.

(2) *RLSO EURAFSWA.* The Commanding Officer RLSO EURAFSWA has authority to process all claims under the Foreign Claims Act arising in their Area of Responsibility. The Commanding Officer RLSO EURAFSWA is authorized to pay any claim regardless of the amount claimed when payment does not exceed \$50,000.00 and has unlimited denial authority.

(3) *International agreements.* Article VIII of the NATO SOFA and similar provisions of SOFAs with individual foreign countries may restrict the use of the FCA by authorizing foreign government officials to process claims that would otherwise be cognizable under the FCA. Therefore, consult the pertinent directives of the area commander to ensure proper processing.

(4) *Single-service claims responsibility.* DoDI 5515.08 (series) assigns single-service claims responsibility to individual military departments for processing claims in specified foreign countries. It also

authorizes the Navy to settle claims for less than \$2,500 arising in foreign ports visited by U.S. forces afloat, including those arising in countries assigned to the Departments of the Army and the Air Force. If a claim arises in a country not specifically assigned by either of these references, the military service component of the employee who caused the damage/injury is responsible for adjudication. Claims arising out of DON activities in countries assigned to the Army and the Air Force must be forwarded promptly to the appropriate military department and may not be processed by DON entities.

(5) *Claims under admiralty jurisdiction.* Admiralty claims arising in foreign countries may be adjudicated under the FCA provided that the claim is not otherwise cognizable under applicable admiralty statutes and regulations. In particular, the reciprocity provisions of the Public Vessels Act (46 U.S.C. 781 and 785) must be met. Prior authorization by the Judge Advocate General (OJAG Code 11) is required.

**§ 750.48 The administrative claim.**

A proper claim must be in writing and filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it must set forth the same basic information required by Standard Form 95.

(a) *Proper signature.* The claim may be signed by either the injured party or an authorized agent. A claim signed by an agent or legal representative will be filed in the name of the claimant, show the title or legal capacity of the person signing, and be accompanied by evidence of their authority to sign the claim on behalf of the claimant.

(b) *Sufficiently detailed.* The claim must describe the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm so as to allow the DON to investigate.

(c) *Sum certain.* A proper claim must include a demand for a specific and definite sum of money damages for property damage, personal injury, or death alleged to have occurred as a result of the incident.

(d) *Substantiation.* See subpart B, § 750.19 for a detailed discussion of the supporting documentation required to substantiate a tort claim presented against the United States under any of the claims statutes. Supporting documentation requirements will vary according to the type of claim presented (i.e., property damage, personal injury, or wrongful death).

(e) *Amending the claim.* A claim may be amended in writing at any time prior

to final settlement or denial and must be signed by the claimant or an authorized agent.

**§ 750.49 Damages.**

(a) *General.* The local laws, standards, and customs, of the country where the incident occurred control when computing damages for personal injury, death, or damage to property.

(b) *Compensation.* An appropriate award is generally limited to reasonable compensation for the injury, death, or property damage, or loss only and does not extend to payment of punitive damages, interests, costs, attorneys fees, or any other such charges, regardless of whether they are allowed by local laws, standards, or customs. In cases of personal injury or death, compensation may include medical expenses, pain and suffering, burial expenses, loss of society and companionship, and lost income. In cases of permanent disability, compensation may also include diminished earning capacity and costs of medical care in the future. In cases of property damage, compensation may include cost of repair, cost of replacement or diminished value, and loss of use of the property.

(c) *Comparative fault.* A claimant's negligence or wrongful act contributing to the injury, death, or damage that is the basis of the claim may bar the claim entirely or diminish the claim proportionately.

**§ 750.50 Foreign Claims Commissions.**

(a) *Purpose.* The purpose of a Foreign Claims Commission (FCC) is to settle meritorious claims fairly and promptly. An FCC shall deny or pay (in full or in part) all claims in accordance with its adjudicating authority or, when required under these regulations, forward adjudication recommendations to appropriate higher authorities.

(b) *Authority to appoint.* (1) All commanding officers of the Navy and Marine Corps have authority to appoint an FCC, unless restricted by a competent superior commander.

(2) For the purpose of the FCA and these regulations, the following officers are considered commanding officers: The Judge Advocate General of the Navy; Commanding Officer, RLSO EURAFSWA; Chiefs of Naval Missions (including Chiefs of the Naval Section of Military Missions); Chiefs of Military Assistance Advisory Groups (including chiefs of the naval section of such groups); and naval attachés.

(c) *Composition of the FCC.* An FCC shall be composed of either one or three members. Members shall be commissioned officers of the Navy or

Marine Corps of sufficient grade and experience to carry out the purpose of the Commission. Whenever possible, at least one member of the Commission shall be a judge advocate. For detailed discussion of the composition of an FCC, the qualification of its members, and the various levels of adjudicating authority held by each type of Commission (ranging from \$5,000 to \$20,000 depending on the composition of the Commission), see JAGINST 5800.7F, Chapter VIII (paragraph 0815).

#### **§ 750.51 Processing claims.**

(a) *Action by the Appointing Authority.* The cognizant commanding officer [see § 750.47(b)(1)] is the appointing authority for the FCC that will adjudicate the claim. The staff judge advocate for the cognizant commanding officer is responsible for providing advice, guidance, and review to the commanding officer, the FCC, and claims investigating officer on the policies and procedures in these regulations. The appointing authority shall convene an appropriate investigation or obtain the report of investigation if one has already been conducted, refer the claim with the investigative report to the FCC for adjudication, and take action or forward it as appropriate.

(b) *Action by the Claims Investigating Officer.* There is no formal procedure for conducting an investigation of a foreign claim. A transcript of witness testimony is not required; a written summary of the substance of any statement is adequate. The formal rules of evidence do not apply, and any relevant evidence may be received to establish the essential facts of the incident. A written report of the investigation shall be submitted to the appointing authority as soon as practicable.

(c) *Action by the FCC.* The FCC will review the claim and the investigation. If appropriate, the FCC will negotiate with the claimant for settlement of the claim within the limits of the FCC's adjudicating authority. The FCC will deny or pay the claim, in full or in part, within the limits of the FCC's denial or payment authority (\$20,000 max). When an FCC recommends payment or denial of a claim in excess of its denial or payment authority, the original report and all related documents shall be forwarded to the appointing authority for retention with a copy forwarded by the appointing authority to OJAG Code 15 for further action.

#### **§ 750.52 Action on forwarded claims.**

When the FCC recommends payment or denial of a claim in excess of the FCC's authority, the following officers

may approve or disapprove the recommendation and pay the claim, in whole or in part, or return the claim with instructions to the appointing authority or the FCC:

(a) *Claims up to \$50,000.00.* The Deputy Judge Advocate General of the Navy, the Assistant Judge Advocate General (Civil Law), the Division Director (Claims and Tort Litigation) and for claims arising in his area of responsibility, the Commanding Officer, RLSO EURAFSWA. These officials have unlimited denial authority.

(b) *Claims from \$50,000.00 to \$100,000.00.* The Judge Advocate General of the Navy.

(c) *Claims in excess of \$100,000.00.* The Secretary of the Navy.

#### **§ 750.53 Reconsideration, appeal, and suit.**

(a) *Reconsideration.* (1) A claim may be reconsidered when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or based on evidence subsequently received. The request for reconsideration must be received by the FCC within 60 days of the date of the denial letter unless good cause is shown.

(2) Claimant's request for reconsideration should indicate the legal or factual basis asserted as grounds for relief.

(3) The claim may be reconsidered by the original FCC, a successor FCC, or a newly appointed FCC upon written request from the claimant, upon the original FCC's initiative, or upon direction by a superior officer authorized to take action on the claim.

(4) If the FCC concludes that the original action was incorrect, it will modify the decision or forward a supplemental recommendation through the appointing authority for action. If the FCC concludes that the original action was correct, it will affirm the decision, and forward a memorandum for information through the appointing authority.

(5) When action on reconsideration has been completed and approved, the appointing authority shall notify the claimant that such action is final and conclusive by law.

(b) *Appeal.* There is no right of appeal under this statute.

(c) *Suit.* The United States has not consented to be sued under this statute.

#### **§ 750.54 Payment.**

(a) *Release.* A settlement agreement and release shall be obtained from the claimant when payment of an award is accepted. The settlement amount shall be set forth in U.S. Dollars to be paid in local currency at the currency exchange

rate in effect at the time of payment. If payment will be made by electronic wire transfer, the necessary banking and routing information should be included on the settlement agreement.

(b) *Advance Payments.* Advance payments may be paid under this section.

(c) *Currency.* Due to Federal currency restrictions, all payments under this chapter shall be made in the local currency of the country in which the claim arose or in the currency of the country where the claimant resides at the time of such payment.

### **Subpart E—Claims Under the Nonscope Claims Act (NSCA)**

#### **§ 750.55 Scope of subpart E.**

This section provides information on payment of claims against the United States, not payable under any other statute, for damages caused by the act or omission, negligent, wrongful, or otherwise involving fault, of DON personnel acting outside the scope of their employment or by latent defects in certain Government equipment.

#### **§ 750.56 Statutory authority.**

Title 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed \$1,000.00 of any claim against the United States not cognizable under any other provision of law for damage, loss, or destruction of property or for personal injury or death caused by military personnel or a civilian official or employee of a military department incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation. There is no right to sue. There are no territorial limitations and the Act has worldwide application.

#### **§ 750.57 Definitions.**

(a) *Civilian official or employee.* Any civilian employee of the DON paid from appropriated funds at the time of the incident.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

(c) *Government installation.* Any Federal facility having fixed boundaries and owned or controlled by the U.S. Government. It includes both military bases and nonmilitary installations.

#### **§ 750.58 Claim procedures.**

(a) The general provisions of subpart A of this part shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be

processed under 10 U.S.C. 2737 and this section.

(b) A claim is presented when the DON receives from a claimant or the claimant's duly authorized agent, written notification of a nonscope claim incident accompanied by a demand for money damages in a sum certain.

(c) A claimant may amend a claim at any time prior to final action.

Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

(d) Claims submitted under the provisions of the FTCA or MCA shall be considered automatically for an award under this section when payment would otherwise be barred because the DON personnel were not in the scope of their employment at the time of the incident. If a tender of payment under this section is not accepted by the claimant in full satisfaction of the claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute under which it was submitted.

(e) Damages caused by latent defects of ordinary, commercial type, Government equipment that were not payable under the MCA, Foreign Claims Act, or FTCA are payable under this section.

(f) Nonscope claims for damages caused by local national DON employees overseas are also payable under this section if the injury was caused by the use of Government equipment.

(g) Payment may not be made on a nonscope claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement.

(h) Payment for nonscope claims adjudicated by field commands will be affected through their local disbursing office by use of funds obtained from the Judge Advocate General.

(i) If a nonscope claim is denied, the claimant shall be informed of reasons in writing and advised he may appeal in writing to the Secretary of the Navy (Judge Advocate General) provided the appeal is received within 30 days of the notice of denial. The provisions of § 750.38(c) of subpart C also apply to denials of nonscope claims.

#### **§ 750.59 Statute of limitations.**

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act or omission for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and

include the date the claim was presented.

#### **§ 750.60 Officials with authority to settle.**

The Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General, Civil Law; Director, Claims and Tort Litigation; and Head, Tort Claims Branch, Claims and Tort Litigation may settle a nonscope claim.

#### **§ 750.61 Scope of liability.**

(a) Subject to the exceptions in § 750.50 of specific claims not payable, the United States shall not pay more than \$1,000.00 for a claim against the United States, not cognizable under any other provision of law, except Article 139, UCMJ.

(b) Article 139, UCMJ, 10 U.S.C. 939, is not preemptive. The prohibition in 10 U.S.C. 2737 on paying claims "not cognizable under any other provisions of law" applies only to law authorizing claims against the United States. Article 139 authorizes claims against service members. See subpart H of this part.

#### **§ 750.62 Claims not payable.**

(a) A claim for damage, loss, or destruction of property or the personal injury or death caused wholly or partly by a negligent or wrongful act of the claimant or his agent or employee.

(b) A claim, or any part thereof, that is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(c) A subrogated claim.

#### **§ 750.63 Measure of damages.**

Generally, the measure-of-damage provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with §§ 750.34 and 750.35 of subpart C, except damages for personal injury or death under this section shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.

### **Subpart F—Claims Under the Personnel Claims Act (PCA)**

#### **§ 750.64 Scope of subpart F.**

(a) This subpart describes the procedures and substantive bases for administrative settlement of claims submitted by Department of the Navy (DON) personnel and civilian employees under the Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C. 3721, and for the administrative pursuit by DON of recovery from carriers, contractors, or insurers responsible for loss, damage or destruction of such personal property.

(b) The PCA is a gratuitous payment statute that Congress intended to help lessen the hardships of military life by providing limited compensation for certain types of property losses. The PCA authorizes payment of claims for the fair market value (FMV) of personal property lost, damaged or destroyed incident to service. This limited compensation is not a substitute for private insurance. Intangible property and consequential and incidental damages are not considered personal property and are not payable under the statute. "Fair market value" is the price that an item would sell for from a retailer who routinely sells the product minus the depreciation based upon its age or, if the item cannot be purchased, what it cost to replace on the open market, given its age and condition.

(c) The PCA and the provisions of this enclosure preempt payment under any other claims statute. Claims not cognizable under the PCA may, however, be cognizable under another claims statute.

#### **§ 750.65 Statutory authority.**

(a) 31 U.S.C. 3721, The Military Personnel and Civilian Employees' Claims Act (PCA).

(b) 10 U.S.C. 2636a (Full Replacement Value).

(c) 10 U.S.C. 2740 (Gap Legislation).

(d) 31 U.S.C. 3711—3720e, The Federal Claims Collection Act.

(e) 49 U.S.C. 14706, The Carmack Amendment to the Interstate Commerce Act.

#### **§ 750.66 Adjudicating authority.**

(a) Responsibility for adjudicating claims under the PCA and asserting and settling claims against carriers, contractors, or insurers rests with the Personnel Claims Unit (PCU) located in Norfolk, Virginia.

(b) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Director, Claims and Tort Litigation (OJAG Code 15), and the Head, Affirmative and Personnel Claims Branch (OJAG Code 15) have been delegated authority to adjudicate claims against the DON for \$100,000.00 or less and denial authority in any amount. Any individual who has been personally designated by the Director, Claims and Tort Litigation, may adjudicate claims up to \$40,000.00 and may deny claims in any amount.

#### **§ 750.67 Proper claimants.**

The definition of a proper claimant is based on a claimant's status at the time the claim accrued, even if the member or employee has separated from Federal

service at the time the claim is filed. The following are proper claimants:

(a) Navy and Marine Corps active duty members and reservists on active duty or active duty for training at the time the claim accrued;

(b) Civilian employees of the Navy and Marines who are paid from appropriated funds;

(c) Non-appropriated Fund Instrumentality (NAFI) employees whose salaries are paid from non-appropriated funds;

(d) Department of Defense (DoD) Education Activity (DoDEA) teachers; and

(e) Authorized agents or legal representatives of the claimant, who provide a Power of Attorney and certain relatives of a deceased claimant.

#### **§ 750.68 Claims payable.**

(a) Claims for loss of property are compensable if the loss was incident to service and possession of the property was reasonable and useful under the circumstances.

(1) Claims may be payable for loss of property at assigned quarters or other authorized places, *i.e.*, non-household goods (non-HHG) claims, if caused by theft, vandalism, fire, flood, or other unusual occurrence.

(2) Claims may also be payable for the loss of property incurred during transportation or storage under orders and at Government expense, *i.e.*, household goods (HHG) claims.

#### **§ 750.69 Claims not payable.**

(a) Any part of the loss that was caused in any part by the negligence or wrongful act of the claimant.

(b) Any part of the loss that is payable by any available insurance, except for the loss of HHG shipped or stored at Government expense pursuant to the Full Replacement Act. In this case, the claimant would first file a claim with the Transportation Service Provider (TSP) in accordance with the contract requirements. In cases where a catastrophic event occurs during transit, and the loss exceeds the TSP's maximum liability, the member must then pursue through any available insurance before filing a PCA claim.

(c) Any claim presented more than two years from the date of accrual.

#### **§ 750.70 Statute of limitations.**

A claim must be filed within two years from the date it accrues unless it accrues during armed conflict and good cause is shown, in which case the time limitation may be extended until the armed conflict is terminated. A claim accrues on the day the claimant knows or should know of the loss—either the

day of the incident or in the case of HHG claims, the date of delivery.

#### **§ 750.71 Filing a claim.**

(a) Non-HHG claims as well as HHG claims not electronically filed in the USTRANSCOM-managed claims filing system should be submitted on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) accompanied by DD Form 1844 (Schedule of Property). However, any writing will be accepted and considered as long as it substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant or by a person with appropriate power of attorney (POA) from a proper claimant. The claim must be submitted to the PCU at the address, email, or facsimile number indicated at the U.S. Navy Judge Advocate General's Corps website at [https://www.jag.navy.mil/organization/code\\_15.htm](https://www.jag.navy.mil/organization/code_15.htm).

(b) HHG Claims electronically filed in a USTRANSCOM-managed claims filing system can be transferred to the PCU electronically by selecting the "transfer to MCO option available in the system.

(c) If a HHG claim is received by a PCU within nine months after the date of delivery, and the member has not first filed with the TSP, the PCU will transmit the claim to the TSP in order to ensure the member meets the requirements to qualify for FRV, unless the claimant directs otherwise.

#### **§ 750.72 Computation of payment.**

The military services publish an Allowance List-Depreciation Guide (ALDG) that specifies rates of depreciation and maximum payments applicable to categories of property that governs all PCU payments. For HHG, the value of a loss is first determined consistent with the ALDG and then adjusted to reflect payments, repairs, or replacement by TSPs or insurance companies, or lost potential recoveries except in very limited cases involving HHG shipments where the PCU may pay Full Replacement Value (FRV).

#### **§ 750.73 Notice of decision.**

Upon adjudication, the claimant will be notified in writing of the amount authorized and of the right to request reconsideration of the decision.

#### **§ 750.74 Reconsideration.**

A request for reconsideration must be submitted to the original adjudicating authority within six months from the date the claimant received the initial claim adjudication.

#### **§ 750.75 Carrier recovery claims.**

For Naval and Marine Corps personnel whose PCA claims for HHGs lost or damaged during shipment were adjudicated and compensated by the PCU, assertion of a claim against the carrier to recover the amount paid is the responsibility of the PCU unless the shipment was arranged by the Department of State (DOS). In those moves, recovery is the responsibility of DOS. Recovery efforts will be in accordance with the Defense Personal Property Program Claims and Liability Business Rules.

### **Subpart G—Admiralty Tort Claims**

#### **§ 750.76 Scope of subpart G.**

This part applies to admiralty tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy for which the Navy has assumed an obligation to respond for damage. Affirmative claims by the United States for damage caused by a vessel or floating object to Navy property are covered under this part.

#### **§ 750.77 Statutory authority.**

28 U.S.C. 1333; 46 U.S.C. 740; 10 U.S.C. 7621–7623; 32 CFR 700.105 and 700.331.

#### **§ 750.78 Organization.**

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed \$ 15,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623).

(b) *Admiralty and Maritime Law Division of the Office of the Judge Advocate General.* The Navy's admiralty tort claims are processed and adjudicated in the Admiralty and Maritime Law Division of the Office of the Judge Advocate General. All correspondence with the Admiralty and Maritime Law Division should be addressed to the Office of the Judge Advocate General (Code 11), 1322



Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

(c) *Mission and policy.* The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty tort claims.* As indicated in paragraphs (a) through (c) of this section, the Admiralty and Maritime Law Division primarily handles admiralty tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty contract claims.* Admiralty contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of DoD cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores.* Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to

the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts.* Admiralty tort claims, such as collision, personal injury, and death claims, are dealt with by the Admiralty and Maritime Law Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty and Maritime Law Division and the Office of Counsel, MSC, as to how the incident should be handled.

#### **§ 750.79 Claims against the Navy.**

(a) *Settlement authority.* 10 U.S.C. 8822 provides settlement authority for damage caused by a vessel in the naval service or by other property under the jurisdiction of the DON; compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or damage caused by a maritime tort committed by any agent or employee of the DON or by property under the jurisdiction of the DON. The limit on the Secretary's settlement authority is payment of \$15,000,000. A claim which is settled for an amount over \$15,000,000 is certified to Congress for payment. Section 8822 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over \$1,000,000. Under the Secretary's delegation, settlements not exceeding \$300,000 may be effected by the Judge Advocate General. Under the Secretary's delegation, settlements not exceeding \$250,000 may be effected by the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over \$300,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable,

a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 8822 are paid out of annual DoD appropriations.

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

#### **§ 750.80 Affirmative claims.**

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 8823, and is the reciprocal of 10 U.S.C. 8822 referred to in § 750.79.

(b) *Scope.* 10 U.S.C. 8823 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the DON or for which the DON has assumed an obligation to respond. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416).

(d) *Litigation.* 10 U.S.C. 8823 does not apply to any claim where suit is filed. If the Admiralty and Maritime Law Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint

against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

#### **§ 750.81 Salvage.**

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the DON, or for salvage services rendered by the DON. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 8822. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 8703. Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command, SUPSALV—00CL, 1333 Isaac Hull Ave. SE, Stop 1070, Washington Navy Yard, DC 20376–1070. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 8704.

### **Subpart H—Claims for Property Damage Under Article 139, Uniform Code of Military Justice**

#### **§ 750.82 Scope of subpart G.**

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations

shall be made only against the pay of persons shown to have been principal offenders or accessories.

#### **§ 750.83 Statutory authority.**

10 U.S.C. 939, commonly referred to as Uniform Code of Military Justice, Article 139: Redress of injuries to property.

#### **§ 750.84 Claims not cognizable.**

The following claims are not cognizable under this subpart:

- (a) Claims resulting from simple negligence;
- (b) Claims of subrogees;
- (c) Claims for personal injury or death;
- (d) Claims arising from acts or omissions within the scope of employment of the offender; and
- (e) Claims for reimbursement for damage, loss, or destruction of Government property.

#### **§ 750.85 Limitation on claims.**

(a) *Time limitations.* A claim must be submitted within 90 days of the incident giving rise to it.

(b) *Acts of property owner.* When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or damage of the property, assessments will not be made against members of the naval service in excess of the amount for which they are found to be directly responsible, *i.e.*, comparative responsibility for the loss will be the standard for determining financial responsibility.

(c) *Only direct damages considered.* Assessment will be made only for direct physical damages to the property. Indirect, remote, or inconsequential damage will not be considered.

#### **§ 750.86 Complaint by the injured party and investigation.**

(a) A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim, and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

(b) Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the member's commanding officer. Where the command of the alleged offenders cannot be determined, the claim and supporting materials shall

be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

(c) Once a complaint is received, the responsible commanding officer will convene an investigation into the circumstances surrounding the claim, gather all relevant information about the matter (answering the who, what, where, when, why, and how questions), and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations. The investigation shall determine the amount of damage suffered by the property owner.

(d) The investigation shall make recommendations about the amount to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against all individuals.

#### **§ 750.87 Action where offenders are members of one command.**

(a) *Action by commanding officer.* The commanding officer shall ensure the alleged offenders are shown the investigative report and are advised they have 20 days within which to submit a statement or additional information on the incident. If the member declines to submit information, he shall so state in writing within the 20-day period. The commanding officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of the command. If the commanding officer finds the claim payable under these regulations, he shall fix the amount to be assessed against the offenders.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no further review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial convening authority, the investigation and the commanding officer's action thereon shall be forwarded to the officer exercising general court-martial jurisdiction (OEGCMJ) over the command for review and action on the claim. That officer's action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

(c) *Charge against pay.* Where the amount does not exceed \$5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against

the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds \$5,000.00, the claim, the investigation, and the commanding officer's recommendation shall be forwarded for review prior to checkage to Headquarters, U.S. Marine Corps (JCA) or the Judge Advocate General, as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of basic pay, as defined in paragraph 126h(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

**§ 750.88 Action where offenders are members of different commands.**

(a) *Action by common superior.* The investigative report shall be forwarded to the common superior exercising general court-martial jurisdiction over the commands to which the alleged offenders are assigned. That officer shall ensure the alleged offenders are shown the investigative report and permitted to comment on it, should they desire, before action is taken on the claim. That officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of his command. If the claim is found payable under these regulations, he shall fix the amount to be assessed against the offenders and direct the appropriate commanding officers to take action accordingly.

(b) *Forwarding to the Secretary of the Navy (JAG).* Where it is not practical or possible to carry out the procedure set forth in subpart A, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

**§ 750.89 Reconsideration and appeal.**

(a) *Reconsideration.* The OEGCMJ may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCMJ contemplates acting favorably on the request, he will provide all individuals interested in the

claim with notice and an opportunity to respond. The basis for any change will be noted in the OEGCMJ's decision.

(b) *Appeal.* In claims involving \$5,000.00 or less, a claimant or member who has been assessed pecuniary liability may appeal the decision to the OEGCMJ. An appeal must be submitted within 5 days of the receipt of the OEGCMJ's decision. Appeals will be forwarded, via the OEGCMJ, to the Judge Advocate General or Headquarters, U.S. Marine Corps (JCA), as appropriate, for review and final action. In the event of an appeal, the imposition of the OEGCMJ's decision will be held in abeyance pending final action by the Judge Advocate General or Headquarters, U.S. Marine Corps (JCA). If it appears that good cause exists that would make it impracticable for an appeal to be submitted within 5 days, the OEGCMJ may, in his discretion, grant an extension of time, as appropriate. His decision on extensions is final and non-appellable.

**Subpart I—Claims Involving Non-Appropriated Fund (NAFI) Activities and Their Employees**

**§ 750.90 Scope of subpart I.**

This part explains how to process claims for and against the United States for property damage, personal injury, or death arising out of the operation of non-appropriated fund activities (NAFI). A NAFI is a Federal agency within the meaning of the FTCA if the NAFI is charged with an essential function of the DON and if the degree of control and supervision by the Navy is more than casual or perfunctory.

**§ 750.91 Statutory authority.**

To the extent sovereign immunity is waived by the FTCA, 28 U.S.C. 1346(b), 2671–2672, 2674–2680, the United States remains ultimately liable for payment of NAFI claims under the FTCA. DoD Directive 5515.6, “Processing Claims Arising out of Operations of Nonappropriated Fund Activities” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/551506p.pdf>) establishes policy governing the administrative processing of claims arising out of the operation of non-appropriated fund activities.

**§ 750.92 Definitions.**

(a) *Non-appropriated-fund instrumentality (NAFI).* An instrumentality of the Federal Government established to generate and administer non-appropriated funds for programs and services contributing to the mental and physical well-being of

DoD personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) *Non-appropriated funds.* Funds generated through the use and patronage of NAFI's, not including funds appropriated by Congress.

(c) *Employees of NAFIs.* Personnel employed by NAFIs whose salaries are paid from non-appropriated funds.

**§ 750.93 Participation in insurance programs.**

(a) Unlike all other tort claims against the Government (which are paid by the United States Treasury using appropriated funds), NAFI claims are paid by the NAFI whose employee caused the damage. Accordingly, some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Commander, Naval Supply Systems Command determine whether NAFI's within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

(b) The Marine Corps requires mandatory participation in the Morale, Welfare and Recreation (MWR) Composite Insurance Program by the following operations: MWR operations and retail services, food and hospitality, recreation; and special NAFI activities including flying clubs, rod and gun clubs, Inter-service Rifle Fund, Marine Corps Marathon and Dependent Cafeteria Fund. The following organizations may also participate in the MWR Composite Insurance Program, if desired: Child welfare centers, billeting funds, chapel funds, and civilian welfare funds.

(c) When the operations of a NAFI result in property damage or personal injury, the NAFI's insurance carrier, if any, should be given immediate written notification. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

**§ 750.94 Responsibility.**

TCU Norfolk has cognizance over all DON claims. Accordingly, TCU Norfolk has primary responsibility for the negotiation and settlement of NAFI claims. Those NAFI's which carry third party insurance or are self-insured [e.g., Navy Exchange Service Command (NEXCOM) and Marine Corps Community Services (MCCS)] are authorized to settle and pay their own

claims. All other NAFI claims are adjudicated by TCU Norfolk and forwarded to the cognizant NAFI's headquarters for payment. Only TCU Norfolk has the authority to deny a NAFI claim.

#### **§ 750.95 Negotiation.**

(a) *General.* Claims from NAFIs should be processed primarily through procedures, regulations, and statutes applicable to similar appropriated fund activity claims.

(b) *When the NAFI is insured.* When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The TCU Norfolk shall monitor the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining that someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the negotiations should be referred directly to the Judge Advocate General (Claims and Tort Litigation) for appropriate action. If requested by the insurer or TPA, the TCU Norfolk may conduct negotiations. If TCU Norfolk negotiates a final settlement, however, request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not necessary.

(c) *When the NAFI is not insured.* When there is no private commercial insurer and the NAFI has made no independent arrangements for negotiations, the TCU Norfolk is responsible for conducting negotiations. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the NAFI for payment from non-appropriated funds.

#### **§ 750.96 Payment.**

(a) *Claims that can be settled for less than \$1,500.00.* A claim not covered by insurance (or not paid by the insurer) that can be settled for \$1,500.00 or less, may be adjudicated by the TCU Norfolk or single-service authority and forwarded to the commanding officer of the activity concerned or designee for payment out of funds available to the commanding officer. The TCU Norfolk or single-service authority will obtain the required release from the claimant.

(b) *Claims that cannot be settled for less than \$1,500.00.* A claim negotiated by the Navy, not covered by insurance, that is for more than \$1,500.00 will be forwarded to the cognizant non-appropriated fund (NAF) headquarters

command for payment from its non-appropriated funds.

(c) *When payment is possible under another statute.* In some cases, neither the NAFI nor its insurer may be legally responsible. In those instances when there is no negligence, and payment is authorized under some other statute, such as the Foreign Claims Act, 10 U.S.C. 2734–2736, the claim may be considered for payment from appropriated funds or may be referred to the TCU Norfolk for appropriate action.

(d) *Other claims.* A NAFI's private insurance policy is usually not available to cover losses that result from some act or omission of a mere participant in a non-appropriated fund activity. In the event the NAFI declines to pay the claim, the file shall be forwarded to the TCU Norfolk for determination.

#### **§ 750.97 Denial.**

Denial of a NAFI claim will begin the six-month limitation on filing suit against the United States for claims filed under the FTCA. If a claim is denied, it will be in writing and in accordance with subparts A and B of part 750 of this chapter, as appropriate. TCU Norfolk should not deny claims that have initially been processed and negotiated by a non-appropriated fund activity, its insurer, or TPA, until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend the claim in court.

#### **§ 750.98 Claims by employees.**

(a) *Property.* Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with subparts A or B of this part, as appropriate. The claims will then be forwarded to the appropriate NAFI for payment from non-appropriated funds.

(b) *Personal injury or death—(1) Personal injury or death of citizens or permanent residents of the United States employed anywhere, or foreign nationals employed within the United States.* Compensation is provided by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901–950) for employees of NAFIs who have suffered injury or death arising out of, and in the course of, their employment (5 U.S.C. 8171). That Act is the exclusive basis for Government liability for such injuries or deaths that are covered (5 U.S.C. 8173). A claim should first be made under that Act if there is a substantial possibility the injury or death is covered under the Act's provisions.

(2) *Personal injury or death of foreign nationals employed outside of the*

*continental United States.* Employees who are not citizens or permanent residents, and who are employed outside the continental United States, may be protected by private insurance of the NAFI or by other arrangements. When a non-appropriated fund activity has elected not to obtain insurance coverage or to make other arrangements, compensation is separately provided by Federal statute, military regulations, and agreements with foreign countries. See 5 U.S.C. 8172, DoD 1401.1–M, Personnel Policy Manual for Non-appropriated Fund Instrumentalities and BUPERSINST 5300.10A, NAF Personnel Manual.

### **Subpart J—Affirmative Claims Regulations (Property Damage Claims)**

#### **§ 750.99 Scope of subpart J.**

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts.

The regulations published in 31 CFR chapter IX control the collection and settlement of affirmative claims. This section supplements the material contained in those regulations. Where this section conflicts with the materials and procedure published in 31 CFR chapter IX, the latter controls.

#### **§ 750.100 Statutory authority.**

(a) *General.* All affirmative claims for damage to or loss of Government property in favor of the United States are processed in accordance with the Federal Collections Claims Act (31 U.S.C. 3711), as amended by the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (25 October 1982), Public Law 101–552, 104 Stat. 2736 (15 November 1990) and the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (26 April 1996).

(b) *Statute of limitations.* Subject to specific provisions in other statutes, there is a general 3-year statute of limitations on affirmative Government tort claims pursuant to 28 U.S.C. 2415(b).

#### **§ 750.101 Claims that may be collected.**

(a) *Against responsible third parties for damage to Government property, or the property of non-appropriated fund activities.* Generally, the Government does not seek payment from service members and Government employees for damages caused by their simple negligence while acting within the scope of their employment. Exceptions to this general policy will be made when the incident involves aggravating circumstances.

(b) *For money paid or reimbursed by the government for damage to a rental car in accordance with the Joint Travel Regulations (1 Mar 2018), Chapter 2, para. 020209.* Collection action shall be taken against third parties liable in tort. Collection action shall not be taken against Government personnel who rented the vehicle.

(c) *Other claims.* Any other claim for money or property in favor of the United States cognizable under the Federal Claims Collections Act not specifically listed in this section.

#### **§ 750.102 Assertion of claims and collection procedures.**

(a) *General.* The controlling procedures for administrative collection of claims are established in 31 CFR part 901.

(b) *Officials authorized to pursue claims.* The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Director, Claims and Tort Litigation are authorized to pursue and collect all affirmative claims in favor of the United States, except in countries where another service has single service responsibility in accordance with DoDI 5515.08 (series).

(c) *Dollar limitations.* All of the officers listed in paragraph (b) of this section are authorized to compromise and terminate collection action on affirmative claims of \$100,000.00 or less.

(d) *Determining liability.* Liability must be determined in accordance with the law of the place in which the damage occurred, including the applicable traffic laws, elements of tort, and possible defenses.

(e) *Assertion of a claim.* Assertion of the claim is accomplished in accordance with 31 CFR part 901 by mailing to the tortfeasor a "Notice of Claim." The notice is to be mailed certified mail, return receipt requested, and should include the following information:

(1) Reference to the statutory right to collect;

(2) A demand for payment or restoration;

(3) A description of damage and estimate of repair;

(4) A description of the incident, including date and place; and

(5) The name, phone number, and office address of the claims personnel to contact.

(f) *Full payment.* When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to "United States Treasury." The check or money order shall then be forwarded to

the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual. For collections for damages to real property, the collection is credited to the account available for the repair or replacement of the real property at the time of recovery. For damages to personal property, the money is returned to the general treasury.

(g) *Installment payments.* In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Installment payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than \$50.00 per month should be accepted only if justified on the grounds of financial hardship or for some other reasonable cause. In all installment arrangements, a confession of judgment note setting out a repayment schedule should be executed. See 31 CFR 901.8 for specific procedures.

(h) *Damage to nonappropriated-fund instrumentality (NAFI) property.* Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the nonappropriated-fund activity for deposit with that activity. In those situations where the recovery involves damage to both NAFI-owned property and other Government property (e.g., destruction of an exchange building resulting in damage to both the building and the exchange-owned property inside), recovery for the exchange-owned property shall be forwarded to the NAFI. Recovery for building damage shall be deposited in accordance with § 750.102(f).

(i) *Damage to industrial-commercial property.* When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual.

(j) *Replacement in kind or repair.* The responsible party, or insurer, may want to repair or replace in kind damaged property. The commanding officer or officer in charge of the activity sustaining the loss is authorized to accept repair or replacement if, in his discretion, it is considered to be in the best interests of the United States.

(k) *Release.* A release of the claim shall be executed when all repairs have

been completed to the Government's satisfaction, and/or when all repair bills have been paid. If repair or replacement is made, a notation shall be made in any investigation or claims file.

#### **§ 750.103 Waiver, compromise, and referral of claims.**

(a) *Officials authorized to compromise claims.* The officers identified in § 750.89(b) may collect the full amount on all claims, and may compromise, execute releases or terminate collection action on all claims of \$20,000.00 or less. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue recovery efforts.

(b) *Claims over \$100,000.00.* Claims in excess of \$100,000.00 may not be compromised for less than the full amount or collection action terminated without approval from the DOJ.

#### **Subpart K—Affirmative Claims Regulations (Medical Care Recovery Act and Claims Asserted Pursuant to the Third Party Payers Act)**

##### **§ 750.104 Scope of subpart K.**

(a) This part describes the assertion and collection of claims for medical care against third parties who are legally liable for the injury or disease, as well as collection through insurance companies.

(b) The DON is entitled to recover the costs of medical care furnished to Navy and Marine Corps active duty personnel, retirees or their dependents, or any other person when appropriate, and third-party tort or contract liability exists for payment for medical expenses resulting from the injury or disease. Claims are asserted for treatment provided at a military treatment facility (MTF) or paid for by the DON at a facility that does not belong to the Federal Government.

##### **§ 750.105 Statutory authority.**

(a) The Medical Care Recovery Act (MCRA), 42 U.S.C. 2651–2653, as amended by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, 10 U.S.C. 1075, 110 Stat. 2422, authorizes the Government to recover the reasonable value of treatment provided to an eligible beneficiary from any third party who is legally liable for the injury or disease.

(b) The Third Party Payers Act (TPPA), 10 U.S.C. 1095 and 10 U.S.C. 1095b, allows for the collection of the costs of medical care to eligible beneficiaries from a third party, such as an insurance company.

(c) 10 U.S.C. 1079a (CHAMPUS: Treatment of refunds and other amounts collected) authorizes the recovery of medical care costs expended to eligible beneficiaries.

#### **§ 750.106 Responsibility.**

Responsibility for investigating, asserting, and collecting DON MCRA/TPPA claims or, if required, properly forwarding claims to other Federal departments or agencies rests with Claims and Tort Litigation Division's Medical Care Recovery Units (MCRUs) located in Norfolk, VA; San Diego, CA; and Pensacola, FL, and Regional Legal Service Office Europe, Africa, and Southwest Asia (RLSO EURAFSWA) for MCRA/TPPA claims arising in their area of responsibility. All other claims arising overseas and outside the RLSO EURAFSWA will be asserted by either MCRU Norfolk or MCRU San Diego depending upon the country of origin.

#### **§ 750.107 Claims asserted.**

(a) The MCRA creates an independent cause of action for the United States and the Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the injured party (IP) to properly file and/or serve a complaint on the third party, that may prevent the IP from recovering damages, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the IP. In creating an independent right for the Government, the MCRA prevents a release given by the IP to a third party from affecting the Government's claim.

(b) When recovery under the MCRA is not possible because no third-party tort liability exists, the TPPA provides the Government an alternate means for recovery. Under the TPPA, claims are asserted by the United States as a third party beneficiary of an insurance contract of the IP. This includes but is not limited to:

(1) Medical Payments Coverage in an automobile or homeowner's policy;

(2) Uninsured/Underinsured Coverage in an automobile policy;

(3) No-fault coverage in an automobile policy; and

(4) On-the-job injury compensable under a worker's employment contract at the job.

(c) Determination of Amount Asserted.

(1) *MTF costs.* The costs of care provided by the MTF are based on Diagnostic Related Group (DRG) rates or a Relative Value Unit (RVU). Rates are established by the Office of Management and Budget (OMB) and/or the DOD and published annually in the **Federal Register**. The MCRU must ensure all MTF bills include only expenses related to the injury and include all charges for care provided by or paid for by the MTF.

(2) *Defense Health Agency (DHA) costs.* The costs of care provided by DHA are the actual amount that DHA paid even if this amount exceeds the amount that the civilian hospital billed DHA.

(d) The DON will not assert claims against the following:

(1) Any department, agency or instrumentality of the United States, including self-insured NAF activities but not private associations (e.g., flying clubs or equestrian clubs);

(2) Against a service member, a dependent family member of a service member, or an employee of the United States who is injured as a result of his/her own willful or negligent acts or the willful or negligent acts of others (the United States does assert claims, however, against insurance policies that cover the IP);

(3) The employer of a merchant seaman who receives medical care in a Federal facility pursuant to 42 U.S.C. 249; and

(4) For care provided to a veteran by the VA when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided a member before transfer to a VA hospital or in those instances where TRICARE pays a VA hospital directly.

#### **§ 750.108 Assertion of claims.**

(a) The MCRUs will promptly assert claims by mailing a notice of claim or demand for payment to identified third-party tortfeasors and/or their insurers or to the insurer for any third party beneficiary coverage. The notice of claim or demand will outline the facts and cite the applicable Federal statutes.

(b) The MCRU will attempt to coordinate collection of the claim with any action brought by the IP.

(1) When the IP is represented by counsel, the MCRU will request to have the IP's attorney agree in writing to protect the Government's interests.

(2) 5 U.S.C. 3106 prohibits the payment of a fee for assertion or collection of the Government's claim. As such, attorney's fees and costs will not be paid by the Government or

computed on the basis of the Government's portion of recovery.

(3) If the IP is not pursuing a claim or has expressly refused to include the Government's claim, the MCRU will pursue independent collection.

(c) Waiver or compromise of the claim may be appropriate when the IP, his attorney, or a lien resolution group files a written request and it is determined that collection of the full amount of the claim would result in undue hardship to the IP.

(1) In assessing undue hardship, the following factors shall be considered: Permanent disability or disfigurement; lost earning capacity; out-of-pocket expenses; financial status; amount of settlement or award from a third-party tortfeasor or contract insurer; and any other factors that objectively indicate that fairness requires waiver.

(2) Only the Department of Justice may authorize the compromise or waiver of a MCRA/TPPA claim in excess of \$300,000.00. The Director and the Head, Affirmative and Personnel Claims Branch, Claims and Tort Litigation (OJAG Code 15) may authorize the compromise or waiver of a MCRA/TPPA claim up to \$300,000.00. The Director and the Head, Affirmative and Personnel Claims Branch, may further delegate authority to personnel in the MCRUs.

**D.J. Antenucci,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 152**

[EPA-HQ-OPP-2019-0701; FRL-10009-23]

**RIN 2070-AK56**

### **Notification of Submission to the Secretary of Agriculture; Pesticides; Proposal To Add Chitosan to the List of Active Ingredients Permitted in Exempted Minimum Risk Pesticide Products**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of submission to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture