

Section 130.72 is amended by redesignating the existing provision as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 130.72 Pay adjustments.

(b) In addition to those pay adjustments determined to be pay adjustments affecting employees in construction under the rules and regulations of the Cost of Living Council, the Pay Board, and the Construction Industry Stabilization Committee in effect on January 10, 1973, the term "pay adjustments affecting employees in construction", within the meaning of paragraph (a) of this section, includes—

(1) Pay adjustments under the terms of a construction industry collective bargaining agreement which covers both construction and nonconstruction operations; and

(2) Pay adjustments under the terms of a nonconstruction collective bargaining agreement which—

(i) Continues a close historical relationship which has been established with respect to a construction industry collective bargaining agreement or sequence of agreements, or provides substantially the same levels of compensation as provided in a construction industry collective bargaining agreement; and

(ii) Covers delivery of materials to a construction site and/or onsite application of materials under circumstances in which a dispute involving such nonconstruction agreement would cause onsite construction operations to be more than marginally interrupted.

[FR Doc. 73-4211 Filed 3-5-73; 8:45 am]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 79]

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Order Terminating Certain Provisions

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Des Moines, Iowa, marketing area.

Notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 4346) concerning a proposed suspension or termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

In § 1079.44, all of paragraph (c), and in paragraph (d) the provisions "lo-

cated not more than 150 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the post offices of Corydon, Creston, Des Moines, Grinnell, Jefferson, and Ottumwa".

STATEMENT OF CONSIDERATION

This action terminates the provisions in the order that provide automatic Class I classification for milk that is transferred or diverted from a pool plant to a nonpool plant located more than 150 miles from the nearest of the six basing points listed above.

The termination was requested by a cooperative association supplying a pool distributing plant with milk produced in the vicinity of Caledonia, Minn. When this milk supply is not needed at the pool distributing plant it is moved to a nonpool manufacturing plant located in the production area.

Caledonia is located more than 150 miles from the nearest of the basing points. The provisions providing for automatic Class I classification of milk moved to a nonpool plant so located have been made inoperative by suspension actions since September 1971. Termination of the provisions will assure the continued classification of milk disposed of to nonpool plants located beyond 150 miles from the basing points on the basis of its actual use and, therefore, facilitate the economical disposition of reserve milk supplies to nearby nonpool manufacturing plants for Class II use.

Deletion of provisions providing mileage limitations on transfers and diversions of milk for Class II use is proposed in the recommended decision for 33 orders (including this order) issued August 28, 1972 (37 F.R. 19482). There were no exceptions received to this particular finding.

The present suspension order expires February 28, 1973. This termination action will enable the proponent cooperative association to continue providing an orderly marketing program for its member producers in the Caledonia area who have been associated with the Des Moines market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it will facilitate the economical disposition of certain of the market's reserve milk supplies.

(b) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rule making was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. No views were received in opposition to the proposed rule making.

Therefore, good cause exists for making this order effective March 6, 1973.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: March 6, 1973.

Signed at Washington, D.C., on February 28, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc. 73-4205 Filed 3-5-73; 8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

MISCELLANEOUS AMENDMENTS TO CHAPTER

Pursuant to 5 U.S.C. 552 and the authority contained in 8 U.S.C. 1103 and 8 CFR 2.1, miscellaneous amendments, as set forth herein are prescribed in Parts 100, 341, and 343a of Chapter I of Title 8 of the Code of Federal Regulations.

On February 8, 1973, notice was published in the FEDERAL REGISTER (38 FR 3595) of the revocation, effective March 12, 1973, of the international airport status of Greater Buffalo International Airport, Buffalo, N.Y. In Part 100, § 100.4 is, therefore, being amended to delete that airport from the listing of ports of entry for aliens arriving by aircraft.

In Part 341, § 341.5 is amended for clarification to provide that the report containing the findings and recommendations of the officer acting on an application for a certificate of citizenship shall be prepared either by formal order or by completing the preprinted form in the Form N-600 application.

In Part 343a, § 343a.2 is amended to provide for the return to the person to whom issued of a certificate of citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment to section 301(b) by Public Law 92-584 enacted October 27, 1972.

In the light of the foregoing, the following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 100—STATEMENT OF ORGANIZATION

§ 100.4 [Amended]

In subparagraph (3) Ports of entry for aliens arriving by aircraft of paragraph (c) Suboffices of § 100.4 Field Service, District No. 7—Buffalo, N.Y., is amended by deleting therefrom the following international airport listing: "Buffalo, N.Y., Greater Buffalo International Airport."

PART 341—CERTIFICATES OF CITIZENSHIP

In § 341.5, the first sentence is amended to read as follows:

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall prepare a report containing his findings and recommendation, by completing the preprinted form in the Form N-600 application, or by formal order, as appropriate. * * *

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

In § 343a.2, the first sentence is amended to read as follows:

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred directly or through a parent by reason of section 404 (b) or (c) of the Nationality Act of 1940 or section 352 of the Immigration and Nationality Act and which finding is no longer valid in view of "Schneider v. Rusk," 377 U.S. 163, or a certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 401(e) of the Nationality Act of 1940 or section 349(a) (5) of the Immigration and Nationality Act and which finding is no longer valid in view of "Afroyim v. Rusk," 387 U.S. 253, or a certificate of citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the same Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment to section 301(b) on October 27, 1972, Public Law 92-584, may be returned to the person to whom it was issued, notwithstanding the fact that he has since been naturalized or repatriated in the United States or abroad. * * *

Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date is unnecessary in this instance and would serve no useful purpose because the amendment to § 100.4(c) (3) relates to agency management; the amendment to § 341.5 relates to agency procedure and is clarifying in nature; and the amendment to § 343a.2 is in implementation of Public Law 92-584 (86 Stat. 1289) enacted October 27, 1972, and confers benefits on persons affected thereby.

Effective date. This order shall become effective on March 6, 1973, except with regard to the amendment to § 100.4(c)

(3) which shall become effective March 12, 1973.

Dated: February 28, 1973.

RAYMOND F. FARRELL,
Commissioner of
Immigration and Naturalization,
[FR Doc. 73-4214 Filed 3-5-73; 8:45 am]

**Title 10—Atomic Energy
CHAPTER I—ATOMIC ENERGY
COMMISSION**

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Reactor Containment Leakage Testing for Water-Cooled Power Reactors

Correction

In FR Doc. 73-2786 appearing at page 4385 in the issue of Wednesday, February 14, 1973, the following changes should be made:

1. In the third column on page 4387:
 - a. In paragraph (2), the first line should read, "Peak pressure tests. The leakage rate".
 - b. In the second line of paragraph B.1. Test methods., delete the article "a".
 - c. The heading for paragraph C. should read "Type C tests."
2. On page 4388, in the second column, transfer the heading "V. INSPECTION AND REPORTING OF TESTS" to appear above "A. Containment inspection. A general in-".

**Title 32—National Defense
CHAPTER VI—DEPARTMENT OF THE NAVY
MISCELLANEOUS AMENDMENTS TO CHAPTER**

Chapter VI of Title 32 is amended by revising Parts 719, 720, 727, 750, 751, 753, 756, and 757 to read as follows.

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Part 179 of Title 32 is revised to read as follows:

Subpart A—Nonjudicial Punishment

Sec.

- 719.101 General Provisions.
719.102 Letters of censure.

Subpart B—Convening Courts-martial

Sec.

- 719.103 Designation of additional convening authorities.
719.104 Preparation of convening orders.
719.105 Changes in membership after court has been assembled.
719.106 Convening special courts-martial.
719.107 Restrictions on exercise of court-martial jurisdiction.
719.108 Superior competent authority defined.

Subpart C—Trial Matters

Sec.

- 719.109 Trial guides.
719.110 Reporters and interpreters.
719.111 Oaths.
719.112 Authority to grant immunity from prosecution.
719.113 10 U.S.C. 839(a) sessions.
719.114 Pretrial agreements in general and special courts-martial.

Sec.

- 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.
719.116 Preparation and forwarding of charges.
719.117 Optional matter presented when court-martial constituted with military judge.
719.118 Court-martial punishment of reduction in grade.
719.119 Forfeitures, detentions, fines.
719.120 Preparation of records of trial.
Subpart D—Post-trial Matters
719.121 Request for appellate defense counsel.
719.122 Review by staff judge advocate.
719.123 Action on courts-martial by convening authority.
719.124 Promulgating orders.
719.125 Review of summary and special courts-martial.
719.126 Action on special courts-martial by general court-martial convening authorities.
719.127 Supervision over court-martial records and their disposition after review in the field.
719.128 Criminal activity, disciplinary infractions, and court-martial report.
719.129 Remission and suspension.
719.130 Effective date of confinement and forfeitures when previous sentence not completed.
719.131 Vacation of suspension.
719.132 Approval of sentences extending to dismissal of an officer.
719.133 Service of decision of Navy Court of Military Review on accused.
719.134 Execution of sentence.
719.135 Request for immediate execution of discharge.
719.136 Filing of court-martial records.

Subpart E—Miscellaneous Matters

- 719.137 Financial responsibility for costs incurred in support of courts-martial.
719.138 Fees of civilian witnesses.
719.139 Warrants of attachment.
719.140 Security of classified matter in judicial proceedings.
719.141 Court-martial forms.
719.142 Suspension of counsel.
719.143 Petition for new trial under 10 U.S.C. 873.
719.144 Application for relief under 10 U.S.C. 869 in cases which have been finally reviewed.
719.145 Set-off of indebtedness of a person against his pay.
719.146 Authority to prescribe regulations relating to the designation and changing of places of confinement.
719.147 Apprehension by civilian agents of the Naval Investigative Service.
719.148 Search and seizure forms.
719.149 Interrogation of criminal suspects form.
719.150 Court-martial case report.

AUTHORITY: Military Personnel and Civilian Employees Claims Act of 1964, as amended (31 U.S.C. 240-243).

Subpart A—Nonjudicial Punishment

§ 719.101 General provisions.

(a) **Authority to impose—(1) Multi-service commander.** In addition to the categories of officers authorized to impose nonjudicial punishment under 10 U.S.C. 815(b), the commander of a multi-service command to whose staff or command members of the naval service are

assigned may designate one or more naval units and shall for each such naval unit designate a commissioned officer of the naval service as commanding officer for the administration of discipline under 10 U.S.C. 815. A copy of any such designation by the commander of a multiservice command shall be furnished to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General.

(2) *General authority.* Pursuant to the authority of 10 U.S.C. 815 and to the provisions of chapter XXVI, MCM, and except as provided in paragraph (b) of this section, nonjudicial punishment may be imposed in the naval service for minor offenses as follows:

(i) *Upon officers and warrant officers.* Any commanding officer, including a commanding officer as designated pursuant to subparagraph (1) of this paragraph, may impose upon officers of his command admonition or reprimand and restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive days. Officers of the grade of major or lieutenant commander, or above, who are authorized to impose nonjudicial punishment, may in addition to admonition or reprimand, impose restriction for not more than 30 consecutive days. Only an officer of general or flag rank in command may impose the additional punishments authorized by 10 U.S.C. 815(b) (1) (B). See also subparagraph (4) of this paragraph.

(ii) *Upon other personnel.* Any commanding officer, including a commanding officer as designated pursuant to subparagraph (1) of this paragraph, may impose upon enlisted men of his command, and any commissioned officer who is designated as officer in charge of a unit by Departmental Orders, Tables of Organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached), or orders of the Senior Officer Present, may impose upon enlisted men assigned to his unit, admonition or reprimand and one or more of the punishments authorized by 10 U.S.C. 815(b) (2) (A) through (G). Only commanding officers of the grade of major or lieutenant commander or above may impose the increased punishments authorized by 10 U.S.C. 815(b) (2) (H).

(3) *Jurisdiction over individual.*—(1) *General rule.* At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if he is assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary additional duty.

(ii) *Issuance of letter of censure to party before fact-finding body.* A person who has been designated a party before

a fact-finding body convened under these regulations (see Subpart J of this part) remains thereafter "of the command" of the unit or organization to which he was assigned or attached at the time of such designation for the purpose of imposition of the sole nonjudicial punishment of a letter of admonition or reprimand, even though for other purposes he may have been assigned or attached to another command before such letter was delivered to him. This status terminates automatically when all action contemplated by 10 U.S.C. 815, including action on appeal, has been completed respecting the letter of admonition or reprimand.

(ii) *Action when accused no longer with command.* Except as provided in subdivision (i) of this subparagraph, if at the time nonjudicial punishment is to be imposed the accused is no longer assigned or attached to the unit, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual concerned. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction over him.

(4) *Nonjudicial punishment of reservists on active duty for training or inactive duty training.* If all aspects of the procedures specified by 10 U.S.C. 815, and paragraph 133b, MCM, which require the presence of the accused are conducted prior to the termination of the drill or training period during which the act for which punishment is imposed occurs, the imposition of punishment may occur subsequent to the termination of such drill or training period at a time at which the reservist is not subject to the Uniform Code of Military Justice. See paragraph 11d, MCM.

(i) Even though no proceedings are conducted during the drill or training period during which the act for which punishment is imposed occurs, nonjudicial punishment may be imposed if all aspects of the procedures described by 10 U.S.C. 815, and paragraph 133b, MCM, which require the presence of the accused are conducted on a subsequent period, or subsequent periods, of active duty for training or inactive duty training, unless there has been an intervening discharge or some equivalent change of status.

(ii) As a matter of policy, any physical restraint pending nonjudicial punishment, or imposed as nonjudicial punishment, shall not extend beyond the normal time of termination of a drill or training period.

(5) *Delegation to a "principal assistant" under 10 U.S.C. 815(a).* With the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, a flag or general officer in command may delegate all or a portion of his powers under 10 U.S.C. 815 to a senior officer on his staff who is eligible to succeed to command in case of absence of such officer in command. To the extent of the authority thus delegated, the officer to whom such powers are delegated shall have the same

authority as the officer who delegated the powers.

(6) *Withholding of 10 U.S.C. 815 punitive authority.* Unless specifically authorized by the Secretary of the Navy, commanding officers of the Navy and Marine Corps shall not limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under 10 U.S.C. 815.

(b) *Limitations on imposition of nonjudicial punishment.*—(1) *Demand for trial.* A person in the Navy or Marine Corps who is attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of nonjudicial punishment.

(2) *Cases previously tried in civil courts.* The provisions of § 719.107(e) with respect to trial by summary court-martial of persons whose cases have been previously adjudicated in domestic or foreign criminal courts apply also to the imposition of nonjudicial punishment in such cases.

(3) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy, refrain from exercising his powers to impose nonjudicial punishment. All such matters should be referred to the commanding officer of the ship for disposition. This policy shall not be applicable to Military Sea Transportation Service vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only.

(4) *Correctional custody.* This punishment shall not be imposed upon persons in grade E-4 and above.

(5) *Confinement on bread and water or diminished rations.* This punishment shall not be imposed upon persons in grade E-4 and above.

(6) *Extra duties.* Subject to the limitations set forth in paragraph 131c(6), MCM, this punishment shall be considered satisfied when the enlisted person shall have performed extra duties during available time in addition to performing his military duties. Normally the immediate commanding officer of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires 1, 2, or more hours, but normally extra duties should not extend to more than 2 hours per day. Extra duty shall not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed. Guard duty shall not be assigned as punishment.

(7) *Reduction in grade.* Subject to the provisions of paragraph 131c(7), MCM, this punishment shall not be imposed except to the next inferior grade. Reduction in grade may be imposed only if the condition concerning promotion authority specified in paragraph 131, MCM, is met.

(8) *Arrest in quarters.* An officer or warrant officer undergoing this punishment shall not be required to perform

duties involving the exercise of authority over any person who is otherwise subordinate to him.

(9) *Forfeiture and detention.* The monthly contribution from his pay that an enlisted person in pay grade E-4 (4 years or less service) or below with dependents is required by law to make to entitle him to a basic allowance for quarters is \$40. As provided in paragraphs 131c (8) and (9); MCM, this amount must be deducted before the net amount of pay subject to forfeiture or detention is computed. When a punishment of a person in pay grade E-4 or above includes both reduction to pay grade E-4 (4 years' or less service) or below and forfeiture or detention, \$40 must be deducted before computing the net amount of pay subject to forfeiture or detention.

(c) *Nonpunitive measures.* (1) Commanding officers and officers in charge are authorized and expected to use nonpunitive measures, including administrative withholding of privileges not extending to deprivation of normal liberty, in furthering the efficiency of their commands.

(2) These measures are not punishment and may be administered either orally or in writing. (See paragraph 128c, MCM.) Nonpunitive letters of censure, other than those issued by the Secretary of the Navy, shall not be forwarded to the Bureau of Naval Personnel or the Commandant of the Marine Corps, quoted or appended to fitness reports, or otherwise included in the official departmental records of the recipient. A sample nonpunitive letter of caution is set forth for guidance in appendix section 1-a.¹

(d) *Procedures.* (1) The procedures prescribed in paragraph 133b, MCM, and in this subsection shall be followed in imposing nonjudicial punishment. The requirements of paragraphs (d) and (e) of this section are also applicable if a letter of admonition or reprimand is to be imposed as punishment.

(2) If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the impartial hearing prescribed in paragraph 133b, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual

concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(3) The officer who imposes punishment under 10 U.S.C. 815 shall insure that the offender is fully informed of his right to appeal from such punishment.

(e) *Effective date and execution of punishments.* (1) *Forfeitures, detention, and reduction in grade.* As provided in paragraph 131e, MCM, these punishments, if unsuspended, take effect on the date imposed. If suspended, and the suspension is later vacated, these punishments take effect for all purposes on the date the suspension is vacated. However, if a forfeiture or detention is imposed while a prior punishment of forfeiture or detention is still in effect, the prior punishment will be completed before the latter begins to run.

(2) *Punishments involving restraint.* Normally, the punishments of arrest in quarters, correctional custody, confinement on bread and water, or diminished rations, extra duties, and restriction, unless suspended, take effect when imposed. However, as with forfeiture and detention, any prior punishment involving restraint will be completed before the second begins to run. In addition, commanding officers and officers in charge at sea may, when the exigencies of the service require, defer execution of correctional custody and confinement on bread and water for a reasonable period of time, not to exceed 15 days, after imposition. When correctional custody is to be served in a regular confinement facility, the conditions of service and the provisions for release therefrom shall be as prescribed in the Corrections Manual. Otherwise, correctional custody shall be imposed and administered in accordance with SECNAVINST 1640.7 series.

(3) *Admonition and reprimand.* These punishments take effect when imposed. A letter of censure is considered to be imposed when delivered to the offender.

(f) *Appeals.* (1) *Time.* (i) In accordance with paragraph 135, MCM, an appeal not made within a reasonable time may be rejected on that basis by the officer to whom the appeal was addressed. In the absence of unusual circumstances, an appeal made more than 15 days after the punishment was imposed may be considered as not having been made within a reasonable time. In computing this appeal period, allowance shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails. This appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended.

(ii) If unusual circumstances exist which make it impracticable or extremely difficult for the offender to prepare and submit his appeal within the 15-day period, he should immediately advise the officer who imposed the punishment of such circumstances and request an appropriate extension of time within which to submit his appeal. In the absence of such a request, an appeal sub-

mitted after the 15-day period will normally be considered as not having been made within a reasonable time. Upon the receipt of such a request, the officer who imposed the punishment shall advise the offender that an extension of time is or is not granted.

(2) *To whom made when officer who imposed the punishment is in a Navy chain of command.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be forwarded to the area coordinator authorized to convene general courts-martial. When the cognizant area coordinator is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a commanding officer who is an area coordinator, the appeal shall be forwarded to the officer authorized to convene general courts-martial and next superior in the chain of command to the officer who imposed the punishment.

(i) An immediate or delegated area coordinator who has authority to convene general courts-martial may take action in lieu of an area coordinator if he is superior in rank or command to the officer who imposed the punishment.

(ii) For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the unit at the time of the forwarding of the appeal.

(3) *To whom made when officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall be made to the officer who is the next superior in the chain of command to the officer who imposed the punishment. This shall be the case without regard to whether the appellant is, at the time of his appeal, a member of an organization within that chain of command. In those cases in which the Commandant of the Marine Corps is the next superior in the chain of command and in which the officer who imposed punishment is not a general officer in command, the appeal shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

(4) *To whom made when commanding officer is a commander of a multiservice command.* An appeal from nonjudicial punishment imposed by an officer of the Marine Corps designated as a commanding officer pursuant to subparagraph (1) of this paragraph shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest and superior in grade to the officer who imposed the punishment. An appeal from nonjudicial punishment imposed by a naval officer designated as a commanding officer pursuant to section 0101a(1) shall be made to the nearest area coordinator. However, when

¹ Filed as part of the original document.

such area coordinator is not superior in grade to the officer who imposed the punishment, the appeal shall be to the naval flag officer in command geographically nearest and superior in grade to the officer who imposed the punishment.

(5) *Delegation of authority to act on appeals.* Such authority may be delegated in accordance with the provisions of subparagraph (4) of this paragraph.

(6) *Prohibited and inappropriate actions.* An officer who has delegated his nonjudicial punishment powers to a principal assistant under subparagraph (4) of this paragraph may not act on an appeal from punishment imposed by such principal assistant. In such cases and in other cases where it may be inappropriate for the officer designated by subparagraph (2) or (3) of this paragraph (f) to act on the appeal, (as where an identity of persons or staff may exist with the command which imposed the punishment) such fact should be noted in forwarding the appeal.

(7) *Procedures.* When the officer who imposed the punishment is not the offender's immediate commanding officer, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under subparagraphs (2), (3), or (4) of this paragraph (f). Similarly, the action of the superior on appeal may be forwarded by the officer who imposed the punishment directly to the offender's commanding officer for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain of command.

(8) In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions and recommendations, together with copies of endorsements thereon, shall, except where the interests of national security may be adversely affected, be made available to the individual concerned for his examination in connection with the preparation of an appeal. In case of doubt, the matter shall be referred to the Judge Advocate General for advice.

(9) *Records of punishment.* The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 133c, MCM and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 2696 and NAVMC 10132PD.

(10) *Definition of "successor in command."* For the purposes of 10 U.S.C. 815 and this part, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations. The term is not limited to the officer next succeeding. See paragraph (j) of this section.

(11) *Punishment not to be increased.* As provided in paragraph 128d, MCM, a punishment once imposed may not be increased. In addition, punishment may

not be withdrawn for the purpose of imposing a more severe punishment.

(j) *Suspension, mitigation, and remission.* (1) The authority of the officer who imposed the punishment, his successor in command, and superior authority to suspend, mitigate, remit, and set aside punishments is discussed in paragraphs 134 and 135, MCM.

(2) When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, assigned to another command, unit, or activity, the receiving commanding officer (or officer in charge) and his successor in command, may under 10 U.S.C. 815 (d), and the conditions set forth in paragraph 134, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment.

§ 719.102 Letters of censure.

(a) *General.* "Censure" is a generic term applicable to adverse reflection upon or criticism of an individual's character, conduct, performance, or military appearance. Censure may be punitive or nonpunitive. Punitive censure is imposed as commanding officer's nonjudicial punishment or as the result of a sentence by court-martial. In increasing order of severity, there are two degrees of punitive censure, namely, "admonition" and "reprimand." Nonpunitive censure is provided for in paragraph 128, MCM, and in § 719.101(c). When imposed upon officers, punitive admonition or reprimand is required to be by written communication. If imposed upon enlisted personnel, punitive admonition or reprimand may be by either oral or written communication. Copies of punitive letters of admonition or reprimand, unless withdrawn or set aside, will be filed in the official records of the individuals to whom they are addressed and recorded in departmental records. As provided in § 710.101(i) of this chapter, once a letter of admonition or reprimand has been received by the individual to whom it is addressed, it may not be increased in severity or withdrawn to impose a more severe punishment. The remaining provisions of this section do not apply to oral censures of enlisted personnel or, unless specifically noted, to court-martial sentences involving admonition or reprimand.

(b) *Administrative letters of censure by the Secretary of the Navy.* In addition to the censures discussed in paragraph (a) of this section, the Secretary of the Navy may, by means of a written communication, administratively censure persons in the naval service without reference to 10 U.S.C. 815. Unless otherwise directed, a copy of the communication will be filed in the official record of the person censured and recorded in departmental records. The provisions of 10 U.S.C. 815, Chapter XXVI, MCM, and §§ 719.101 and 719.102 (including the right of appeal) are not applicable to administrative censure by the Secretary of the Navy. However, if the person censured is an officer and a copy of the communication is to be filed in his official record and recorded in departmental

records, the officer being censured may submit such official statement as he may choose to make in reply. Any such reply shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges.

(c) *Internal departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of admonition or reprimand are personnel matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

(d) *Procedure—(1) Issuing authority.* Where an officer has committed an offense which warrants a punitive letter of admonition or reprimand, the immediate commanding officer may, at his discretion, but subject to paragraphs 132 and 133, MCM, issue the letter or refer the matter through the chain of command, normally to the superior who exercises general court-martial jurisdiction and who has command over the prospective addressee (see § 719.101(a)(3)). Consideration must be given to the fact that the degree of severity and effect of punitive admonition or reprimand increases proportionately with the degree of superiority of the officer in command who issues the letter.

(2) *Hearing requirement.* Subject to the provisions of 10 U.S.C. 815, paragraph 132, MCM, and § 719.10(b) regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of mast or office hours prescribed in paragraph 133b, MCM (see 719.101(d)). When mast or office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements, and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

(e) *Content of letter—(1) General.* A punitive letter of admonition or reprimand issued pursuant to 10 U.S.C. 815 may be imposed only for minor offenses (see paragraph 128b, MCM). Such offenses include only those acts or omissions constituting offenses under the punitive articles of the Uniform Code of Military Justice. The letter must set forth the facts constituting the offense but need not refer to any specific punitive article of the Uniform Code of Military Justice; nor must it satisfy the tests for legal sufficiency required of court-martial specifications. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader of all relevant facts and circumstances surrounding the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts

upon which they are based. Sample letters of reprimand and admonition are set forth for guidance in Appendix section 1-b and 1-c.¹

(2) *References.* In all punitive letters of admonition or reprimand, reference should be made to all prior proceedings and correspondence upon which they are based. Reference should also be made to applicable laws and regulations, including the MCM and this section. Particular reference should be made to the hearing afforded the offender. Where applicable, the letter shall include a statement that the recipient has been advised that he has the right to demand trial by court-martial in lieu of nonjudicial punishment and that he has not demanded such trial. See 10 U.S.C. 815.

(3) *Classification (security).* Every reasonable effort will be made to exclude specific details requiring security classification from punitive letters of admonition or reprimand. Unless it contains classified matter, a letter of censure shall be designated "For Official Use Only."

(4) *Notification of right to appeal and right to submit statement.* All punitive letters of admonition or reprimand, except letters issued in execution of a court-martial sentence as described in § 719.123(d), shall contain the following paragraphs:

You are hereby advised of your right to appeal this action to the next superior authority, the _____ via [here insert the official designation of the commanding officer issuing the letter or, if he is not the immediate commanding officer of the offender, the official designations of the immediate commanding officer of the offender and the commanding officer issuing the letter] in accordance with the provisions of 10 U.S.C. 815(e), paragraph 135 of the Manual for Courts-Martial, and § 719.102(f).

If, upon full consideration, you do not desire to avail yourself of this right to appeal, you are directed to so inform the issuing authority in writing within 15 days after the receipt of this letter.

If, upon full consideration, you do desire to appeal from the issuance of this letter, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than 15 days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances exist which make it impracticable or extremely difficult for you to prepare and submit your appeal within the 15-day period, you shall immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time within which to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time within which to submit your appeal.

In all communications concerning an appeal from the issuance of this letter, you are directed to state the date of your receipt of this letter.

Unless withdrawn, or set aside by higher authority, a copy of this letter will be placed in your official record in (the Bureau of

Naval Personnel) (Headquarters, U.S. Marine Corps.) You are therefore privileged, pursuant to U.S. Navy Regulations, to forward within 15 days after receipt of final determination of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, such statement concerning this letter as you may desire for inclusion in your record. (Omit "pursuant to U.S. Navy Regulations" in cases involving enlisted personnel.) If you elect not to submit a statement, you shall so state officially in writing within the time above prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement may not contain countercharges. Your reporting senior is required to make notation of this letter in your fitness report submitted next after the issuance of this letter has become final, either by decision of higher authority upon appeal or by your decision not to appeal.

(Omit last sentence in cases involving enlisted personnel.)

(f) *Appeals.* The following special rules are applicable to appeals involving punitive letters of admonition or reprimand (in addition to those rules contained in § 719.101(f)).

(1) A copy of the report of mast or office hours shall be provided the individual upon his request except where the interests of national security may be adversely affected. In any event a copy shall be made available to him for his use in preparation of a defense or appeal. See § 719.101(f) for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal from a punitive letter of admonition or reprimand (see § 719.101(f)(4)), the officer who issued the letter shall attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of hearing on which the letter is based. The appeal shall be forwarded via the chain of command to the superior to whom the appeal is made. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if he deems such action necessary in the interests of justice.

(3) Appeals from a letter of admonition or reprimand imposed as nonjudicial punishment shall be forwarded as specified in § 719.101(f).

(4) Upon determination of the appeal, the superior shall advise the appellant of the action taken via his immediate commanding officer with copies of the action to officers in the chain of command through whom the appeal was forwarded. He shall also return all papers directly to the commander who issued the letter.

(g) *Forwarding letter to Department.* Upon adverse determination of any appeal taken, the lapse of a reasonable time after issuance (see § 719.101(f)), or upon receipt of the addressee's state-

ment that he does not desire to appeal, together with such statement as he may desire to make or his written declaration that he does not desire to make a statement, a copy of the punitive letter of censure, and such other documents as may be required by the Chief of Naval Personnel or the Commandant of the Marine Corps shall be forwarded via the chain of command to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The command to which the addressee of the letter is then attached (if different from the forwarding command) and superior authority who took action on appeal pursuant to §§ 719.101(f) and 719.102(f) whether or not in the chain of command, shall be included as via addressee(s). If the letter of censure is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned. It is the responsibility of the command issuing a letter of admonition or reprimand to assemble and forward at one time all the foregoing documents. A copy of the forwarding letter shall be provided for each via addressee.

(h) *Cancellation.* (1) Except in certain highly infrequent situations, material properly placed in an officer's or enlisted member's official record is not removed therefrom or destroyed. When a letter of admonition or reprimand has been issued under 10 U.S.C. 815 and filed in the addressee's official record and it is shown that factual error occurred or that other sound reasons indicate that the punishment resulted in a clear injustice, the officers referred to in § 719.101(j) may cancel or direct cancellation of the letter of admonition or reprimand. The authority (i.e., the office as distinguished from the former incumbent) which issued such a letter of admonition or reprimand may also cancel such a letter. In these cases, cancellation will be accomplished by issuing a second letter to the officer concerned announcing the cancellation of the letter of admonition or reprimand and setting forth in detail the reason prompting such cancellation. Copies of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to other addressees to whom copies of the original letter of censure may have been directed. The copy of the letter of admonition or reprimand and any reference thereto filed in the recipient's official record shall then be removed and destroyed.

(2) If a letter of admonition or reprimand is canceled by superior authority before a copy of the original of such letter has been received by the Chief of Naval Personnel or the Commandant of the Marine Corps, no copy of the letter of admonition or reprimand will be filed in the member's official record. If the cancellation occurs after the copy of the letter of admonition or reprimand has

¹ Filed as part of the original document.

been forwarded to the Department, a copy of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Upon receipt of the copy of the letter of cancellation, copies of the letter of admonition or reprimand shall not be filed in or, if already filed, shall be removed from the member's official record and destroyed. The order or letter of cancellation or a copy thereof shall not be filed in the member's official records. In other cases, physical removal of letters of admonition or reprimand and other documents in official records will normally be accomplished only by the Secretary of the Navy acting through the Board for Correction of Naval Records. However, if a letter of censure is filed inadvertently by reason of clerical error or mistake of fact, such document may be removed as authorized by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(1) *Public reprimands—Private reprimands.* For historical purposes and understanding of the captioned types of censure, brief comment is supplied thereon. Under Article 24 of the Articles for the Government of the Navy (superseded by the Uniform Code of Military Justice), "private reprimand" was one of the punishments specified as being within the authority of a commanding officer to impose upon officers under his command. The word "private" was employed to distinguish a formal letter of reprimand addressed to an individual officer without general publicity from a "public reprimand," i.e., one published verbatim throughout the naval service. Omission of the word "private" preceding "admonition or reprimand" in 10 U.S.C. 815 does not constitute authority to commanding officers to issue "public reprimands," which are looked upon with disfavor by the Department of the Navy.

Subpart B—Convening Courts-Martial

§ 719.103 Designation of additional convening authorities.

(a) *General courts-martial.* In addition to those officers authorized by 10 U.S.C. 822(a) (3) through (5) and (7), the following officers are, under the authority granted to the Secretary of the Navy by Uniform Code of Military Justice 10 U.S.C. 822(a) (6), designated as empowered to convene general courts-martial:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps.

(2) The following officers or their successors in command:

Chief of Naval Operations.
Vice Chief of Naval Operations.
Commandant of the Marine Corps.
Commander, Service Group One.
Commander, Service Force, Sixth Fleet.
Commanders, Fleet Air Wings.
Commanders, Fleet Air Commands.
Commander, Morocco—U.S. Naval Training Command.
Commanding Officer, U.S. Naval Support Activity, Naples.
Commander, U.S. Naval Activities, Spain.

Commander, U.S. Naval Training Center, Bainbridge, Md.
Commander, U.S. Naval Training Center, Great Lakes, Ill.
Commander, U.S. Naval Training Center, San Diego, Calif.
Commander, U.S. Naval Training Center, Orlando, Fla.

(3) The Commanding Officer, U.S. Naval Disciplinary Command, Portsmouth, New Hampshire, is hereby designated as empowered to exercise limited general court-martial jurisdiction for the purpose of performing the functions described in paragraphs 100c, 102, and 107, MCM. See § 719.129(a) (2) concerning the clemency powers of the Commanding Officer of the Naval Disciplinary Command.

(b) *Special courts-martial.* In addition to those officers otherwise authorized by 10 U.S.C. 23(a) (1) through (6), the following officers are, under the authority granted to the Secretary of the Navy by 10 U.S.C. 823(a) (7), empowered to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons, including both regular and reserve Marine Corps commands.

(2) Any commander whose subordinates in the tactical or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, except inactive duty training Naval Reserve units.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All directors, Navy Recruiting, Navy Recruiting Areas.

(7) All Inspector-Instructors, Marine Corps Reserve Organizations.

(c) *Summary courts-martial.* Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial.

(d) *Requests for authority to convene general, special, and summary courts-martial.* (1) If authority to convene general courts-martial is desired for an officer who is not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to 10 U.S.C. 823.

(2) If authority to convene special or summary courts-martial is desired for officers other than those listed in subparagraphs (3) and (4) of this paragraph, and such officers are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to 10 U.S.C. 823(a) (7) or 10 U.S.C. 824(a) (4), as appropriate.

(3) If authority to convene special or summary courts-martial is desired for

the commanding officer or officer in charge of any command designated as separate or detached under the provisions of U.S. Navy Regulations, the officer designating the organization as separate or detached shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to 10 U.S.C. 823(a) (7). The request shall state that the organization has been designated as separate or detached.

(4) If authority to convene special or summary courts-martial is desired for an officer designated as the commanding officer of staff enlisted personnel under the provisions of U.S. Navy Regulations, the designating commander shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to 10 U.S.C. 823(a) (7).

(5) Requests for authority to convene summary courts-martial are processed by the Judge Advocate General with other requests for authority to convene special courts-martial. A single letter of authorization, signed by the Secretary, will empower all addressees to convene special courts-martial. Upon receipt of the Secretary's letter, therefore, a superior commander who originally requested only summary court-martial authorization for his subordinate commander shall, pursuant to § 719.107(a), issue a letter to that subordinate commander restricting the authority granted to the convening of summary courts-martial. Copies of such letters of restriction shall be forwarded to the Judge Advocate General.

(6) Copies of all secretarial letters of authorization are maintained in the Military Justice Division, Office of the Judge Advocate General.

§ 719.104 Preparation of convening orders.

(a) *Form.* Convening and amending orders should be in the form set forth in Appendix 4, MCM.

(b) *Contents.* The text of the order is indicated by the forms in Appendix 4, MCM, and notes therein. Each convening order shall be assigned a Court-Martial Convening Order Number. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the convening order shall be furnished to each person named in such order. A copy of any amending order shall be furnished to each person named in the convening order to which such amending order pertains.

§ 719.105 Changes in membership after court has been assembled.

10 U.S.C. 829(a) provides that no member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

§ 719.106 Convening special courts-martial.

(a) *Bad conduct discharge cases.* As used herein, a bad conduct discharge case is one in which a bad conduct discharge is authorized, i.e., in which either because of the offenses charged or the accused's previous convictions, the maximum punishment authorized includes a bad conduct discharge, and in which the convening authority has not included in his endorsement on the charge sheet a direction that the authorized maximum punishment shall not include a bad conduct discharge. In bad conduct discharge cases, the convening authority shall detail to the court a military judge, a defense counsel having the qualifications prescribed under 10 U.S.C. 827(b), and a reporter. *Provided*, That a military judge need not be so detailed in any case in which a military judge cannot be detailed because of physical conditions or military exigencies. In some cases, detailed written explanation by the convening authority is required to be prepared prior to trial. See paragraph 15b, MCM.

(b) *Non-bad-conduct discharge cases.* In cases in which neither the offenses charged nor the accused's previous record authorize the imposition of a bad conduct discharge, or in which the convening authority has directed that a bad conduct discharge shall not be an authorized punishment, the convening authority may, but is not required to, detail a military judge, certified defense counsel, and a court reporter to the court. However, in every case the accused must be afforded the opportunity to be represented at trial by counsel having the qualifications prescribed under 10 U.S.C. 827(b), unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to assembly of the court. See paragraph 6c, MCM.

§ 719.107 Restrictions on exercise of court-martial jurisdiction.

(a) *Special and summary courts-martial.* In accordance with the provisions of paragraph 5b(4) and 5c, MCM, exercise of authority to convene summary and special courts-martial may be restricted by a competent superior commander.

(b) *Right to refuse summary court-martial.* All persons in the Navy and Marine Corps have the absolute right to refuse trial by summary court-martial.

(c) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sea Transportation Service vessels operating under a master, nor is it applicable where an

organized unit is embarked for transportation only.

(d) *Jurisdiction under 10 U.S.C. 802 (4), (5), (6), and 10 U.S.C. 803.*

(1) *Policy.* In all cases in which jurisdiction is dependent upon the provisions of 10 U.S.C. 802 (4), (5), (6), and 10 U.S.C. 803, the following policies apply:

(i) No case of a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Naval Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense.

(ii) No case in which jurisdiction is based on 10 U.S.C. 803 will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy.

(iii) If authorization is withheld under subdivision (i) or (ii) of this subparagraph, the Judge Advocate General shall indicate alternative action or actions, if any, to the convening authority.

(2) *Request for authorization.* Requests for authorization should contain the following information: The nature of the offense or offenses charged; a summary of the evidence in the case; the facts showing amenability of accused to trial by court-martial; whether civil jurisdiction exists; the military status of the accused or suspected person at the present and at the time of the alleged offense; and the reasons which make trial by court-martial advisable. Requests shall be addressed to the Secretary of the Navy and shall be forwarded by air mail or other expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

(3) *Apprehension and restraint.* Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or confinement of any person who is amenable to trial by court-martial solely by reasons of the provisions of 10 U.S.C. 802 (4), (5), or (6) or 10 U.S.C. 803.

(4) *Tolling statute of limitations.* The foregoing rules shall not impede the preferring and processing of sworn charges under 10 U.S.C. 830 when such preferring and processing are necessary to prevent the barring of trial by the statute of limitations. See 10 U.S.C. 843 and paragraphs 29, 31, 33b, and 68c, MCM.

(5) *Recall to active duty.* Members described in subparagraph (1) (i) of this paragraph may not be recalled to active duty solely for trial by court-martial.

(e) *Cases which have been adjudicated in domestic or foreign criminal courts—*

(1) *Policy.* A person in the naval service who has been tried in a domestic or

foreign court, whether convicted or acquitted, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial for the same act or acts, except in those unusual cases where trial by court-martial is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases shall not be referred for trial without specific permission as provided below.

(2) *Criteria.* Referral for trial within the terms of this policy shall be limited to cases involving substantial discredit to the naval service and which meet one of the following criteria:

(i) Cases in which punishment by civil authorities consists solely of probation, and local practice does not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(ii) Cases in which civil authorities have, in effect, divested themselves of responsibility by an acquittal manifestly against the evidence, or by the imposition of an exceptionally light sentence on the theory that the individual will be returned to the naval service and thus removed as a problem to the local community.

(iii) Cases of homosexuality in which mild penalties have been imposed upon conviction. Homosexuality is a more serious problem in the military society because of the close-contact living and working conditions of its members.

(iv) Other cases in which the interests of justice and discipline are considered to require further action under the Uniform Code of Military Justice (where conduct leading to trial before a foreign court has reflected adversely upon the naval service itself).

(3) *Procedure.*—(i) *General and special courts-martial.* No case described in subparagraph (2) of this paragraph shall be referred for trial by general court-martial or special court-martial without the prior permission of the Secretary of the Navy. Requests for such permission shall be forwarded by the general court-martial authority concerned (or by the special court-martial authority concerned via the general court-martial authority) to the Secretary of the Navy via the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, and the Judge Advocate General.

(b) *Summary courts-martial.* No case described in subparagraph (2) of this paragraph shall be referred for trial by summary court-martial without the prior permission of the officer exercising general court-martial jurisdiction over the command. Grants of such permission shall be reported by the general court-martial authority concerned by means of a letter addressed to the Secretary of the Navy in which he shall describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy.

(1) *Reporting requirements.* The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases

of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

(4) *Limitations.* Personnel who have been tried by courts which derive their authority from the United States, such as U.S. District Courts, shall not be tried by court-martial for the same act or acts. See paragraph 68d, MCM.

(f) *Cases involving classified information.* (1) See OPNAVINST 5510.1 series for procedures relating to trial of cases involving classified information.

(2) See SECNAVINST 5511.4 series for policies relating to trial of cases involving cryptographic systems and publications.

(g) *Major Federal offenses.*—(1) *Background.* The Federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel which violate both the Federal criminal law and the Uniform Code of Military Justice. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases. The administration of this program, on behalf of the naval service, has been assigned to the Naval Investigative Service. Guidelines are set forth in SECNAVINST 5430.13 series.

(2) *Limitation on court-martial jurisdiction.* Commanding officers receiving information indicating that naval personnel have committed a major Federal offense (including any major criminal offense, as defined in SECNAVINST 5430.13 series, committed on a naval installation) shall refrain from taking action with a view to trial by court-martial, but shall refer the matter to the commanding officer of the cognizant Naval Investigative Service Office, or his nearest representative, for a determination in accordance with SECNAVINST 5430.13 series. In the event that the investigation of any such case is referred to a Federal civilian investigative agency, any resulting prosecution normally will be conducted by the cognizant U.S. attorney, subject to the exceptions set forth below.

(3) *Exceptions.* (i) Where it appears that naval personnel have committed several offenses, including both major Federal offenses and serious but purely military offenses, naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action shall be reported immediately to the Secretary of the Navy (Judge Advocate General) and to the cognizant officer exercising general court-martial jurisdiction.

(ii) When, following referral of a case to a civilian Federal investigative agency for investigation, the cognizant U.S. attorney declines prosecution, the investigation normally will be resumed by the Naval Investigative Service, and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(iii) If, while investigation by a Federal civilian investigative agency is pending, existing conditions require immediate prosecution by naval authorities, the officer exercising general court-martial jurisdiction will contact the cognizant U.S. attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter shall be referred to the Judge Advocate General for disposition.

(4) *Related matters.* See SECNAVINST 5430.13 series for procedures in cases involving civilian employees. See Part 720 of this chapter concerning the interviewing of naval personnel by Federal investigative agencies and the delivery of personnel to Federal authorities.

§ 719.108 Superior competent authority defined.

(a) *Accuser in a Navy chain of command.* Whenever a commanding officer comes within the purview of 10 U.S.C. 822(b) and 823(b), the "superior competent authority" as used in those articles is, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such accuser, the area coordinator authorized to convene general or special courts-martial, as appropriate. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding of the charges. When the cognizant area coordinator is not superior in rank or command to the accuser, or when the accuser is an area coordinator, or if it is otherwise impossible or impracticable to forward the charges as specified above, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction (see paragraph 331, MCM). An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is authorized to convene the appropriate court-martial and is superior in rank or command to the accuser.

(b) *Accuser in the chain of command of the Commandant of the Marine Corps.* Whenever a commanding officer comes within the purview of 10 U.S.C. 822(b) and 823(b), the "superior competent authority" as used in those articles is defined as any superior officer in the chain of command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction. See paragraph 331, MCM.

Subpart C—Trial Matters

§ 719.109 Trial guides.

(a) *Summary courts-martial.* For the conduct of summary courts-martial, guidance may be obtained in NAVPERS 10091, Trial Guide for Summary Courts-Martial. The trial guide is for assistance and does not have the mandatory effect of regulations.

(b) *Special courts-martial with a military judge.* A special court-martial with a military judge, to the extent possible, should follow the same procedures as a general court-martial, including any 10 U.S.C. 839(a) session that may be held. See appendix 8 a and b, MCM.

§ 719.110 Reporters and interpreters.

(a) *Appointment.*—(1) *Reporters.* In each case before a general court-martial or before a military commission, the convening authority shall detail a qualified court reporter or reporters. The detail of qualified court reporters in cases of special courts-martial shall be in accordance with § 719.106 (a) and (b). If no reporter is detailed and sworn, the special court-martial may not adjudge a bad conduct discharge. (See paragraphs 15b and 33j, MCM, as to when bad conduct discharges may be adjudged by special courts-martial.) Detailed reporters shall record in shorthand or by mechanical or other means the proceedings of, and the testimony taken before, the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders an investigation under 10 U.S.C. 832, or by the officer who directs the taking of a deposition. As directed by the trial counsel of a general or special court-martial or by the summary court, the reporter shall prepare either a verbatim or a summarized record and shall preserve the complete shorthand notes or mechanical record of the proceedings as provided in § 719.120. Additional clerical assistants may be detailed when necessary.

(2) *Interpreters.* In each case before a court-martial or military commission, in each investigation conducted under 10 U.S.C. 832 and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, an interpreter for the court, commission, investigation, or officer taking the deposition.

(3) *Manner of appointment.* Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him or, at his discretion, by any other person. Such appointment may be oral or in writing.

(b) *Source and expenses.* Whenever possible, reporters, interpreters, and clerical assistants shall be detailed from either naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Federal agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of a reporter or interpreter, at the prevailing wage scale, for duty with a general or special court-martial, military commission, an investigation under 10 U.S.C. 832, or at the taking of a deposition. No expense to the Government shall be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, 10 U.S.C. 832 investigation, or the taking of a deposition.

except when authorized by the convening authority or officer directing the proceeding. When required reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

§ 719.111 Oaths.

(a) *Military judges.* A military judge, certified in accordance with 10 U.S.C. 826(b), may take a one-time oath to perform his duties faithfully and impartially in all cases to which he is detailed. This oath may be taken at any time and may be administered by any officer authorized by 10 U.S.C. 936 and section 2502 to administer oaths. Once such an oath is taken, the military judge need not be resworn at any court-martial to which he is subsequently detailed. Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel shall administer the oath to the military judge at the appropriate point in the proceedings. The following oath shall be used for the swearing in of military judges:

I ----- do swear (or affirm) that I will faithfully and impartially perform, according to my conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon me as military judge. So help me God.

(b) *Counsel.* Any military counsel, certified in accordance with 10 U.S.C. 827 (b), may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any officer authorized by 10 U.S.C. 936, and section 2502 to administer oaths. Once such an oath is taken, counsel need not be resworn at any trial to which he is detailed trial counsel, assistant trial counsel, defense counsel or assistant defense counsel, or in any case in which he is serving as individual counsel at the request of the accused. Individual counsel, military (not certified) or civilian, requested by the accused must be sworn in each case. Detailed trial and defense counsel who are not certified in accordance with 10 U.S.C. 827(b) must be sworn in each case. Counsel who have taken one-time oaths administered by forces of the armed services other than the naval services need not again be sworn in courts-martial convened in the naval service. The following oath may be used in administering a one-time oath to counsel:

I ----- do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel or in which I participate as individual defense counsel. So help me God.

(c) *Court members.* Court members may be given one oath for all cases which are referred to the court in accordance with the convening order which detailed

them as members. In the event the convening order is amended, a new member may be sworn when he arrives. This oath may be administered by any officer authorized by 10 U.S.C. 936, and section 2502 of the Manual of the Judge Advocate General to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in paragraph 114b, MCM. See also appendix 8b, MCM.

(d) *Reporters.* Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be resworn at any trial to which he is assigned. Each command to which court reporters are permanently attached shall maintain a record of the one-time oaths administered to reporters attached to that command. In addition, a notation of the fact that a military court reporter has taken a one-time oath should be placed in the service record of such court reporter for future reference with instructions that such notation be retained in the service record upon re-enlistment. When the court reporter is not sworn at trial, the fact that he has been previously sworn will be recorded in the transcript or record of trial. The following oath may be used in administering a one-time oath to court reporters:

I ----- do swear (or affirm) that I will faithfully perform the duties of reporter in any court-martial to which I am assigned as reporter. So help me God.

(e) *Interpreters.* Interpreters will be sworn by the trial counsel as provided in paragraph 114e, MCM.

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity from prosecution to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and the trial of the principal offender. The authority to grant immunity from prosecution to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted immunity from prosecution in consideration for testimony deemed essential to the Government shall be forwarded to the cognizant officer exercising general court-martial jurisdiction by the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any

other fact-finding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice.

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary to the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, then the approval of the Attorney General of the United States or his designee must be obtained prior to the issuance of an order to testify to the witness by the cognizant officer exercising general court-martial jurisdiction. The officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter to the Judge Advocate General requesting assistance in obtaining a grant of immunity for the civilian witness and enclosing the signed order to testify sought to be approved. The order to testify should be substantially in the form set forth in Appendix section 1-d(2).¹ Requests to grant immunity to civilian witnesses must be in writing, allowing at least 3 weeks for consideration, and must contain the following information:

- (1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.
- (2) Name of the individual for whom the immunity is requested.
- (3) Name of the employer or company with which he is associated.
- (4) Date and place of birth, if known, of the witness.
- (5) FBI number or local police number, if any, and if known.
- (6) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.
- (7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.
- (8) A brief résumé of the background of the investigation or proceeding before the agency or department.
- (9) A concise statement of the reasons for the request, including:
 - (i) What testimony the prospective witness is expected to give;
 - (ii) How this testimony will serve the public interest;
 - (iii) Whether the witness (a) has invoked the privilege against self incrimination; or (b) is likely to invoke the privilege;
 - (iv) If subdivision (iii) (b) of this subparagraph is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

¹ Filed as part of the original document.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(d) *Civilian witnesses—post-testimony procedure.* After the witness has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530.

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony given by a civilian witness pursuant to such an order to testify can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(e) *Review.* The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified. However, a successor in command not participating in the grant of immunity is not so precluded.

(f) *Form of grant.* In any case in which a witness is granted immunity, the general court-martial convening authority should execute a written agreement substantially in the form set forth in Appendix section 1-d(1).¹

§ 719.113 10 U.S.C. 839(a) Sessions.

(a) *Procedure.* 10 U.S.C. 839(a) sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. 10 U.S.C. 839(a) sessions prior to assembly are encouraged, and every effort should be made to resolve at that time those issues which would otherwise be considered out of the hearing of the members of the court. At an 10 U.S.C. 839(a) session held prior to assembly, the military judge may inquire into the accused's desire to be tried by a military judge alone. If the accused does so desire, the court may be immediately assembled with all further proceedings taking place subsequent to assembly. The military judge should determine at the initial 10 U.S.C. 839(a) session whether counsel have been sworn. If not, the appropriate oath should be administered at

this time. See § 719.111(a). If the accused does not request to be tried by military judge alone, the 10 U.S.C. 839

(a) session may proceed. The military judge of a general or special court-martial may, at an 10 U.S.C. 839(a) session hold the arraignment, hear arguments and rule upon motions, and receive the pleas of the accused. (See paragraph 53d, MCM.) If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of his plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately and without further formalities. If the accused has pleaded guilty to some but not all of the charges and specifications, the military judge may enter findings of guilty on those charges and specifications to which the accused has pleaded guilty. When a finding of guilty has been so entered, the military judge need only inform the court members after assembly that the accused has been arraigned, a plea of guilty has been entered and accepted, and he has been found guilty. At an 10 U.S.C. 839(a) session either counsel may make challenges for cause or preemptory challenges if he so desires. If questioning of a particular court member is desired, the military judge may, in his discretion, request the court member to appear at the 10 U.S.C. 839(a) session. The use of this procedure does not preclude voir dire of the court after assembly, further challenges at that time, or subsequent challenges as provided by paragraph 62d, MCM. If all matters have not been considered at the initial 10 U.S.C. 839(a) session, other 10 U.S.C. 839(a) sessions may be held prior to or after assembly of the members. An 10 U.S.C. 839(a) session is not authorized to be held by the president of a special court-martial without a military judge.

(b) *Entry of findings without a vote.* In special courts-martial without a military judge and in courts-martial with a military judge in which the plea has not been accepted at a previous Article 39(a) session, the president of the court or the military judge, as appropriate, may enter a finding of guilty without vote immediately upon the acceptance of a plea of guilty.

§ 719.114 Pretrial agreements in general and special courts-martial.

(a) *Legality of pretrial agreements.* Under the provisions of the Uniform Code of Military Justice, it is legal and proper for the convening authority to make a pretrial agreement as to charges and specifications upon which the accused will be tried and/or the maximum sentence which will be finally approved by the convening authority if the accused pleads guilty. Experience has shown that opportunities for advanced planning, savings in money and manpower, and a more expeditious administration of justice can be affected by such agreements.

(b) *Action by convening authorities.* Convening authorities and their staff judge advocates will take necessary ac-

tion to insure that the rights of accused persons are fully protected in cases where there is a pretrial agreement. To that end, the following procedures shall apply:

(1) *General courts-martial.* (i) The offer to plead guilty must originate with the accused and his counsel and should be submitted to the assigned trial counsel who will conduct all arrangements as to the offer and make recommendations with respect thereto to the convening authority through the staff judge advocate. Whether or not the convening authority enters into such a pretrial agreement is a matter within his sound discretion. The agreement, if made, must be in writing and must be personally signed by the convening authority and the accused and witnessed on behalf of the accused by his counsel. A suggested form of such an agreement is set forth in Appendix section 1-e,¹ but this form must be modified as appropriate to include all of the agreement made between the accused and the convening authority. No matters "understood" between the parties should be omitted from the written agreement. The sentence which will ultimately be approved by the convening authority (under various sentences which may be adjudged by the court, if desired) shall be set forth clearly and should, under all of the circumstances of the particular case, be appropriate for the offense or offenses.

(ii) The offer of the accused to plead guilty will not be accepted if the Government has reason to believe that the evidence which it will be able to produce at the trial will be insufficient to convict. Unreasonable multiplication of charges which might tend to persuade the accused to enter into a pretrial agreement shall be avoided; nor shall an accused be induced to plead guilty to a lesser included offense by the preferring of more serious charges—as, for example, by preferring a charge of desertion where the evidence indicates that unauthorized absence is the appropriate charge.

(iii) Except for the military judge, under no circumstance will the court be officially informed of any negotiation between counsel and the convening authority on the subject of a pretrial agreement; of any such agreement existing at the time of trial; or of any such agreement made and later rejected by the accused to permit a plea of not guilty. Precaution shall also be taken to prevent the court, insofar as possible, from obtaining unofficial knowledge of the foregoing. A pretrial agreement will not preclude the accused from presenting matter in mitigation and extenuation; and counsel for the accused has a continuing duty, despite such an agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged. The military judge is authorized to examine in toto the pretrial agreement in those cases in which he sits with members of the court. The military judge hearing the case alone, without members, is not, prior to his adjudging sentence, authorized to examine or inquire into that portion of the pretrial

¹ Filed as part of original document.

agreement which sets forth the specific sentence agreed upon by the accused and the convening authority.

(iv) In all cases where there is a pre-trial agreement followed by a guilty plea of the accused, the agreement (in a form substantially similar to that set forth in appendix section 1-e)¹ shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the review of the staff judge advocate prescribed by paragraph 85, MCM.

(2) *Special courts-martial.* (i) The procedures set forth above relating to pretrial agreements in general courts-martial are applicable to special courts-martial except as provided in subdivisions (ii) and (iii) of this subparagraph.

(ii) The provisions of subparagraph (1) (i) of this paragraph relating to submission of the proposed agreement through the staff judge advocate are not applicable in those cases in which the convening authority has no staff judge advocate. A suggested form of the agreement is set forth in appendix section 1-f.¹

(iii) In those cases wherein the agreement contemplates a punitive discharge, if counsel for the accused is not a lawyer within the meaning of 10 U.S.C. 827(b), additional counsel so qualified shall be made available to the accused, unless specifically waived by the accused. Such additional counsel will advise the accused relative to the pretrial agreement and will also witness the signature of the accused thereon. In all cases where there is a pretrial agreement followed by a guilty plea, the agreement (in a form substantially similar to that set forth in appendix section 1-f)¹ shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the convening authority's action on the record of trial.

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information.*—(1) *General.* There are valid reasons for making available to the public information about the administration of military justice. The task of striking a fair balance between the protection of individuals accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and of the workings of military justice, depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the

outcome of an accused's trial, or which could reasonably have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial (court-martial sessions) or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.* (i) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(ii) Except in unusual circumstances, information which is subject to release under this regulation should be released by the cognizant public affairs officer; and requests for information received by others from representatives of news media should be referred to such officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry, the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in subparagraph (6) of this paragraph:

(i) The accused's name, grade, age, unit, regular assigned duties, residence.

(ii) The substance of the offenses of which the individual is accused or suspected.

(iii) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(iv) The identity of the apprehending and investigating agency, and the identity of counsel of the accused, if any.

(v) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(vi) The type and place of custody, if any.

(vii) Information which has become a part of the record of proceedings of the court-martial in open session.

(viii) The scheduling or result of any stage in the judicial process.

(ix) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of

such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released except as provided in subparagraph (6) of this paragraph.

(i) Subjective opinions, observations, or comments concerning the accused's character, demeanor at any time (except as authorized in subparagraph (4) (v) of this paragraph), or guilt of the offense or offenses involved.

(ii) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(iii) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(iv) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(v) The identity, testimony, or credibility of possible witnesses, except as authorized in subparagraph (4) (c), of this paragraph.

(vi) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(vii) References to confidential sources or investigative techniques or procedures.

(viii) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under subparagraph (5) of this paragraph or the nonrelease of information permitted under subparagraph (4) of this paragraph. In these cases the senior judge advocate of the command involved shall be responsible for determining whether questionable material shall be released.

(b) *Spectators.*—(1) *At sessions of courts-martial.* The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, as

¹ Filed as part of the original document.

appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

(2) In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832, or a court of inquiry or investigation conducted pursuant to this manual, the presiding officer, upon motion of the Government or the defense or upon his own motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

§ 719.116 Preparation and forwarding of charges.

(a) *Preparation generally.* See Chapter VI, MCM, for preparation of charges. Available data as to service, witnesses, and similar items, required to complete the first page of the charge sheet will be included. Ordinarily, the charge sheet will be forwarded in triplicate, and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense, the complete personal data as to each accused will be set forth on page 1 of the charge sheet or upon an attached copy of that page. One additional signed copy of the charge sheet will be prepared for each accused in excess of one.

(b) *Enlisted pay grades.* The pay grade of an accused, e.g., E-1, E-2, etc., shall be indicated following the grade or rate of the accused on page 1 of the charge sheet.

(c) *Pay and allotment data.*—(1) *Longevity increases.* Under applicable provisions of the Department of Defense Military Pay and Entitlements Manual, certain periods, such as unauthorized absence, do not constitute "time served" for the purpose of determining the cumulative years of service creditable for longevity pay increases. Care shall be taken in recording the basic pay of the accused on page 1 of the charge sheet to insure that the entry accurately reflects only the longevity increase to which the accused is entitled.

(2) *Contribution to basic allowance for quarters.* Inasmuch as the monthly contribution of an enlisted person to basic allowance for quarters (which is to be deducted prior to computing the net amount of pay subject to partial forfeitures or detention of pay) is the minimum contribution as required by law in the particular case (see § 719.119(a)),

only such minimum amount, regardless of the actual contribution of the accused, shall be entered in the appropriate place on page 1 of the charge sheet.

(d) *Forwarding of charges by an officer in a Navy chain of command.*—(1) *General court-martial cases.* When a commanding officer, in taking action on charges, deems trial by general court-martial to be appropriate, but he is not authorized to convene such court or finds the convening of such court impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such commanding officer, be forwarded to the area coordinator actively exercising general court-martial jurisdiction. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of forwarding of the charges. See § 719.108 for additional provisions in cases in which the forwarding officer is an accuser. An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is actively exercising general court-martial jurisdiction.

(2) *Special and summary court-martial cases.* When an officer in command or in charge, in taking action on charges, deems trial by special or summary court-martial to be appropriate, but he is not authorized to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain of command authorized to convene the type of court-martial deemed appropriate unless an officer authorized to convene general courts-martial and superior in the chain of command to such officer in command or charge, on the basis of a local arrangement with the area coordinator, has directed that such cases be forwarded to the area coordinator. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of the forwarding of the charges. See § 719.108 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the area coordinator may also be resorted to even though the immediate or superior commanding officer of the accused is authorized to convene the type of court-martial deemed appropriate but finds such action impracticable. An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is authorized to convene the type of court-martial deemed appropriate.

(e) *Forwarding of charges by an officer in the chain of command of the Commandant of the Marine Corps.* When a commander, in taking action on charges, deems trial by general, special, or summary court-martial to be appropriate, but he is not empowered to convene a court as deemed appropriate for the trial of the case, the officer will forward the charges and necessary allied papers through the chain of command to an offi-

cer exercising the kind of court-martial jurisdiction deemed appropriate. See paragraphs 32f and 33i, MCM. See also § 719.108 for additional provisions in cases in which the forwarding officer is an accuser.

§ 719.117 Optional matter presented when court-martial constituted with military judge.

In accordance with the authority contained in paragraph 75d, MCM, the trial counsel may, prior to sentencing, obtain and present to the military judge, for use by either the court members or the military judge if sitting alone, personnel records of the accused or copies or summaries thereof. Personnel records of the accused include all those records made or maintained in accordance with departmental regulations which reflect the past conduct and performance of the accused. Records of nonjudicial punishment must relate to offenses committed prior to trial and during the current enlistment or period of service of the accused, provided such records of nonjudicial punishment shall not extend to offenses committed more than 2 years prior to the commission of any offense of which the accused stands convicted. In computing the 2-year period, periods of unauthorized absence as shown by the records of nonjudicial punishment or by the evidence of previous convictions should be excluded. See paragraph 75d, MCM, for applicable procedural regulations.

§ 719.118 Court-martial punishment of reduction in grade.

(a) *No automatic reduction.* Automatic reduction to the lowest enlisted pay grade under 10 U.S.C. 858a(a) and paragraph 126e, MCM, shall not be effected in the naval service. It is the policy of the Department of the Navy that enlisted persons of other than the lowest enlisted pay grade who are sentenced to confinement exceeding 3 months or to dishonorable or bad conduct discharge also be sentenced to reduction to the lowest enlisted pay grade. The sentence in such cases should expressly include reduction to the lowest enlisted pay grade.

(b) *Form of sentence to reduction in grade.* In adjudging a sentence which includes reduction to the lowest enlisted pay grade or to an intermediate pay grade, that portion of the sentence which relates to reduction should refer exclusively to the numerical designation of the grade to which reduced. Accordingly, this portion of the sentence should read: "To be reduced to the grade of pay grade E-....." The proper grade or rate title, occupational field, or apprenticeship or striker designation of the reduced pay grade shall be administratively determined by the convening authority, subject to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate.

(c) *Execution of sentence to reduction in grade.* If the sentence includes, unsuspended, a dishonorable or bad conduct discharge or confinement for 1 year or more, execution of reduction included

in the sentence shall not be accomplished until the sentence has been affirmed by the Navy Court of Military Review, and in cases reviewed by it, the U.S. Court of Military Appeals.

§ 719.119 Forfeitures, detentions, fines.

(a) *Deduction of contribution to basic allowance for quarters.* The monthly contribution to basic allowance for quarters of persons in pay grades E-1 through E-4 (4 years' service or less) with dependents, required by paragraph 126h(2), MCM, to be deducted prior to computing the net amount of pay subject to forfeiture or detention, is \$40 in all cases. The foregoing provision is equally applicable to members in pay grades E-4 or higher, with dependents, who are sentenced to reduction to pay grade E-4 (4 years' service or less) or below in combination with partial forfeiture or detention of pay. In such cases the amount of \$40 shall be deducted whether or not an allotment has been registered. Regardless of the pay grade of a member with dependents, the effect of any forfeiture or detention of pay on his ability to discharge his responsibility for the care of his dependents is a factor in considering the amount of forfeiture or detention.

(b) *Forfeitures imposed by a summary court-martial.* Forfeiture of pay adjudged by summary courts-martial under 10 U.S.C. 820, may be apportioned over more than 1 month, but, as a matter of policy, the period of apportionment should not exceed 3 months.

(c) *Limitations.* In cases in which the sentence involves forfeiture of pay, detention of pay, or fine, the limitations prescribed by paragraph 126h, MCM, shall be observed, as well as the procedures prescribed in the Department of Defense Military Pay and Allowances Entitlements Manual.

§ 719.120 Preparation of records of trial.

(a) *Verbatim records of trial.* Records of trial shall be prepared verbatim in certain general and special courts-martial as provided in paragraphs 82b and 83a and Appendix 9a, MCM. When a verbatim record of trial is maintained, the trial counsel shall, unless unavoidably impractical, retain or cause to be retained any notes (stenographic or otherwise) or any recordings (mechanical or voice) from which the record of trial was prepared until such time as the convening authority (in general courts-martial) or the officer exercising general court-martial jurisdiction (in special courts-martial) takes action on the case.

(b) *Summarized records of trial.* Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 82b and Appendix 10a, MCM, in general courts-martial where:

- (1) The court has adjudged a sentence not including discharge; and
- (2) The sentence is not in excess of that which can otherwise be adjudged by a special court-martial; and
- (3) The case does not affect a general or flag officer.

(i) Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 83b and Appendix 10a, MCM, in special courts-martial where the court has adjudged a sentence not including a bad conduct discharge.

(ii) When summarized records of trial are prepared, the notes or recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until completion of appellate review.

(c) *Records of trial establishing lawful jurisdiction only.* In all courts-martial that have resulted in an acquittal of all charges and specifications, or that have been terminated prior to findings with prejudice to the Government, the record of trial need contain only sufficient information to establish lawful jurisdiction over the accused and the offenses. When the proceedings were terminated prior to findings with prejudice to the Government, a summary of the reasons for such termination shall be included in the record of trial.

(d) *Summary courts-martial.* In summary court-martial cases in which a not guilty plea is entered to any charge and specification and in which a finding of guilty results, the evidence considered by the summary court-martial relative to guilt or innocence must be summarized and attached to the record. Matters considered by a summary court-martial in extenuation and mitigation must, in all cases, be summarized and attached to the record. Strict compliance with the provisions of paragraph 79e, MCM, is directed.

(e) *Preparation, arrangement, and authentication; general and special courts-martial.* In the preparation of both verbatim and summarized records of trial, the preparation, arrangement, and authentication of records of trial and allied papers, to the extent possible, shall be in accordance with Appendixes 9 and 10, MCM, and the following rules:

(1) *Charge sheets.* The original of the charge sheet may be inserted into the original record and copies of the charge sheet may be inserted into copies of the record in lieu of copying into the record the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. However, when the charges and specifications, the name and description of the accuser, his affidavit and the reference for trial have been copied verbatim into the record, as recommended in the guide on page A8-13, MCM (Appendix 8b), the original of the charge sheet is to be prefixed to the original of the record.

(2) *Staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, copies of the staff judge advocate's legal review shall be attached to all copies of records of trial forwarded for review by the Navy Court of Military Review.

(3) *Court-Martial Data Sheet.* Unless otherwise directed by the cognizant officer exercising general court-martial

jurisdiction, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

(4) *Request for appellate defense counsel.* When the statement of the accused concerning appellate representation before the Navy Court of Military Review is required (see § 719.121), the original shall be prefixed to the original record and a copy thereof to each copy of the record.

(5) *Court-Martial Data Form.* Effective January 1, 1970, all convening authorities and supervisory authorities, as appropriate, shall complete NAVJAG Form 5813/1 (Rev. 4-69) after review of all trials of general courts-martial and all trials of special courts-martial in which the approved sentence includes a bad conduct discharge. The form will be prefixed to the original record of trial just under the front cover sheet. Supplies of NAVJAG Form 5813/1 (Rev. 4-69) are available in the forms and publications segment of the Navy Supply System under Stock No. 0105-100-8132. A form containing sample entries and the Punitive Article Identification Code to be used in completing the form are set forth in Appendix section 1-g.¹

(6) *Authentication.* Nonverbatim records of trial by special courts-martial shall be authenticated in the same manner as verbatim records.

(7) *Arrangement of original record with allied papers.* The record of trial should be bound within protective covers and arranged in the sequence shown on the back cover sheet of DD Form 490 or DD Form 491, as applicable.

(f) *Security classification of records of trial.* Records of trial containing classified matter shall be properly classified in accordance with the provisions of paragraph 82d, MCM, and the Department of the Navy Security Manual for Classified Information. Copies of such records for delivery to the accused shall be prepared and handled in accordance with paragraph 82g, MCM. Attention is directed to the fact that, while the security manual requires that matter bear the overall classification of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants (if any). Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

Subpart D—Post-Trial Matters

§ 719.121 Request for appellate defense counsel.

10 U.S.C. 870(c)(1) provides that appellate defense counsel shall represent the accused, when requested by him, before the Navy Court of Military Review or the U.S. Court of Military Appeals. Paragraph 48k(3), MCM requires the trial defense counsel, immediately after

¹ Filed as part of original document.

a trial which results in a conviction, to advise the accused in detail as to his appellate rights. In order that each record of trial show compliance with that paragraph, the following procedures will be observed. In all general courts-martial which result in a conviction, and in those special courts-martial involving a bad conduct discharge, and within the period prescribed in paragraph 48k(3), MCM the accused will, after being advised of his appellate rights, be requested to indicate his wishes as to appellate representation by a statement in the form set forth in Appendix section 1-h.¹ The original signed statement will be attached to the original trial record in accordance with § 719.120(c)(4), and an unsigned copy will be similarly attached to each copy of the trial record.

§ 719.122 Review by staff judge advocate.

(a) *Who may act.* Ordinarily the senior judge advocate attached to the command of an officer exercising general court-martial jurisdiction is the staff judge advocate of that command within the meaning of 10 U.S.C. 834, 861, and 865(a) and (b). If, however, more than one judge advocate is attached to such a command, and if it appears that the senior is or may become disqualified for any reason from acting as staff judge advocate in any particular case or for a specific period of time, a convening authority may, in addition to the action authorized by paragraph 85a, MCM, designate, in writing, a junior to act as his staff judge advocate in any particular case or for a specified period of time if that junior officer is otherwise qualified.

(b) *Distribution of staff judge advocate's review.* In addition to the requirements or paragraph 85d, MCM, and § 719.120(c)(2), a copy of the review of the staff judge advocate shall be forwarded to the command at which the accused is to be confined in order that it may be available to those charged with developing an institutional program for the individual. In addition to the foregoing, one copy of the review of the staff judge advocate shall be forwarded to the Senior Member, Naval Clemency and Parole Board, Washington, D.C. 20370, in those cases wherein the sentence includes confinement for 8 months or more, or an unsuspended punitive discharge. The original and all copies must be legible.

§ 719.123 Action on courts-martial by convening authority.

(a) *Companion cases tried separately.* In court-martial cases where the separate trial of a companion case is ordered, the convening authority shall so indicate in his action on the record in each case.

(b) *Suspension of sentences.* Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by pro-

bation than by the execution of all or any part of the sentence adjudged.

(c) *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence as approved by him extends to a punitive discharge, whether or not suspended, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: Dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not in any way affect the legal requirements as to the admissibility of records of previous convictions during the trial itself. See also § 719.123(f).

(d) *Sentences including censure.*—(1) *General.* Censures (reprimands and admonitions) issued in execution of court-martial sentences are required to be in writing. Except as otherwise prescribed in this section, the provisions of § 719.102 (e) (1), (2), and (3) shall be applicable to letters of censure issued in execution of a court-martial sentence.

(2) *By whom issued.* Letters of censure in execution of sentences of summary courts-martial shall be issued by the convening authority. In those special and general court-martial cases wherein a sentence imposing censure is ordered executed by the convening authority, he shall issue the letter as part of his action on the record in accordance with the provisions of paragraph 89c(9), MCM. Otherwise the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) *Contents.* The letter shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

A copy of this letter will be placed in your official record in (the Bureau of Naval Personnel) (Headquarters, U.S. Marine Corps). You are therefore privileged to forward, within 15 days after receipt of this action, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement shall not contain countercharges.

(4) *Procedure for issuance.* The original letter shall be delivered to the accused and a copy appended to the convening authority's action (or the promulgating order of the officer subsequently directing execution of the sentence). The ac-

tion (or order) should refer to the letter in the following tenor:

Pursuant to the sentence of the court, as herein approved, a letter of (reprimand) (admonition) is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

(5) *Forwarding copy to Department.* Upon receipt of the accused's written statement or his written declaration that he does not desire to make a statement, an additional copy, together with the statement or declaration, shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(6) *Appeals.* Review, including appellate review, of letters of censure issued as part of an approved court-martial sentence will be accomplished as provided for by the Uniform Code of Military Justice, the Manual for Courts-Martial, and this Manual with respect to the proceedings of the particular court-martial which imposed the sentence. No separate appeal from these letters will be considered.

(e) *Designation of places of confinement.* The convening authority of a court-martial sentencing an accused to confinement is a competent authority to designate the place of temporary custody or confinement of naval prisoners. See § 719.146.

(f) *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been approved, whether or not suspended, in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record facts which tend to extenuate, mitigate, or aggravate the offense or offenses and which do not appear in the court record or in the papers accompanying the same. If the accused entered a plea of guilty, the convening authority shall also include a synopsis of the circumstances of the offense amplifying the allegations set forth in the specification, regardless of whether such facts are otherwise set forth in the record of trial. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority, and any statement made by the accused in rebuttal shall be appended to such action. See paragraph 85b, MCM for limitations on consideration of adverse matter.

§ 719.124 Promulgating orders.

(a) *General and special courts-martial.*—(1) *When promulgating orders required.* Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening

¹ Filed as part of original document.

authority or any other party empowered to take such action shall be promulgated as prescribed in paragraphs 90 and 91, MCM. Separate orders shall be issued for each accused in the case of a joint or common trial. See Note, Appendix 15a, MCM, page A15-2.

(2) *When supplementary order is not required.* Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement.

(3) *Supplementary orders in Navy Court of Military Review cases.* If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the Navy Court of Military Review and, in appropriate cases, the U.S. Court of Military Appeals, no supplementary court-martial order is necessary. Although not necessary for the validity of the action taken, a supplementary court-martial order shall be issued in all other cases. Such orders shall be published as follows:

(i) Supplementary orders in cases involving flag or general officers, death sentences, and dismissals are issued by the Judge Advocate General by direction of the Secretary of the Navy.

(ii) Other supplementary orders shall be issued by the cognizant general court-martial authority. In cases not reviewed by the U.S. Court of Military Appeals (by petition or certification), orders should be issued immediately following the accused's execution of a "Request for Immediate Execution of Discharge" (see § 719.135) or upon expiration of 30 days from the date of service of the Navy Court of Military Review decision upon the accused. In cases considered by the U.S. Court of Military Appeals, supplementary orders should be issued upon notification of completion of review by the court.

(iii) All supplementary orders in Navy Court of Military Review cases shall bear the "NCM" number appearing on the Navy Court of Military Review decision.

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, MCM. In copying and including the action of the convening authority in the promulgating order, any synopsis of the offense contained in the convening authority's action pursuant to § 719.123 (c) and/or § 719.123(f) shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade, and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words: "By direction of (name, grade, title, and or-

ganization of issuing officer)." Duplicate originals of promulgating orders are copies personally subscribed by the officer who subscribed the original. Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade, and title of an officer.

(5) *Distribution.* All initial and supplementary promulgating orders shall be distributed as follows (the original and all copies must be legible):

(i) Original to be attached to original record of trial.

(ii) Duplicate original to be placed in the service record or service record book of the accused, unless the court-martial proceedings resulted in acquittal of all charges; disapproval of all findings of guilty; or disapproval of the sentence by the convening authority when no findings have been expressly approved by him.

(iii) Certified copies:

(a) Three to be attached to the original record of trial.

(b) One to be attached to each copy of the record of trial.

(c) Two to the commanding officer of the accused if a brig or correctional center is designated as the place of confinement; three if a disciplinary command is designated as the place of confinement. These copies should accompany the records of accused to the place of confinement.

(d) One to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(e) One to the Senior Member, Naval Clemency and Parole Board, Washington, D.C. 20370, if the sentence, as approved by the convening authority, includes an unsuspended punitive discharge or confinement for 8 months or more.

(iv) Plain copies:

(a) One to the accused.

(b) One each to the military judge, trial counsel, and defense counsel of the court-martial before which the case was tried.

(c) One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

(d) One to each appropriate subordinate unit and any other local distribution desired.

(b) *Summary courts-martial.* In accordance with paragraph 90e, MCM, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial pursuant to § 719.125(a), subsequent to the initial action of the convening authority, shall be communicated to the convening authority and to the commanding officer of the accused for notation in the service record or service record book of the accused.

§ 719.125 Review of summary and special courts-martial.

a. *Summary courts-martial and special courts-martial not involving a bad con-*

duct discharge.—(1) *Officers having supervisory powers.* In addition to the officer immediately exercising general court-martial jurisdiction over a command, the Judge Advocate General, the Deputy Judge Advocate General, any Assistant Judge Advocate General, all officers exercising general court-martial jurisdiction, and the deputies or chiefs of staff of officers exercising general court-martial jurisdiction are designated as having supervisory authority for the review of records of trial pursuant to 10 U.S.C. 865(c), and paragraph 94a(2), MCM.

(2) *Selection of supervisory authorities.* It is the policy of the Department of the Navy that review of cases pursuant to paragraph 94a(2), MCM will be accomplished in the field, unless compelling reasons exist for forwarding the record or records to the Judge Advocate General for review.

(i) For commands in a Navy chain of command, review pursuant to paragraph 94a(2), MCM will be accomplished, if practicable, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, by the area coordinator authorized to convene general courts-martial. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding of the record. An immediate or delegated area coordinator may take action in lieu of an area coordinator if he has authority to convene general courts-martial.

(ii) For commands in the chain of command of the Commandant of the Marine Corps, review pursuant to paragraph 94a(2), MCM, will be accomplished within the chain of command if practicable. If such accomplishment of the review is found not practicable, any officer having supervisory authority in the field may be requested to accept records of such cases and to act thereon pursuant to paragraph 94a(2), MCM. Only if all reasonably available officers having supervisory authority in the field find it impracticable to grant such requests, will the records in such cases be forwarded to the Judge Advocate General for review. If so forwarded to the Judge Advocate General, each record shall be accompanied by a letter stating the reasons why supervisory authority action was not accomplished in the field.

(3) *Courts convened by an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial jurisdiction is the convening authority of a summary court-martial or a special court-martial not involving a bad conduct discharge, his action thereon shall be as convening authority only.

(i) At activities in a Navy chain of command, the record should be forwarded, in the absence of specific direction to the contrary by a superior in the chain of command, to the area coordinator if superior in rank or command to the convening authority and authorized to

convene general courts-martial, otherwise the record should be forwarded to any appropriate superior officer authorized to convene general courts-martial, or if no such superior officer has a judge advocate available, the record shall be forwarded to the Judge Advocate General for review. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding the record.

(ii) At activities in the chain of command of the Commandant of the Marine Corps, the record should be forwarded to an appropriate superior officer exercising general court-martial jurisdiction or, if no such superior officer has a judge advocate available, the record shall be forwarded to the Judge Advocate General for review.

(4) *Identification of officer to whom record is forwarded for supervisory review.* In all cases, the action of the convening authority in forwarding the record for supervisory review shall identify the officer to whom the record is forwarded by stating his official title, such as "The record of trial is forwarded to the Commandant, First Naval District, for action under 10 U.S.C. 865(c)."

(5) *Review procedures.* (i) In accordance with the provisions of paragraph 94a(2), MCM, the officer having supervisory authority shall cause a judge advocate to review records of trial received for review under 10 U.S.C. 865(c). Unless, following such review, corrective or mitigating action by the officer having supervisory authority is required or recommended, no supervisory action need be taken. In lieu thereof, a notation may be made on the record of trial by the judge advocate who reviewed the record, reciting the designation of the command in which the review was accomplished; the date; the result of the review; and the signature of the judge advocate. In such cases, notification of the review and the result thereof will be made to the convening authority, the accused, and the commanding officer of the accused for notation in the service record or service record book of the accused. In cases in which corrective or mitigative action is required or recommended, action will be placed on the record of trial over the signature of the supervisory authority and a supplemental promulgating order will be issued (see § 719.124(a)(2)).

(ii) If the officer having supervisory authority disagrees with the recommendation of the judge advocate as to a matter of law, he shall not place an action on the record but shall forward the record to the Judge Advocate General, together with a signed copy of the judge advocate's recommendation, by a letter of transmittal giving his reasons for disagreement with the judge advocate's recommendation. When the question of law has been resolved by the Judge Advocate General, he may either take action on the record as the officer having supervisory authority, or he may return the record together with a final determination as to the law of the case, to

the cognizant officer having supervisory authority for his action on the record.

(iii) Any action on the record by the officer having supervisory authority shall affirmatively indicate that the record was reviewed by a judge advocate by including the statement "This record has been reviewed in accordance with 10 U.S.C. 865(c)."

(b) *Special courts-martial involving a bad conduct discharge—(1) Action by convening authority who is an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial jurisdiction is the convening authority of a special court-martial which involves a bad conduct discharge, and if such discharge is approved by him, the record shall be forwarded directly to the Navy Appellate Review Activity for review by the Navy Court of Military Review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM.

(2) *Action by reviewing authority (officer exercising general court-martial jurisdiction).* In special court-martial cases where the sentence as approved by the convening authority who is not an officer exercising general court-martial jurisdiction includes a bad conduct discharge, review will be accomplished in accordance with paragraph 94a(3), MCM.

(i) For activities in a Navy chain of command, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, review will be accomplished by the area coordinator authorized to convene general courts-martial. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of forwarding of the record. An immediate or delegated area coordinator may take action in lieu of an area coordinator if he has authority to convene general courts-martial. As indicated above, a superior officer authorized to convene general courts-martial in the chain of command may direct otherwise; he may, for example, direct that the records be forwarded to him for review.

(ii) For activities in the chain of command of the Commandant of the Marine Corps, review will be accomplished by the officer ordinarily exercising general court-martial jurisdiction over the command. In the event review by any of the foregoing is impracticable (e.g., because of the absence or lack of a staff judge advocate) any other officer authorized to convene general courts-martial may be requested to accept records of trial for review. Only if all reasonably available officers exercising general court-martial jurisdiction find it impracticable to grant such request will the records be forwarded directly to the Navy Appellate Review Activity for review by the Navy Court of Military Review. If so forwarded, they shall be accompanied by a letter stating the reasons why review under 10

U.S.C. 865(b) was not accomplished in the field.

(3) *Disagreement between reviewing authority and his staff judge advocate.* If the reviewing authority is in disagreement with his staff judge advocate as to any matter of law, he shall take such action on the record as is within his discretionary powers notwithstanding the disagreement, and shall transmit the record of trial, with an expression of his own views as to the matters of law involved in the disagreement, to the Navy Appellate Review Activity for review by the Navy Court of Military Review.

(4) *Disapproval of bad conduct discharge by reviewing authority.* If a reviewing authority determines that he will not approve that portion of the sentence which provides for a bad conduct discharge, he shall, prior to placing his action upon the record, cause the record to be reviewed by a judge advocate in accordance with 10 U.S.C. 865(c), and in the manner set forth in paragraph (2) (3) of this section.

(c) *Special courts-martial tried in joinder or in common.* When one or more of the sentences adjudged in cases tried in joinder or in common require review only under paragraph 94a(2), MCM (not involving an approved bad conduct discharge), and the remaining sentence or sentences require review under paragraph 94a(3), MCM (including an approved bad conduct discharge), the officer exercising general court-martial jurisdiction shall cause each of the sentences to be reviewed in accordance with the applicable paragraph of the MCM. In his action on the sentence or sentences requiring review under paragraph 94a(3), MCM, he shall state that the sentence or sentences requiring review only under paragraph 94a(2), MCM, have been reviewed in accordance with 10 U.S.C. 765(c). The original of the action or review taken on the sentence or sentences requiring review only under paragraph 94a(2), MCM, shall be filed with the copy or copies of the record in the files of the officer exercising general court-martial jurisdiction, and a copy of such action or review shall be attached to the record forwarded to the Judge Advocate General, together with the action taken on the sentence or sentences requiring review under paragraph 94a(3), MCM.

§ 719.126 *Action on special courts-martial by general court-martial convening authorities.*

(a) *Suspension of sentences.* Officers exercising general court-martial jurisdiction are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence which was adjudged and approved by the convening authority.

(b) *Designation of places of confinement.* The general court-martial convening authority who orders a sentence of confinement into execution subsequent

to the initial action of the convening authority on the record shall designate the place of confinement in his action on the record. See also § 719.146.

§ 719.127 Supervision over court-martial records and their disposition after review in the field.

(a) *JAG supervision.* Records of all trials by courts-martial in the naval service are under the supervision of the Judge Advocate General of the Navy.

(b) *Navy Court of Military Review cases.* After completion of review in the field, all records requiring review by the Navy Court of Military Review shall be forwarded to the Navy Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

(c) *Other general court-martial cases.* General court-martial cases which do not require review by the Navy Court of Military Review under 10 U.S.C. 866(b), shall be forwarded to the Navy Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

(d) *Summary courts-martial and special courts-martial not involving a bad conduct discharge.* The records of trial of such cases shall be filed as provided in § 719.136.

§ 719.128 Criminal activity, disciplinary infractions, and court-martial report.

NAVJAG Form 5800/9 (Rev. 4-69) will be prepared by each supervisory authority for semiannual submission to the Judge Advocate General (Code 007), Navy Department, Washington, D.C. 20370. Reports must reach the Judge Advocate General no later than January 31 and July 31 of each year. Supplies of NAVJAG Form 5800/9 (Rev. 4-69) are available in the Forms and Publications Segment of the Navy Supply System under Stock No. 0105-100-8092. A sample form is set forth in appendix section 1-1.

§ 719.129 Remission and suspension.

(a) *Authority to remit or suspend sentences.*—(1) *General.* Pursuant to the provisions of 10 U.S.C. 874(a) and paragraph 97a, MCM, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the Judge Advocate General, and all officers exercising general court-martial jurisdiction over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. However the Judge Advocate General shall not exercise this power in cases involving flag or general officers, and officers exercising general court-martial jurisdiction shall not exercise this power in cases involving officers or warrant officers. A sentence to death may not be suspended. Any action authorized by this subsection may be taken without regard to whether the person acting has previously approved the sentence.

(2) *Authority of Commanding Officer, Naval Disciplinary Command, Portsmouth, N.H.* Authority of the Commanding Officer, Naval Disciplinary Command, Portsmouth, N.H., to take action pursuant to 10 U.S.C. 874(a), other than remission or suspension of any part or amount of any sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge, is limited to the following:

(i) Effecting actions directed by the Secretary following clemency review.

(ii) Remission of uncollected forfeitures in the cases of court-martial prisoners who are to be returned to duty.

(iii) Remission of confinement, not in excess of 5 days, for the purpose of facilitating administration by adjusting dates of transfer upon completion of confinement. Early releases in excess of 5 days may be granted when specifically authorized by the Chief of Naval Personnel.

(iv) In the event of an emergency, where, in the opinion of the commanding officer, the requirement to remit additional confinement or a punitive discharge is of such immediate nature as to preclude the normal or urgent processes of clemency as provided by SECNAVINST 5815.3 series, the commanding officer may take such action following report of the circumstances to, and having received concurrence in such action of, the Secretary of the Navy (Naval Clemency and Parole Board).

(3) *Inferior courts-martial.* Paragraph 97a, MCM, grants power to remit or suspend any part or amount of the unexecuted portion of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge to the officer having supervisory authority (§ 719.125a) and the commanding officer of the accused who has immediate authority to convene a court of the kind that adjudged the sentence.

(b) *Probationary period.* All suspensions shall be of the conditional remission type and shall be for a definite period of time. The running of the period of suspension of a sentence is interrupted either by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the sentence. The running of the period of suspension of a sentence resumes: (1) As of the date the probationer's unauthorized and unexcused absence ends; or (2) as of the initial date of the interruption if proceedings to vacate suspension of the sentence are concluded without vacation of the suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 series.

(c) *Liaison with Naval Clemency and Parole Board.* Officers who take clemency action pursuant to the authority of paragraph (a) of this section on any sentence which includes a punitive discharge or confinement for 8 months or more shall coordinate such action with the Naval Clemency and Parole Board in accordance

with the provisions of SECNAVINST 5815.3 series.

§ 719.130 Effective date of confinement and forfeitures when previous sentence not completed.

(a) *Confinement.* When a prisoner serving a sentence to confinement adjudged by court-martial is convicted by a court-martial for another offense and sentenced to a term of confinement, the subsequent sentence, upon being ordered into execution, will begin to run as of the date adjudged and will interrupt the running of the prior sentence. After the subsequent sentence has been fully executed, the prisoner will resume the service of any unremitted interrupted sentence to confinement.

(b) *Forfeitures.* If forfeitures are being collected pursuant to a sentence adjudged by a previous court-martial at the time the convening authority takes action approving a sentence to forfeitures adjudged by a subsequent court-martial, he may, in his discretion, provide in his action that the application of forfeitures adjudged by the latter court-martial will be deferred until the date upon which the sentence to forfeitures adjudged by the previous court-martial has been fully executed.

§ 719.131 Vacation of suspension.

(a) *Form of order.* The forms prescribed in Appendix 15e, MCM, shall be used for promulgating orders vacating suspensions of sentences. In cases where 10 U.S.C. 871(c) is applicable and appellate review is not complete, the final sentence of the appropriate form may be modified to read: "Upon completion of appellate review pursuant to 10 U.S.C. 871(c), the sentence as affirmed may be executed without further order."

(b) *Distribution of order.* The promulgating order shall be distributed in accordance with the applicable provisions of § 719.124, except that in 10 U.S.C. 872 (a) cases the original promulgating order and original report of proceedings to vacate suspension shall be forwarded to the Judge Advocate General for attachment to the record of trial.

§ 719.132 Approval of sentences extending to dismissal of an officer.

Pursuant to the authority of 10 U.S.C. 871(b), the Under Secretary of the Navy and the Assistant Secretaries of the Navy are designated as empowered to approve sentences extending to the dismissal of an officer (other than a general or flag officer), or such part, amount, or commuted form of such sentences as they see fit, and to suspend the execution of any part of the sentence as approved.

§ 719.133 Service of decision of Navy Court of Military Review on accused.

(a) *Promulgation packages.* When, in accordance with the provisions of paragraph 100c, MCM, the Judge Advocate General elects not to certify a case to the U.S. Court of Military Appeals, a "promulgation package" will be prepared by his office and forwarded to the officer immediately exercising general

¹ Filed as part of original document.

court-martial jurisdiction over the command to which the accused is attached. The package shall include copies of the Navy Court of Military Review decision, a copy of the initial and supplementary court-martial orders, an endorsement (on the accused's copy of the decision) notifying him of his right to petition for review, a form of petition for review, and a postcard receipt to be signed by the accused. The package normally will also include directions to take action in accordance with the provisions of this section; however, detailed instructions may be included.

(b) *Delay in service.* Delivery of the Navy Court of Military Review decision to the accused shall be accomplished as soon as possible, unless delay is expressly authorized by the Judge Advocate General.

(c) *Change in place of confinement.* To avoid delay in service, it is imperative that the Judge Advocate General, as well as the designated confinement activity, be notified when the place of confinement or temporary custody, as designated in the initial court-martial order, is changed. In addition, any activity which receives information indicating that a promulgation package has been misaddressed because of any such change shall immediately notify those concerned.

(d) *Action by general court-martial authority.* Upon receipt of a promulgation package, the officer exercising general court-martial jurisdiction will determine whether the accused is still under his jurisdiction.

(1) *Accused transferred.* If the accused has been transferred from that jurisdiction, the package will be forwarded by endorsement (copy to Judge Advocate General) to the officer currently exercising general court-martial jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General informed.

(2) *Accused present.* If the accused is under the jurisdiction of the recipient of the promulgation package and present within his command, action shall be taken as follows:

(i) The accused's copy of the Navy Court of Military Review decision, with the endorsement thereon, and the petition for review form shall be delivered to the accused.

(ii) The accused's signature should be obtained on the postcard receipt. If the accused refuses to sign the receipt, a certificate of personal service reciting the facts shall be prepared.

(iii) The date of service shall be noted on the copy of the Navy Court of Military Review decision marked for the general court-martial authority and the copy marked for the accused's commanding officer, if appropriate, and the copies filed accordingly.

(iv) The postcard receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General.

(3) *Accused on leave awaiting appellate review or administratively separated*

prior to completion of appellate review. If the accused is on leave awaiting appellate review pursuant to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, or if the accused has been administratively separated prior to completion of appellate review, the following shall apply:

(i) Service shall be made by registered mail, return receipt requested, in accordance with the provisions of those manuals.

(ii) Signature on the return receipt by anyone at the accused's leave address (or address of record if administratively separated) shall constitute notification as of the date of the receipt to the accused of the decision of the Navy Court of Military Review and shall commence the running of the 30-day appeal period.

(iii) The general court-martial authority shall cause a certificate of service by registered mail to be executed and to be mailed, together with the return receipt to the Judge Advocate General.

(iv) If no signed return receipt is received (for example, because the accused has changed his address without notifying his commanding officer), constructive service shall be made in the manner prescribed in paragraph (d)(4) of this section.

(4) *Accused absent or not at leave address or home of record.* When delivery cannot be made to an accused because he is absent without leave from his assigned ship or station, or because, having been granted leave under the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, he has changed his address without notifying his commanding officer, or because, having been administratively separated, he has changed the address listed as his home of record at the time of his separation without notifying proper authorities, if appropriate, constructive service may be made by certificate of attempted service, in accordance with the following:

(i) *Execution of certificate of attempted service.* The certificate of attempted service shall be executed in triplicate by the officer attempting service, and shall show the date, place, and manner in which service was attempted. In addition, it shall show either

(a) that personal service could not be made because the accused was absent without authority from his assigned ship or station, or (b) that service by registered mail, return receipt requested, could not be made at the accused's leave address because he changed such address without notifying his commanding officer (or such other facts showing why a return receipt was not obtained). There shall be attached to the certificate of attempted service as enclosures thereto an authenticated extract copy of the entry in the service record or the service record book of the accused relating to his unauthorized absence or administrative separation or relating to his leave under the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, and an

authenticated copy of Form DD 553 (Deserter-Absentee Wanted by Armed Forces), if issued, or the returned envelope showing the reason for non-delivery of attempted service by registered mail.

(ii) *Distribution.* Two copies of the certificate of attempted service shall be forwarded to the Judge Advocate General. One copy shall be forwarded to the Chief of Naval Personnel or to the Commandant of the Marine Corps, as appropriate. Two copies shall be retained by the officer immediately exercising general court-martial jurisdiction over the accused.

(c) *Return of accused within appeal period.* If the accused returns to his assigned ship or station or advises his commanding officer of his correct address within the 30-day appeal period, a copy of the promulgation package and a copy of the certificate of attempted service shall be served upon him. If he returns to the naval service within the appeal period at some place other than his assigned ship or station, the promulgation package and a copy of the certificate of attempted service shall be transmitted by the most expeditious means to such place for personal service upon him. In either case, the required endorsement, notifying the accused of his right to petition the U.S. Court of Military Appeals, should be modified by an appropriate endorsement informing him that his appeal period is limited to 30 days from the date of the certificate of attempted service. A receipt from the accused for his copy of the decision of the Navy Court of Military Review and for the certificate of attempted service shall be obtained and forwarded to the Judge Advocate General.

(d) *Effect of constructive service.* Constructive service constitutes notification to the accused of the decision of the Navy Court of Military Review and commences the running of the 30-day appeal period within which he may petition the U.S. Court of Military Appeals for grant of review. At the termination of the 30-day appeal period, action will be taken in the same manner as though the accused had been served personally or by registered mail on the date of the execution of the certificate of attempted service.

(e) *Form.* The form set forth in Appendix section 1-j¹ is recommended but may be modified as necessary to meet the requirements of a particular case.

§ 719.134 Execution of sentence.

(a) *General.* When the sentence of an enlisted man or warrant officer as affirmed by the Navy Court of Military Review includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for 1 year or more, it may not, except as provided in § 719.135, be executed until completion of appellate review, i.e., expiration of the 30-day appeal period if no petition for review is filed, or final review by the U.S. Court of Military Appeals. When such sentence as

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affirmed by the Navy Court of Military Review does not include, unsuspended, a dishonorable or bad conduct discharge, or confinement for 1 year or more, it may be executed without further delay. See § 719.124 for requirements concerning issuance of promulgating orders.

(b) *Execution of punitive discharge.* In addition to the foregoing requirements, and notwithstanding the fact that the sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 series have been complied with.

§ 719.135 Request for immediate execution of discharge.

(a) *General.* Prior to completion of appellate review, an accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which his sentence as affirmed by the Navy Court of Military Review:

(1) Includes an unsuspended punitive discharge; and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed prior to 30 days from the date the accused is served with a copy of the Navy Court of Military Review decision.

(b) *Conditions of approval.* Such requests may be approved by the officer exercising general court-martial jurisdiction subject to the following conditions:

(1) That the accused has received a copy of the decision of the Navy Court of Military Review in his case;

(2) That the accused has had fully explained to him his right to petition the U.S. Court of Military Appeals for grant of review;

(3) That the accused does not have an appeal pending before the U.S. Court of Military Appeals;

(4) That the accused does not intend to appeal to the U.S. Court of Military Appeals but, nevertheless, understands that his request for immediate release does not affect his right seasonably to petition the U.S. Court of Military Appeals;

(5) That the accused has consulted counsel of his own choice; and

(6) That Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 series, if applicable, has been completed.

(c) *Execution of unexecuted portion of sentence.* Upon approval of such requests, the officer exercising general court-martial jurisdiction shall order the unexecuted portion of the sentence to be duly executed.

(d) *Form of request for immediate execution of discharge.* The prescribed form is set forth in Appendix section 1-k.¹ Three signed copies of the request shall be transmitted to the Judge Advocate General.

§ 719.136 Filing of court-martial records.

(a) *General courts-martial.* All records of trial by general court-martial

shall, after completion of final action, be filed in the Office of the Judge Advocate General.

(b) *Special courts-martial.* Records of trial by special court-martial which (1) involve an officer accused or (2) have been acted upon by the Navy Court of Military Review, including those cases which have been returned to the officer exercising general court-martial jurisdiction for further action, shall, after completion of final action, be filed in the Office of the Judge Advocate General. All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

(c) *Summary courts-martial—(1) Shore activities.* Officers having supervisory authority over shore activities shall retain original records for a period of two years after final action. At the termination of such retention period, the original records of proceeding shall be transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

(2) *Fleet activities.* Officers having supervisory authority who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, shall retain original records of proceedings for a period of 3 months. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

Subpart E—Miscellaneous Matters

§ 719.137 Financial responsibility for costs incurred in support of courts-martial.

Financial responsibility for costs incurred as the result of necessary activities of appointees to or witnesses called before courts-martial will be governed by the following:

(a) *Travel, per diem, and fees.* (1) The costs of travel and per diem of military personnel and civilian employees of the Navy, but excluding that of personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof, when acting as military judges of general courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof, when acting as military judges of general courts-martial will be charged to the operation and maintenance allotment of the Judge Advocate General.

(2) Subject to obtaining authorization from the Commandant of the Naval District or the Fleet or Force Commander concerned, the costs of fees and mileage of civilians, other than employees of the Navy, will be charged as follows:

(i) When the convening authority is a Navy activity, costs will be charged to appropriation "Operation and Maintenance, Navy" funds administered by the Bureau of Naval Personnel.

(ii) When the convening authority is a Marine Corps command, costs will be charged to the operating budget which supports the temporary additional duty travel for the convening authority.

(b) *Services and supplies.* (1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(i) In-house costs which are direct, out-of-pocket, identifiable, and which total \$100 or more in a calendar month; and

(ii) Costs which arise under contracts which were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services or supplies.

§ 719.138 Fees of civilian witnesses.

(a) *Method of Payment:* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed, public voucher or such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial.

(2) Summary court.

(3) Counsel for the court in a court of inquiry.

(4) Recorder or junior member of a board to redress injuries to property.

(5) Military or civil officer before whom a deposition is taken.

(i) The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 5), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the

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witness the fees and mileage supported by the public voucher.

(b) Obtaining money for advance tender or payment: Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witnesses for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) Reimbursement: If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) Certificate of person before whom deposition is taken: The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned. See paragraph 117b(9), MCM.

(e) Payment of accrued fees: The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) Computation: Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) Nontransferability of accounts: Accounts of civilian witnesses may not be transferred or assigned.

(h) Signatures. Signatures of witnesses signed by mark must be witnessed by two persons.

(i) Rates for civilian witnesses prescribed by law.

(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive:

(i) \$20 for each day's actual attendance and for the time necessarily oc-

cupied in going to and returning from the place of attendance.

(ii) \$16 per day for expenses of subsistence (including the time necessarily occupied in going to and returning from the place of attendance) if the witness attends at a point so far removed from his residence as to prohibit return therefrom day to day.

(iii) 10 cents per mile for going from and returning to his place of residence, provided such travel is performed as a direct result of being compelled or required to appear as a witness. Regardless of the mode of travel employed by the witness, computation of mileage in this respect shall be made on the basis of a uniform table of distances adopted by the Attorney General (Rand McNally Standard Highway Mileage Guide or any other generally accepted highway mileage guide which contains a short-line nationwide table of distances and which is designated by the Assistant Attorney General for Administration for such purpose). With respect to travel in areas for which no such highway mileage guide exists, mileage shall be computed on the basis of (a) the mode of travel actually employed, (b) a usually traveled route, and (c) distances as generally accepted in the locality. In lieu of the mileage allowance provided for herein, witnesses who are required to travel between Hawaii, Puerto Rico, the territories and possessions, or to and from the continental United States, shall be entitled to the actual expenses of travel at the lowest first class rate available at the time of reservation for passage by the means of transportation employed.

(iv) Paragraph (i)(1) of this section shall not apply to Alaska. See 28 CFR 21.3 for fees and allowances of witnesses in Alaska, or the Judge Advocate General will, upon request, furnish the current applicable rates.

(v) Further, nothing in paragraph (i)(1) of this section shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for: (a) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of the issuance of invitational orders; or (b) for travel which is performed prior to being duly summoned as a witness; or (c) for travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) *Civilian witnesses in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid (i) his necessary expenses, incident to travel by common carrier or, if travel is made by privately owned automobile, mileage at the rate of 10 cents per mile, and (ii) a per diem allowance at the rate of \$25 in lieu of subsistence within the continental limits of the United States. In Alaska, Hawaii, and outside the United States, he shall be paid at the maximum rates prescribed by the Bureau of the Budget pursuant to

the Travel Expense Act of 1949, as amended (5 U.S.C. 5702). Such per diem allowance shall be paid in accordance with the provisions of the Standardized Government Travel Regulations (see NCPI 4650). If the tribunal is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

(j) Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested in accordance with paragraph 115a, MCM, or whose testimony is determined not to meet the standards of relevancy and materiality set forth in that paragraph.

(k) Expert witnesses: (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the staff judge advocate of the local area coordinator. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commandant of the Fourteenth Naval District. See paragraph (1) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (i) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with paragraph 115, MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(1) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

§ 719.139 Warrants of attachment.

Warrants of attachment shall not be issued without prior approval of the Judge Advocate General, acting for the Secretary of the Navy, in each case.

§ 719.140 Security of classified matter in judicial proceedings.

(a) *General.* Every precaution shall be taken by convening authorities, military judges, presidents of special courts-martial, summary courts, and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves security information or cryptographic systems and publications, the convening authority, military judge, president of a special court-martial, summary court, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of the Department of the Navy Security Manual for Classified Information paragraph 33f, MCM, and SECNAVINST 5511.4 series.

(b) *Security clearance of personnel.* If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Department of the Navy Security Manual for Classified Information must be granted to all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused himself, and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in his determination that permission to try a particular case be requested from the Secretary of the Navy in accordance with the provisions of paragraph 33f, MCM. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this subsection have not been complied with, the military judge or president of a special court-martial or summary court shall adjourn the court and refer the matter to the convening authority.

(c) *Procedures concerning spectators.* See § 719.115 which prescribes procedures necessary to prevent the dissemination of classified information to other than authorized persons.

§ 719.141 Court-martial forms.

(a) *List.* The forms listed below are used in courts-martial by the naval service:

- STD 1156 Public Voucher for Fees and Mileage of Witnesses.
- STD 1157 Claim for Fees and Mileage of Witnesses.
- DD 453 Subpoena for Civilian Witness.
- DD 454 Warrant of Attachment.
- DD 455 Report of Proceedings to Vacate Suspension.
- DD 456 Interrogatories and Depositions.
- DD 457 Investigating Officer's Report.
- DD 458 Charge Sheet.
- DD 490 Verbatim Record of Trial.
- DD 491 Summarized Record of Trial.
- DD 493 Extract of Military Records of Previous Convictions.
- DD 494 Court-Martial Data Sheet (Optional).
- DD 1722 Request for Trial Before Military Judge Alone.

NAVJAG 5800/9 Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 4-69).

NAVJAG 5813/1 Court-Martial Data (Rev. 4-69).

NAVJAG 5813/2 Court-Martial Case Report (Rev. 6-69).

(b) *How to obtain forms.* The above-designated forms are available from the Forms and Publications Segment of the Navy Supply System as cognizance symbol "I" material and may be obtained in accordance with the instructions contained in Navy Stock List of Forms and Publications, NAVSUP Publication 2002. Marine Corps activities will requisition forms in accordance with instructions contained in Chapter 22 of Marine Corps Unified Material Management System Manual, Marine Corps Order P-4400.84.

(c) *Forms prescribed by MCM.* Where forms are prescribed by the Manual for Courts-Martial, but are not immediately available, convening authorities may improvise as necessary, using the MCM and appendices thereto as guides.

§ 719.142 Suspension of counsel.

(a) *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM, and these regulations, been suspended from acting as counsel before courts-martial and the Navy Court of Military Review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM, and from withdrawal of certification made pursuant to 10 U.S.C. 826 and 827.

(b) *Grounds for suspension.* Suspension shall be accomplished only when, by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or the Navy Court of Military Review. Specific grounds for suspension include, but are not limited to:

- (1) Demonstrated incompetence while acting as counsel during pretrial, trial or post-trial stages of a court-martial;
- (2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;
- (3) Fabricating papers or other evidence;
- (4) Tampering with a witness;
- (5) Abusive conduct toward the court-martial, the Navy Court of Military Review, the military judge, or opposing counsel;
- (6) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46, and 48, MCM);
- (7) Conviction of an offense involving moral turpitude or conviction of a violation of 10 U.S.C. 848;
- (8) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or
- (9) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

Action to suspend should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems from inexperience or lack of instruction in the performance of legal duties. The Code of Professional Responsibility of the American Bar Association is considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and the Navy Court of Military Review, and is quoted, in part, for guidance:

DR 2-110 WITHDRAWAL FROM EMPLOYMENT

(A) *In general.* (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) *Mandatory withdrawal.* A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) *Permissive withdrawal.* If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 4-101 PRESERVATION OF CONFIDENCES AND SECRETS OF A CLIENT

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

(B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 6-101 FAILING TO ACT COMPETENTLY

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 7-101 REPRESENTING A CLIENT ZEALOUSLY

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment under DR 2-110, DR 5-102, and DR 5-105, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 PERFORMING THE DUTY OF PUBLIC PROSECUTOR OR OTHER GOVERNMENT LAWYER

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 COMMUNICATING WITH ONE OF ADVERSE INTEREST

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7-106 TRIAL CONDUCT

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 [SECTIONS (A)-(E)] TRIAL PUBLICITY [SEE ALSO: § 719.115]

(A) A lawyer participating in or associated with the investigation of a criminal

matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or test of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(c) *Action to suspend.*—(1) *General.* Action to suspend a person from acting as counsel before courts-martial and the Navy Court of Military Review will be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effectiveness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff-judge advocate, or member of the Navy Court of Military Review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action shall be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as military judge or counsel of general courts-martial pursuant to 10 U.S.C. 826 or 827. The board shall cause notice to be given to the counsel concerned, informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel shall be permitted at least 5 days subsequent to notice to prepare for a hearing. Failure to appear on a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was not convened by the Judge Advocate General, the officer who appointed the board shall (unless he deems the investi-

gation incomplete, in which case he may direct further investigation and hearing), forward the report of the board to the his comments and recommendations Judge Advocate General together with concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board, the Judge Advocate General shall determine whether the person involved shall be suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as military judge or as counsel before general courts-martial made pursuant to 10 U.S.C. 826 or 827.

§ 719.143 *Petition for new trial under 10 U.S.C. 873.*

(a) *Statutory provisions.* 10 U.S.C. 873, provides, "At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

(b) *Time limitations.* If the petition for new trial was placed in military channels within 2 years after approval of a sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate General, it shall be considered to have been seasonably filed. Except in extraordinary circumstances, petitions will not be acted upon by the Judge Advocate General until all reviews in the field, contemplated by 10 U.S.C. 865, have been completed.

(c) *Submission procedures.* If the petitioner is on active duty the petition shall be submitted to the Judge Advocate General via the petitioner's commanding officer, the command which convened the court, and the command that took supervisory authority action on the case. If the supervisory authority has the record of trial he will forward it as an enclosure to his endorsement on the petition. The endorsement shall include information and comments as deemed appropriate. If the petitioner is no longer on active duty the petition may be submitted directly to the Judge Advocate General. If more than one court-martial is involved, a separate petition shall be filed for each trial.

(d) *Contents of petitions.* The form and contents of petitions for new trial are

specified in paragraph 109e, MCM. In addition, the petition shall include the following:

- (1) Place of trial.
- (2) Command title of the organization at which the court-martial was convened (convening authority).
- (3) Command title of the officer exercising general court-martial jurisdiction over the petitioner at the time of trial (supervisory authority).
- (4) Type of court-martial which convicted the petitioner.

(e) *Receipt in the Office of the Judge Advocate General.* (1) If the case is pending before the Navy Court of Military Review or the U.S. Court of Military Appeals, or will be so pending, the petition will be referred for action to the Navy Court of Military Review or the U.S. Court of Military Appeals, as appropriate. If referred for action to the Navy Court of Military Review, such court shall take action in accordance with Courts of Military Review rules of practice and procedure.

(2) In all other cases the Judge Advocate General may take one or more of the following actions as appropriate:

(i) Return the petition for compliance with the procedural requirements of paragraph 109e, MCM, and paragraph (d) of this section.

(ii) Deny the petition if relief is not warranted under the criteria set forth in paragraph 109d, MCM.

(iii) Grant the petition if relief is warranted under the criteria set forth in paragraph 109d, MCM.

(iv) Refer the petition to one or more officers for review and preparation of a recommendation for the Judge Advocate General. In the event such a referral is made, counsel for the Government and for the petitioner will be designated and a hearing with oral argument after submission of briefs may be permitted.

§ 719.144 Application for relief under 10 U.S.C. 769, in cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 769 provides in pertinent part, "Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused."

(b) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that took supervisory authority action on the case. If the original record of trial is held by the supervisory authority, he shall forward it as an enclosure to his endorsement. This endorsement shall also include information and

comment on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(c) *Contents of applications.* All applications for relief shall contain:

- (1) Full name of the applicant;
- (2) Service number and branch of service, if any;
- (3) Social Security account number;
- (4) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;
- (5) Address at time the application is forwarded;
- (6) Date of trial;
- (7) Place of trial;
- (8) Command title of the organization at which the court-martial was convened (convening authority);
- (9) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);
- (10) Type of court-martial which convicted the applicant;

(11) General grounds for relief which must be one or more of the following:

- (i) Newly discovered evidence;
- (ii) Fraud on the court;
- (iii) Lack of jurisdiction over the accused or the offense;
- (iv) Error prejudicial to the substantial rights of the accused;
- (12) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires);
- (13) Any other matter which the applicant desires to submit; and
- (14) Relief requested.

The applicant's copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(d) *Signatures on applications.* Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter.

§ 719.145 Set off of indebtedness of a person against his pay.

(a) *Court-martial decisions.* When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging, or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in U.S. Navy Regulations, have been convicted by court-martial, the amount of such loss constitutes an indebtedness to the United States which will be set off against the final pay and allowances due such per-

sons at the time of dismissal, discharge, or release from active duty.

(b) *Administrative determinations.* In addition, when the Government suffers a loss of money and competent authority has administratively determined that the loss occurred through the fraud, forgery, or other unlawful acts of such persons as described in paragraph (a) of this section, the amount of such loss shall be set-off as described in paragraph (a) of this section. "Competent authority," as used herein, shall be the commanding officer of such persons and the administrative determination shall be made through an investigation pursuant to the JAG Manual and approved on review by a general court-martial authority.

(c) *Army and Air Force property.* When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. 1007 and demands set off against the final pay and allowances of any naval service personnel, setoff shall be effected in accordance with subsection a above.

(d) *Voluntary restitution.* Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the Government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. 6161 and SECNAV INST 7220.38A series concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding setoff against final pay in other cases when such action is directed by competent authority.

§ 719.146 Authority to prescribe regulations relating to the designation and changing of places of confinement.

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations as required to appropriate authorities relating to the designation and the changing of places of confinement of naval prisoners (see BUPERSINST 1640.5 series). Convening authorities, officers exercising supervisory authority, and commanding officers operating correctional facilities are considered appropriate authorities within the meaning of this section. The Chief of Naval Personnel is further authorized to designate places of confinement when necessary, to change the designation, and to authorize the transfer of prisoners between naval places of confinement and to Federal penal or correctional institutions.

§ 719.147 Apprehension by civilian agents of the Naval Investigative Service.

Pursuant to the provisions of paragraph 19, MCM, and under the authority of 10 U.S.C. 807(b), any civilian agent of the Naval Investigative Service, who is

duly accredited by the Director, Naval Investigative Service, and who is engaged in conducting an investigation within the investigative jurisdiction of the Naval Investigative Service as established in departmental directives, which investigation has been duly requested by, or is at the direction of, competent U.S. Navy or U.S. Marine Corps authority, may apprehend, if necessary, persons subject to the Uniform Code of Military Justice or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the Uniform Code of Military Justice upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his commanding officer or other appropriate military authority.

§ 719.148 Search and seizure forms.

Appendix sections 1-1¹ and 1-m¹ contain suggested formats for recording information pertaining to authorization for searches (with instructions), and the granting of consent to search. These formats are designed as guides in processing problems which may arise in connection with cases involving searches and seizures. Use of these formats, even as guides, is not mandatory, but rests with the discretion of local commanders.

§ 719.149 Interrogation of criminal suspects form.

Appendix section 1-n¹ contains a suggested format which may henceforth be utilized by investigative personnel in cases in which criminal suspects desire to waive their rights concerning self-incrimination, and to make statements. This format is designed as a guide and its use is not mandatory.

§ 719.150 Court-martial case report.

The Court-Martial Case Report, NAVJAG 5813/2 (Rev. 6-69), is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or congressional interest. A case report will be submitted by the "Presiding Officer" with respect to each accused tried by general or special court-martial. The term "Presiding Officer" includes a military judge of the Judiciary Activity, any other military judge assigned to a special court-martial, and the president of a special court-martial without a military judge. Supplies of NAV

JAG Form 5813/2 (Rev. 6-69) are available in the Forms and Publications Segment of the Navy Supply System under Stock No. S/N 0105-100-8160. A form containing sample entries is set forth in appendix section 1-o.¹

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPENAS; PRODUCTION OF OFFICIAL RECORDS

Part 720 of Title 32 is revised to read as follows:

- Subpart A—Delivery of Personnel**
- Sec.
720.1 Delivery when personnel within territorial limits of the requesting State.
720.2 Delivery when personnel beyond territorial limits of requesting State.
720.3 Personnel stationed outside the United States.
720.4 JAG authority.
720.5 Agreement required prior to delivery to State authorities.
720.6 Delivery of personnel to Federal authorities.
720.7 Delivery of personnel to foreign authorities.
720.8 Circumstances in which delivery is refused.
720.9 Reports required when personnel delivered.
720.10 Report required when delivery refused.
720.11 Report required when personnel confined by foreign authorities.
720.12 Personnel released by civil authorities on bail or on their own recognizance.
720.13 Interviewing of naval personnel by Federal civilian investigative agencies.
720.14 Habeas corpus.

- Subpart B—Service of Process and Subpenas Upon Personnel of Naval Establishment**
- 720.20 Service of process upon personnel.
720.21 Personnel subpoenaed as witnesses in State or local courts.
720.22 Personnel subpoenaed as witnesses in Federal courts.
720.23 Naval prisoners as witnesses or parties in civil courts.
720.24 Interviewing personnel preliminary to civil litigation in matters pertaining to official duties.
720.25 Suits against the United States.

- Subpart C—Production of Official Records**
- 720.30 Production of official records in response to court order.
720.31 Production of official records in absence of court order.
720.32 Certificates of full faith and credit.

- Subpart D—Liaison With the Department of Justice**
- 720.40 Litigation reports.
720.41 Liaison with U.S. attorney.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

- Subpart A—Delivery of Personnel**
- § 720.1 Delivery when personnel within territorial limits of the requesting State.**

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for

¹ Filed as part of the original document.

an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in § 720.8.

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, subject to exceptions in § 720.8, to deliver such person for the purpose of making him amenable to prosecution. The authorities of the requesting State will be required, in the absence of a waiver of extradition by the member concerned, to complete extradition process according to the prescribed procedures to obtain custody of a person from the State in which the individual is located, and to make arrangements to take the individual into custody there. Compliance with § 720.5 is required.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition under circumstances cognizable under paragraph (a) of this section. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in appendix section A-13(a).¹

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (a) of this paragraph.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When an individual declines to waive extradition, the Commandant of the Naval District shall be informed and he shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, until the matter of extradition is resolved, without the permission of the Secretary of the Navy (Judge Advocate General).

(c) *Fugitive warrants.* A fugitive warrant, as used herein, is a warrant for the arrest of an individual issued by a court of competent jurisdiction of the State in

which the individual concerned is then located, and which may be based on a warrant or other process issued by still another State. When delivery of an individual is sought on the basis of such a warrant, delivery will normally be granted. Section 720.1 is considered controlling in such cases. When the State in which the individual is located desires custody solely for the purpose of delivering the individual to another State, such as when delivery is sought on the basis of a fugitive warrant, officials of both States shall sign the agreement required by § 720.5, or the agreement will be modified so as to reflect clearly that the State in which the individual is located may not avoid the responsibility of returning the individual to the Department of the Navy. When an individual is delivered upon presentation of a proper fugitive warrant, the provisions of paragraph (b) of this section relative to extradition are applicable.

§ 720.3 Personnel stationed outside the United States.

(a) *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with § 720.1 or § 720.2, as applicable.

(b) *Personnel desired by Federal authorities.* In all cases in which the de-

livery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy. Delivery may be accomplished as set forth in § 720.6.

§ 720.4 JAG Authority.

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under §§ 720.1, 720.2, 720.3, 720.5, 720.8, 720.14, 720.20, 720.23, and 720.30.

§ 720.5 Agreement required prior to delivery to State authorities.

In every case in which the delivery for trial of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in appendix section A-13(b).¹ When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation back to a naval or Marine Corps activity as set forth herein and necessary cash to cover his incidental expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in appendix section A-13(b)¹ must have prior approval from the Secretary of the Navy (Judge Advocate General).

§ 720.6 Delivery of personnel to Federal authorities.

(a) *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal law enforcement authorities who display proper credentials and represent to the command that a Federal warrant for the arrest of the individual concerned has been issued, subject to exceptions in § 720.8.

(b) *Agreement not required of Federal authorities.* The agreement described in § 720.5 will not be exacted as a condition to the delivery of personnel to Federal law enforcement authorities. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case, the person will be returned to the naval service; *Provided*, That naval authorities desire his return, and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

§ 720.7 Delivery of personnel to foreign authorities.

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received, in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General.

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending or the person is undergoing a sentence of a court-martial, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities.

(b) *When delivery may be refused.* Delivery may be refused in the following circumstances:

(1) Where the accused has been retained for prosecution as set forth in § 719.107(g) (3) (a) of this chapter;

(2) Where the accused is undergoing a sentence of a court-martial. However, attention is directed to the "Interstate Agreement on Detainers Act" (Public Law 91-538; 84 Stat. 1397; 18 U.S.C. A. App.), which provides for the delivery of a sentenced prisoner to a jurisdiction in which an untried indictment, information, or complaint is pending, for temporary custody during trial. Any request made pursuant to the "Interstate Agreement on Detainers Act" shall be forwarded in an expeditious manner to the Secretary of the Navy (Judge Advocate General, Code 14), for action;

(3) When the commanding officer considers that conditions exist which indicate that delivery should be denied.

(c) *Reports required.* When delivery is refused, see § 720.10.

§ 720.9 Reports required when personnel delivered.

(a) *General.* Upon delivery of naval personnel to civil authorities, whether Federal, State, Territory, Commonwealth, local, or foreign, a written report of delivery shall be made by the commanding officer to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. A copy will be furnished the Judge Advocate General in cases in which the Secretary of the Navy or the Judge Advocate General has authorized the delivery. The reports required by this paragraph and by paragraph (b) of this section need not be made when personnel are delivered to local civil authorities for misdemeanors not involving moral turpitude and are returned to the command within 24 hours.

(b) *When disposition is made by civil authorities.* When the trial of a person delivered pursuant to this chapter is

¹ Filed as part of original document.

¹ Filed as part of the original document.

completed or the charges dismissed, the commanding officer shall submit, by letter to the Chief of Naval Personnel or to the Commandant of the Marine Corps, a full report of the offense or offenses charged, the findings, sentence or other action taken. A copy shall be furnished the Judge Advocate General in cases where delivery of the person was authorized by the Secretary of the Navy or the Judge Advocate General. As a separate matter, certain cases also must be processed under applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of personnel.

§ 720.10 Report required when delivery refused.

In any case where delivery has been refused, the commanding officer shall report the circumstances to the Judge Advocate General by dispatch (telephone if circumstances warrant). He shall thereafter confirm the initial report by letter setting forth a full statement of the facts. A copy of the report shall be forwarded to the Commandant of the Naval District or to the Area Coordinator, as appropriate.

§ 720.11 Report required when personnel confined by foreign authorities.

When any person in the Navy or Marine Corps is held or confined by foreign authorities in connection with criminal charges, the commanding officer shall promptly submit by letter a full initial report to the Chief of Naval Personnel or the Commandant of the Marine Corps with a copy to the Judge Advocate General. The report, and subsequent reports as to any significant change, shall include the offenses charged and of which convicted, sentence (if convicted), place of confinement, confinement conditions, and health and welfare of personnel concerned. As a separate matter, certain cases also must be processed under the applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of Navy and Marine Corps personnel. The provisions of this subsection do not affect the reporting requirements set forth in SEC-NAVINST 5820.4 series (NOTAL).

§ 720.12 Personnel released by civil authorities on bail or on their own recognizance.

A person in the Navy or Marine Corps arrested by Federal, State, or territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and

released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

§ 720.13 Interviewing of naval personnel by Federal civilian investigative agencies.

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate persons in the naval service suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General.

§ 720.14 Habeas corpus.

(a) *General.* In all cases where habeas corpus process is served on a person in the Navy or Marine Corps, the nearest U.S. attorney will be informed immediately and his assistance requested. A report of such service will be made to the Secretary of the Navy (Judge Advocate General) by message (telephone if circumstances warrant) confirming the initial report by a speed letter to the Secretary of the Navy (Judge Advocate General). This letter should include the information outlined in paragraph (b) of this section. Action must be taken expeditiously in habeas corpus proceedings as the courts generally allow but a short period of time in which to prepare a response.

(b) *Reports required.* (1) Immediately following the dispatch or telephonic report to the Secretary of the Navy (Judge Advocate General), a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by speed letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained.

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to the Secretary of the Navy (Judge Advocate General). This is particularly important if the order was adverse to the Navy in order to permit a timely determination as to whether or not to undertake further proceedings.

Subpart B—Service of Process and Subpenas Upon Personnel of the Naval Establishment

§ 720.20 Service of process upon personnel.

(a) *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or territory out of which the process issues are con-

sidered within the jurisdiction of that State or territory for the purpose of service of process. The commanding officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will insure that the nature of the process is explained to the person concerned.

(b) *Personnel beyond the jurisdiction of the court.* (1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in paragraph (a) of this section for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will insure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

(c) *Service of process arising from official duties.* (1) If the service of process involves a potential claim against the Government, see §§ 750.2(d) and 750.55(d) of this chapter. While the right to remove to Federal court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Whenever a Government employee (as defined in § 750.1(a) of this chapter) is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of his official duties, he shall immediately deliver all process and pleadings served upon him to his commanding officer. The commanding officer shall thereupon ascertain the facts surrounding the incident and with the advice of a Navy or Marine Corps judge advocate, if one is reasonably available, take appropriate

action in accordance with JAGINST 5822.2 of February 2, 1962, Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings. The Government employee will be advised concerning his right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his rights under the Federal Driver's Act (28 U.S.C. 2679B), and the contents of JAGINST 5822.2.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. For lawsuits filed in the U.S. District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. See § 720.14 for habeas corpus and § 720.40 for litigation reports. In habeas corpus cases, liaison with the U.S. attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by § 720.14.

(d) *Service of process of foreign courts.* (1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 Article VIII of the NATO Status of Forces Agreement, TIAS 2846.) Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with paragraph (c) of this section. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of paragraph (a), of this section, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the per-

son for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

(e) *Leave or liberty to be granted persons served with process.* In those cases where personnel are served with process, as noted in subsection a above, or accept service of process, as noted in subsection b above, the commanding officer normally should grant leave or liberty to the person served in order to permit him to comply with the process; provided, such absence will not prejudice the best interests of the naval service.

(f) *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General).

§ 720.21 Personnel subpoenaed as witnesses in State or local courts.

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in § 720.20, the provisions of § 720.20(e) apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases) the procedures described in § 720.22(a) may be followed.

§ 720.22 Personnel subpoenaed as witnesses in Federal courts.

(a) *Witnesses on behalf of Federal Government.* Where naval personnel are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in a case involving activities of the Department of the Navy, the Bureau of Naval Personnel or the Commandant of the Marine Corps, as the case may be, will direct the activity to which the person is attached to issue Temporary Additional Duty Travel Orders to the person concerned. The

charges for such orders shall be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U.S. Navy Travel Instructions. If the required witness is to appear in a case where the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046278.

(b) *Witnesses on behalf of nongovernmental parties.*—(1) *Criminal actions.* Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer is authorized to issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the public interest would be seriously prejudiced by his absence. In this case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the Government. However, such persons should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* Where naval personnel are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of § 720.20 apply.

§ 720.23 Naval prisoners as witnesses or parties in civil courts.

(a) *Criminal actions.* In those instances where the Federal, State, or territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ of *habeas corpus ad testificandum* (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal, State, or Territorial court, either as a party or as a witness, in private litigation pending before such court, because in these the court may grant a postponement or a continuance of the trial. The deposition of a naval prisoner may be taken in such a case subject to such reasonable conditions or limitations as may be imposed by the command concerned.

§ 720.24 Interviewing personnel preliminary to civil litigation in matters pertaining to official duties.

(a) *Request by parties in interest.* Except as hereinafter limited, requests, preliminary to civil litigation, for permission to conduct an ex parte interview of persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and the obtaining of their statements shall be forwarded to the Judge Advocate General. The Judge Advocate General, when practicable, will make appropriate arrangements in order that all of the desired personnel may be interviewed at the same time. The interview will be by all of the counsel for the various parties in interest or by such counsel as desire to be present. Interviews of such personnel shall be conducted in the presence of an officer designated by the Judge Advocate General. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished to each party in interest, to the person making the statement, and to the Judge Advocate General. The officer assigned for the purpose of the interview shall distribute the copies of the statement as prescribed. If the interview involves any line of inquiry which would disclose or compromise classified material or otherwise result in detriment to the interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

(b) *Limitations.* Requests mentioned in paragraph (a) of this section shall not be granted where the United States is a party in any related litigation or where its interests are involved, including cases where the interests of the United States or any Department thereof are represented by private counsel by reason of insurance or subrogation arrangements. In these instances, records, data, and witnesses shall be made available only to the Department of Justice or to such other U.S. Government departments, agencies or personnel requiring access thereto in the performance of their official duties.

(c) *Admiralty matters.* Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, shall be sent to the Office of the Judge Advocate General (Deputy Assistant Judge Advocate General (Admiralty)). Examples of admiralty matters are set forth in paragraph (c) and (d) of paragraph (1) of § 752.1.

§ 720.25 Suits against the United States.

(a) *General.* The primary responsibility for representing the United States in any litigation in which the United States has an interest rests in the Attorney General. For the purpose of affording the Attorney General timely notice of legal actions arising out of operations of the Naval Establishment, the Judge Advocate General and the General Counsel, within the areas of their respective jurisdictions, maintain close liaison with the Department of Justice. Reports are re-

quired of all suits against the United States, or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant.

(b) *Reports to the Judge Advocate General.* When any command is apprised, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, including those involving nonappropriated-fund activities, other than suits within the jurisdiction of the General Counsel as set forth in paragraph (c) of this section, which arise out of the operations of the Naval Establishment or are otherwise of substantial interest to it, such command will report to the Judge Advocate General, Navy Department, Washington, D.C., by the most expeditious means, using message, telephone, or letter, as may be warranted by the circumstances. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the United States as a party and arising out of operations of the Department of the Navy; proceedings against any person subject to military law or any official or employee of the Department of the Navy in connection with his public duties; and proceedings in which attachment of Government funds or other property is sought. The report shall contain as much of the following information as may be pertinent:

- (1) Name of parties to the proceeding.
- (2) Nature of the action.
- (3) Correct designation of the tribunal in which the proceeding is brought.
- (4) Docket number of case, if available.
- (5) Names of person or persons on whom service was made, method of service, and dates.
- (6) Explanation of Government's interest in the proceeding.
- (7) Date by which the defendant must plead or otherwise respond.
- (8) Nature of the principal defense, if known.
- (9) Status of the defendant as being a Government officer, employee, agent, contractor, nonappropriated-fund activity employee, etc.
- (10) Amount claimed, or other relief sought.
- (11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a U.S. Attorney.
- (12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.
- (13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the United States. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate.

(14) Such other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

(c) *Reports to the General Counsel.* A report as required above shall be made to the General Counsel, Navy Department, Washington, D.C., rather than to the Judge Advocate General, in all cases in the field of business and commercial law, including cases relating to:

- (1) The acquisition, custody, management, transportation, taxation, disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, matters concerning nonappropriated-fund activities, and matters related to the Naval Petroleum Reserves;
 - (2) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract;
 - (3) The Office of the Comptroller of the Navy;
 - (4) Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Armed Services Procurement Regulations and Navy Procurement Directives and deviations therefrom; and
 - (5) Industrial security.
- (d) *Initial and supplemental reports.* If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of all parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order except as noted in subsections b and c below. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified.

(b) Records in the custody of National Personnel Records Center. Court orders, subpoenas duces tecum, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to confidential matter, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 FR 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4 (reprinted in MAN-MED article 23-255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or otherwise confidential material such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the U.S. Attorney or U.S. Marshal be requested so that custody of the records may be maintained.

§ 720.31 Production of official records in the absence of court order.

(a) *Furnishing information from personnel and related records to personnel concerned.* Whether or not litigation is involved, naval personnel, civilian employees of the Naval Establishment, their

personal representatives (e.g., executors, guardians, etc.), or other properly interested parties may be furnished copies of records or information therefrom relating to death, personal injury, loss, or property damage to or involving such personnel without following the procedures prescribed in either § 720.24 or § 720.30, provided the interests of the United States are not prejudiced thereby. All such requests (except requests for medical records, for such traffic accident reports as are described in subparagraph (2) of this paragraph, and for records relating to matters under the cognizance of the General Counsel) shall be referred to the appropriate District Judge Advocate, or to the area coordinator, or to the Judge Advocate General. In no event shall findings of fact, opinions, and recommendations, or endorsements thereon, be released outside the Department of the Navy without approval of the Secretary of the Navy or the Judge Advocate General.

(1) *Medical records.* Requests for medical records, shall be processed in accordance with the Department of Defense policy set forth in Title 32, Code of Federal Regulations, § 66.1-66.2, as implemented by the manual of the Medical Department. If, in processing a request for medical records, it appears that the interests of the United States may be involved, then such requests shall be referred to the Judge Advocate General for a determination. Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of the Executive Order and the Federal Personnel Manual referred to in § 720.30(d). See § 757.6 of this chapter concerning release of medical records in Medical Care Recovery Act cases.

(2) *Provost marshal or base police reports of traffic accidents.* Local commanders are authorized to release copies of traffic accident investigative reports where service personnel are not involved and where no Government vehicle is involved, provided the interests of the United States will not be prejudiced thereby. Release may be made to any properly interested party or to his authorized representative. If it appears that the interests of the United States may be involved, the request shall be referred to the appropriate district judge advocate, or the area coordinator, or the Judge Advocate General. (Charges will be made in accordance with the schedule of fees published in the Navy Comptroller Manual, paragraph 035887 (minimum fee \$3). Fees collected will be credited as set forth in the Navy Comptroller Manual, paragraph 043145.)

(b) *OGC matters.* The General Counsel, Deputy General Counsel, and Assistant to the General Counsel for litigation matters have been designated to act for the Secretary of the Navy in releasing or producing, and authorizing the release or production of official records or copies thereof in matters within the assigned responsibilities of the Office of the General Counsel. Such responsibilities are outlined in § 720.25(c).

(c) *Security matters.* For information on the production of records involving classified matter, whether or not litigation is involved, see OPNAVINST 5510.1 series, Department of the Navy Security Manual for Classified Information, article 0922.3.

(d) *Confidential nature of military personnel records.* Officer and enlisted personnel records are deemed confidential. Such records may be released only to persons properly and directly concerned, including the serviceman himself, and personal representatives of the serviceman (e.g., executors, guardians, etc.) who present proper proof thereof, or in accordance with § 720.30 (a) and (b).

(e) *How to address requests for military medical and other personnel records.* The serviceman or personal representatives may obtain access to the health and medical records of both Navy and Marine Corps personnel by applying to the Chief of the Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20360. Applications for Navy and Marine Corps personnel records should be addressed to the Chief of Naval Personnel, Navy Department, Washington, D.C. 20370, or to the Commandant of the Marine Corps, Washington, D.C. 20380. Applications may be made in person or in writing.

§ 720.32 Certificates of full faith and credit.

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

Subpart D—Liaison With the Department of Justice

§ 720.40 Litigation reports.

In all lawsuits involving the Department of the Navy, other than those purely contractual in nature, the litigation report to the Department of Justice will be prepared in the Office of the Judge Advocate General unless authority to prepare the report is specifically delegated to a field activity.

§ 720.41 Liaison with U.S. Attorney.

In matters other than those which are purely contractual in nature, liaison with local U.S. Attorneys will be maintained through the Judge Advocate General, except for the initial report required by § 720.14 in habeas corpus cases, unless specific authority has been delegated to a field activity.

PART 727—LEGAL ASSISTANCE

Part 727 of Title 32 is provided as follows:

Sec.	
727.1	Purpose.
727.2	Policy.
727.3	Legal Assistance Officers.
727.4	Legal Assistance Offices.
727.5	Persons eligible for assistance.
727.6	Functions of Legal Assistance Officers.

- Sec.
727.7 Limitations on service provided.
727.8 Confidential and privileged character of service provided.
727.9 Referrals to civilian lawyers.
727.10 Fees and compensation.
727.11 Supervision.
727.12 Communications.
727.13 Reports.
727.14 Files and records.
727.15 Liberal construction of charter.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 727.1 Purpose.

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this part is to provide guidelines for the continuation of the program.

§ 727.2 Policy.

Personal problems that remain unresolved adversely affect morale and efficiency and frequently result in behavior requiring disciplinary action. Prompt and understanding aid in resolving these problems is an effective preventative. Accordingly, it is the policy of the Department of the Navy to maintain from available resources a legal assistance program to make eligible persons aware of their legal rights and obligations and to assist military personnel and their dependents in obtaining adequate legal advice and services from within the military service.

§ 727.3 Legal assistance officers.

All Navy and Marine Corps judge advocates on active duty, regular or reserve, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any State or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. Navy and Marine Corps judge advocates not on active duty may be designated as legal assistance officers by the Judge Advocate General. While performing legal assistance duties, legal assistance officers shall be guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association, and the Canons of Professional Ethics of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country shall be guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

§ 727.4 Legal assistance offices.

(a) *Establishment of Offices.* A legal assistance office shall be established at each Navy law center and at each Marine Corps command exercising general court-martial jurisdiction. In addition, any commanding officer having a legal assistance officer attached, assigned, or available to his command may establish a legal assistance office. The legal assistance office shall be disestablished when no person qualified to perform legal assistance duties is attached, assigned, or

available to the command. Whenever a legal assistance office is established or disestablished, the Judge Advocate General shall be notified.

(b) *Location.* Each legal assistance office should be conveniently located so as to be easily accessible to all persons eligible for legal assistance, and should be provided with facilities which will enable private consultation with legal assistance clients. Information as to the location and hours of the legal assistance office and the nature of the services available shall be published periodically in local directives and posted in appropriate conspicuous places.

(c) *Legal assistance reference material.* The Judge Advocate General will, from time to time, furnish directly to legal assistance offices such professional information, reference material, and procedural suggestions and recommendations as he may deem advisable to enable legal assistance officers to render legal assistance services. Reference materials and publications so furnished are the property of the Office of the Judge Advocate General and shall remain in the legal assistance office and be carefully preserved. If the legal assistance office is disestablished, all such material shall be returned to the Judge Advocate General.

(d) *Action to be taken by commands not having a legal assistance office.* All commands shall maintain in a convenient location, and publish from time to time, a current list of the legal assistance offices serving the command and a list of local civilian lawyer-referral committees or services.

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist military personnel and their dependents in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) May, in appropriate cases and under guidelines promulgated by the Judge Advocate General, serve as advocate and counsel for, and provide full legal representation to, military personnel and their dependents in connection with their personal legal problems.

(3) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(4) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(5) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV instruction 5350.5 series.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

§ 727.7 Limitations on service provided.

(a) *Assistance in military criminal matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial or investigations. Frequently a serviceman accused or suspected of an offense will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the interests of

the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

§ 727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by § 727.13. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely, all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

§ 727.9 Referrals to civilian lawyers.

(a) *General.* If it is determined that the legal assistance requested is beyond the scope of this part, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent, and sympathetic counsel, or to a civilian lawyer designated by such organization.

(b) *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

§ 727.10 Fees and compensation.

Military and civilian employees of the Navy are prohibited from accepting, directly or indirectly, any fee or compensation of any nature for legal services rendered to any person entitled to legal assistance under this part.

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, the designated commanders set out in OPNAVINST 5800.6 (Subject: Law Centers; activation of), and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall insure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

§ 727.12 Communications.

Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of January of each year, prepare and submit to the Judge Advocate General two copies of the Legal Assistance Report (NAVJAG 5801/3 (Rev. 5-71)) covering the preceding calendar-year period. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG-5801-1 is assigned for this reporting requirement.

§ 727.14 Files and records.

(a) *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

(b) *Office records.* Each legal assistance office should maintain whatever records are necessary for the preparation of required reports. The Legal Assistance Case Record (NAVJAG 5801/9 (Rev. 5-71)) provides for the recording of the information required for the annual report, and the use of this form to record each individual legal assistance case is recommended.

§ 727.15 Liberal construction of chapter.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

PART 750—GENERAL CLAIMS REGULATIONS

Part 750 of title 32 is revised to read as follows:

Subpart A—General Provisions for Claims

Sec.	
750.1	Scope of subpart A.
750.2	Investigation: In general.
750.3	Investigation: Requirements.
750.4	Investigation: Responsibility for.
750.5	The Investigating Officer: In general.
750.6	The Investigating Officer: Duties.
750.7	The investigative report: Contents.
750.8	The investigative report: Action by Commanding Officer or Officer in Charge.
750.9	The investigative report: Action by reviewing authority.
750.10	Claims: In general.
750.11	Claims: A proper claimant.
750.12	Claims: Presentment of.
750.13	Claims: Contents of.
750.14	Claims: The scope of liability and the measure of damages.
750.15	Claims: Action by Receiving Officer or Command.
750.16	Claims: Action by adjudicating authority.
750.17	Claims: Payment of.
750.18	Claims: Settlement agreement and release.
750.19	Claims: Disposition or denial of.
750.20	Claims: Amendment, appeal, or reconsideration of.
750.21	Claims: Action required upon notice of suit.
750.22	Claims: Finality.
750.23	Disclosure of information.
750.24	Single-service assignment of responsibility for processing of claims.
750.25	—
750.29	[Reserved]

Subpart B—Federal Tort Claims Act

750.30	Scope of Subpart B.
750.31	Definitions.
750.32	Statutory authority.
750.33	Administrative claim and consideration as a prerequisite to suit.
750.34	The administrative claim.
750.35	Administrative consideration: Who is authorized?
750.36	Scope of liability.
750.37	Measure of damages.
750.38	Statute of limitations.
750.39	Attorney fees.
750.40	Regulations of Attorney General governing administrative claims procedure.
750.41	—
750.49	[Reserved]

Subpart C—Military Claims Act

750.50	Scope of Subpart C.
750.51	Definitions.
750.52	Statutory authority.
750.53	The administrative claim.
750.54	Authority to settle.
750.55	Scope of liability.
750.56	Measure of damages.
750.57	Statute of limitations.
750.58	[Reserved]
750.59	[Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

750.60	Scope of Subpart D.
750.61	Definitions.
750.62	Statutory authority.
750.63	Proper claim and claimant processing of the claim.
750.64	Officials with authority to settle.
750.65	Scope of liability and measure of damages.
750.66	Statute of limitations.
750.67	[Reserved]
750.69	[Reserved]

Subpart E—Advance Payments

- Sec.
750.70 Scope of Subpart E.
750.71 Statutory authority.
750.72 Officials with authority to make advance payments.
750.73 Conditions for advance payments.
750.74 [Reserved]
750.75 [Reserved]

Subpart F—Authorization To Adjudicate

- 750.80 Table of delegation and designated authority to pay a claim.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

Subpart A—General Provisions for Claims

§ 750.1 Scope of Subpart A.

Subpart A 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 A conflict with the specific provisions of any subsequent part of this part, the specific provisions govern.

§ 750.2 Investigation: In general.

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to insure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

§ 750.3 Investigation: Requirements.

(a) *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in § 750.36 (c), (d), § 750.55(d) or § 750.65(b), the investigative report must document the factual basis for the exclusion.

(b) *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Chief of the Torts Section, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in § 750.80 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see § 750.53(c)(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

(c) *Investigation without delay.* Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(d) *Additional requirements under other regulations.* This part in no way modifies the requirements of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General.

§ 750.4 Investigation: Responsibility for.

(a) *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see § 719.207 of this chapter. If a nonnaval activity is concerned, see § 750.3(b)(3). Such nonnaval activity should be promptly notified of the incident.

(b) *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

(c) *Report of Motor Vehicle Accident, Standard Form No. 91.* The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

§ 750.5 The investigating officer: In general.

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To insure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignment he may have.

§ 750.6 The investigating officer: Duties.

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

(a) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(b) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

(c) To secure and consider signed statements from all competent witnesses

on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.

(d) To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

(e) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see § 750.14.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage, or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(f) To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

(g) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officers, if the injured person does not object, should have a physical examination of the injured person conducted at a military in-

stallation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available may be made locally. Any expense involved will be absorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with subparagraph (1) of this paragraph.

(h) To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under \$600 as set forth in § 750.7(b).

(i) To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by § 750.13 has been submitted by the claimant.

(j) To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by § 750.7 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted

as soon as the previously omitted information becomes available.

§ 750.7 The investigative report: Contents.

A written report of investigation will be made in each case using standard forms whenever appropriate.

(a) *Pertinent data.* Except in cases falling with the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, service numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and addresses of witnesses.

(7) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in § 750.31(b). The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(8) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(11) If straying animals are involved, a statement whether the jurisdiction has

an "open range law" and, if so, reference to such statute.

(12) A statement as to whether any person involved violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(13) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(14) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(16) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under § 750.6 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.6 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of \$600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Subpart B of this part) or the Military Claims Act (Subpart C of this part); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix page 20-c.¹

§ 750.8 The investigative report: Action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in

§ 750.7(b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

(b) *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention Staff Judge Advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

§ 750.9 The investigative report: Action by reviewing authority.

(a) *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(b) *When a claim has been filed.* If a claim has been filed, see § 750.16. When a claim is received, all holders of the investigative report shall be notified.

§ 750.10 Claims: In general.

(a) *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 750.11-750.22 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

(b) *Claims in favor of the United States.* See Part 757 of this chapter for the processing of claims in favor of the Government.

§ 750.11 Claims: A proper claimant.

(a) *Damage to property cases.* A claim for damage to or loss, or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the prop-

erty, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

(b) *Personal injury or death cases.* A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in § 750.40, when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of § 750.16(c-d) apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part of shares thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all power for attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, 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.

§ 750.12 Claims: Presentation of.

(a) *Standard Form No. 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95 (see appendix page 20-a),¹ shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim,

¹ Filed as part of original document.

² Filed as part of original document.

combining damage to property and personal injury or death, may be submitted by a claimant.

(b) *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, Washington, D.C. 20370. See § 750.40.

§ 750.13 Claims: Contents of.

(a) *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts

evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: A written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in § 750.6(d)(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.14 Claims: The scope of liability and the measure of damages.

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see §§ 750.36, 750.55, and 750.65). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see §§ 750.37, 750.56, and 750.65).

§ 750.15 Claims: Action by receiving officer or command.

(a) *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

(b) *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a non-naval activity is or may be the activity most directly involved, see § 750.3(b)(3) and of paragraph (d) of this section.

(c) *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with §§ 750.2-750.7 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a

claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by § 750.8.

(d) *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

§ 750.16 Claims: Action by adjudicating authority.

(a) *Review prior action.* The adjudicating authority is ultimately responsible for determining that an adequate and complete investigation in accordance with §§ 750.2-750.7 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

(b) *Determine sufficiency of claim.* A determination of the sufficiency of a claim under §§ 750.11-750.12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

(c) *Adjudication of claims.* (1) Claims within the adjudicating authority. Except as provided in § 750.35(c) concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in § 750.80. In unusual cases, the entire record, together with the information required by subsection of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command. Whenever a case is retained for negotiation more than 6 months after the claim has been submitted, an interim status report will be made to the Judge Advocate General (Litigation and Claims).

(d) *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this subsection.

(e) *Litigation reports.* Most litigation reports originate from the Litigation and Claims Division of the Office of the Judge Advocate General. The Judge Advocate General may request that the cognizant district judge advocate or staff judge advocate provide a litigation report directly to the United States Attorney representing the Government's interest. A litigation report consists of a letter addressed to the Department of Justice, copy to the U.S. Attorney, containing a narrative summary of the pertinent facts concerning the claim upon which the lawsuit has been filed in the United States district court. It will normally contain an evaluation of the facts together with a comment on the law of the State where the claim arose and recommendations respecting settlement or defense of the case. The report should tell whether an administrative claim (Standard Form 95) or other writing sufficient under § 750.12 was submitted and what disposition was made of such claim. If records show that no administrative claim has been filed, prompt notification of this fact shall be given to the Judge Advocate General, the Department of Justice, and the U.S. Attorney. Copies of the enclosures to the JAG Manual investigation should be provided if they are not classified for security reasons. The investigative officer's finding of facts, opinions, recommendations and endorsements thereon shall not be released except as specifically authorized by the Secretary of the Navy or the Judge Advocate General in accordance with § 750.23. If there is a question as to the propriety of releasing a particular document or information, the matter should be referred to the Judge Advocate General (Litigation and Claims) for resolution.

§ 750.17 Claims: Payment of.

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See § 750.40 regarding the payment of Federal tort claims in excess of \$2,500 by the General Accounting Office and appendix page 20-d.¹

§ 750.18 Claims: Settlement agreement and release.

(a) *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form No. 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness

to accept such amount in full satisfaction and final settlement of the claim. A sample settlement agreement is contained in Appendix page 20-b.¹

(b) *Release.* Except for an advance payment pursuant to § 750.71 the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under title 28, United States Code, or the civil action provisions of 28 USC 1346(b) and Subpart B of this part also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.19 Claims: Disposition or denial of.

(a) *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

(b) *Final denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail and return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate U.S. District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

§ 750.20 Claims: Amendment, appeal, or reconsideration of.

(a) *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See §§ 750.34(e) and 750.40.

(b) *Appeal or reconsideration.* (1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Subpart B of this part), the claimant may, in writing and provided such writing is received by the

authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See §§ 750.34(1) and 750.40. Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Subpart C of this part), or not cognizable under any other provision of law (Subpart D of this part), the claimant may, in writing and provided such writing is received by the proper authority under § 750.53(h) or § 750.53(c) not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

(c) *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by § 750.19.

§ 750.21 Claims: Action required upon notice of suit.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 USC 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commandant of the cognizant naval district, to the attention of the district staff judge advocate who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See §§ 750.2 and 720.20(c).

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

(c) *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in

¹ Filed as part of original document.

order that the preparation of the Government's defense may not be delayed. In addition, the commandant shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

(d) *Litigation reports.* See § 750.16(e).

§ 750.22 Claims: Finality.

Subject to the provisions of 28 U.S.C. 1346(b) and § 750.34(l) respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of § 750.53(h) regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

§ 750.23 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the basis of a claim against the United States unless such release has been properly authorized by competent authority. This prohibition does not apply to advice concerning the correct administrative procedure for filing claims or to providing prospective claimants with appropriate claim forms. Disclosure of information from an official JAG Manual investigation, excluding all endorsements, findings of fact, opinions, recommendations, appended material from personnel and medical records, and other material privileged under the Freedom of Information Act (5 U.S.C. 552), may be released by the adjudicating authority set forth in § 750.80 provided all claims filed or anticipated are within his adjudicating authority. All other requests for disclosure of information shall be processed in accordance with Subpart C of Part 720 of this chapter.

§ 750.24 Single-service assignment of responsibility for processing of claims.

(a) *Applicable law.* Department of Defense Directive 5515.8 of July 28, 1967 (NOTAL), has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act (10 U.S.C. 2734 (see Part 753 of this chapter));

(2) Military Claims Act (10 U.S.C. 2733 (see Subpart C of this part));

(3) Act of September 7, 1962 (10 U.S.C. 2734a and 2734b), pro rata cost sharing of claims pursuant to international agreement (see § 753.27 of this chapter);

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements (see § 753.27 of this chapter);

(5) Act of September 25, 1962 (42 U.S.C. 2651-2653) claims for reimburse-

ment for medical care furnished by the United States (see part 757 of this chapter);

(6) Act of October 9, 1962 (10 U.S.C. 2737), claims not cognizable under any other provisions of law (see Subpart D of the part);

(7) Act of June 10, 1921 (31 U.S.C. 71), claims and demands by the Government of the United States (see Part 727 of this chapter); and

(8) Act of September 8, 1961 (10 U.S.C. 2736), advance or emergency payments (see Subpart E of this part).

(b) *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under paragraph (a) (4), (5), or (7) of this section or against the United States cognizable under paragraph (a) (4), (6), or (8) of this section, which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, the Democratic Republic of the Congo, Ethiopia, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, the Republic of Vietnam, and as the Receiving State Office in the United States under paragraph (a) (3) and (4) of this section.

(2) Department of the Navy: Australia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Canada, Denmark, Greece, India, Japan, Libya, Luxembourg, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(c) *U.S. forces afloat cases under \$200.* Notwithstanding the provisions of subsection (b) above, the Department of the Navy is authorized to settle claims under \$200 caused by Navy personnel not acting within 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 without regard to international agreements described in paragraph (a) (4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(d) *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

§§ 750.25-750.29 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.30 Scope of Subpart B.

The regulations of this subpart B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in § 750.40 and are expressly incorporated into the

regulations of the Judge Advocate General. In cases of conflict between provisions of §§ 750.30-750.39 and the provisions of § 750.40, the provisions of § 750.40 prevail for Federal Tort Claims Act claims.

§ 750.31 Definitions.

(a) *Employees of the Government.* The term "employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

(b) *Scope of employment and line of duty.* "Scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondent superior under the State law of the jurisdiction in which the act or omission occurred.

§ 750.32 Statutory authority.

(a) *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. 2671-80, Tort Claims Procedure, the U.S. district courts including the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 1346(b)).

(b) *Setoff, etc., encompassed.* The jurisdiction described in subsection (a) includes a jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States (28 U.S.C. 1346(c)).

(c) *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 U.S.C. 1402(b)).

(d) *Jury trial.* Any action against the United States under 28 U.S.C. 1346(b) shall be tried without a jury (28 U.S.C. 2402).

(e) *Exclusive character of remedies—*
(1) *Action against the United States.* The remedies provided by 28 U.S.C. 1346 (b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States

for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United States under 28 U.S.C. 1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 U.S.C. 2679(b)), the immunity arises from case law (*Barr v. Matteo*, 360 U.S. 564 (1959); *Bates v. Carlow*, 430 F.2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (*Willingham v. Morgan*, 424 F.2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. See § 720.20(c) and JAG Instruction 582.2 of February 2, 1962. Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings.

§ 750.33 Administrative claim and consideration as a prerequisite to suit.

(a) No action may be maintained against the United States under 28 U.S.C. 1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See §§ 750.34(b) and 750.34(h) for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 U.S.C. 2675(a)).

(b) No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 U.S.C. 2675(b)). See § 750.34(c) regarding the amendment of an administrative claim.

§ 750.34 The administrative claim.

(a) *Proper claimant.*—(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented 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 his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

(b) *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See Appendix page 20-a¹ for a sample form. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-months provision of § 750.33(a), a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See § 750.33(b)(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

(c) *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See § 750.40 and § 750.13 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim.

(d) *Investigation and examination.* The claim shall be investigated in accordance with Subpart A of this part. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 U.S.C. 2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See § 750.40.

(e) *Amendment of the claim.* A proper claim under paragraph (b) of this sec-

tion may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally denied claim for which reconsideration has been requested under subsection i may be amended.

(f) *Payment of the claim.* Any award, compromise, or settlement in an amount of \$2,500 or less shall be paid in accordance with § 750.17. Payments in excess of \$2,500 shall be paid in accordance with § 750.40. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See Appendix page 20-d.¹

(g) *Settlement agreement.* A sample settlement agreement including the required statement concerning fee limitations in Federal Tort Claims Act cases is contained in Appendix page 20-b.¹ See § 750.18.

(h) *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with §§ 750.19 and 750.40.

(i) *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with § 750.20c. Claimant's option under § 750.33a and 28 USC 2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this paragraph, but is a final denial for purposes of §§ 750.33, 750.34(h), and 750.38. Nothing in this paragraph shall be construed to permit amendment of a finally denied claim. A request for reconsideration filed solely for the purpose of extending the § 750.38(b) statutory period for filing suit shall be void.

§ 750.35 Administrative consideration: Who is authorized?

(a) *Statutory authorization.* Pursuant to 28 U.S.C. 2672 of the Federal Tort

¹ Filed as part of original document.

Claims Act and in accordance with regulations issued by the Attorney General (see § 750.40), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See paragraph (c) of this section for limitations on the authority of the Secretary or his designee.

(b) *Specific delegation and designation.* See § 750.80.

(c) *Limitations on authority.* Notwithstanding the provisions of paragraphs (a) and (b) of this section:

(1) Any award, compromise, or settlement by the Navy under 28 U.S.C. 2672 in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 U.S.C. 2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(i) A new precedent or a new point of law is involved;

(ii) A question of policy is or may be involved;

(iii) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(iv) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed \$25,000; and

(3) An administrative claim presented under 28 U.S.C. 2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in subparagraphs (2) and (3) of this paragraph in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with § 750.16(d).

§ 750.36 Scope of liability.

(a) *In general.* Subject to the exceptions listed in paragraphs (c) and (d) of this section in adjudicating claims under § 750.35, the liability of the United

States is generally determined in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2672). Where local law and applicable Federal law conflict, the latter prevails.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Claims not within the Act.* By virtue of 28 U.S.C. 2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see § 750.55(c) for processing mail claims under the Military Claims Act;

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741-752), or the act of March 3, 1925 as amended (46 U.S.C. 781-790) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 U.S.C. 761) are not excepted from the provisions of 28 U.S.C. 1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the JAG for adjudication in all cases. By virtue of 28 U.S.C. 2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Part 752 of this chapter. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 U.S.C. App. 1-44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim for damages caused by the fiscal operations of the Treasury

or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country (see Part 753 of this chapter concerning Foreign Claims); and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(d) *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (Perez v. United States, 340 U.S. 135 (1950); compare Brooks v. United States, 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 U.S.C. 240-243 and the applicable Personnel Claims Regulations (see Part 751 of this chapter);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 U.S.C. 7901-7903, 8101-8193), is applicable (see 5 U.S.C. 8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a non-appropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (see 33 U.S.C. 905 and 5 U.S.C. 8171);

(5) That portion of any claim attributable to the fault or negligence of a contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (see United States v. Seckinger, 397 U.S. 203 (1969), and § 750.7(a)(15)), and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue-producing activities, or is a Government corporation or a nonappropriated-fund activity (see 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); but see 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (see 22 Comp. Dec. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where

specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (see 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

§ 750.37 Measure of damages.

(a) *In general.* Subject to the exceptions set out in paragraphs (b) and (d) of this section for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 U.S.C. 2674). When there is a conflict between local law and applicable Federal law, the latter governs.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 U.S.C. 2674).

(d) *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in § 750.80 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. See § 750.35(c)(2)(iii) concerning settlement without indemnification or contribution.

(e) *Setoff.* In a case brought by a serviceman not barred by the Feres doctrine (Feres v. United States, 340 U.S. 135, (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (Brooks v. United States, 337 U.S. 49, (1949)).

§ 750.38 Statute of limitations.

(a) Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 U.S.C. 2401(b)). The filing of suit

against the United States does not constitute the presentment of a claim under this subsection or under 28 U.S.C. 2401 (b) (Gunstream v. United States, 307 F. Supp. 366 (C.D. Cal. 1969)).

(b) A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 U.S.C. 2401(b)). See § 750.34(i) regarding a request for reconsideration.

§ 750.39 Attorney fees.

(a) Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to §§ 750.34-750.35 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 U.S.C. 2678).

(b) The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See appendix page 20-b¹ for a sample settlement agreement including a statement regarding attorney fees.

§ 750.40 Regulations of Attorney General governing administrative claims procedure.

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, appear in 28 CFR Part 14.

§§ 750.41-750.49 [Reserved]

Subpart C—Military Claims Act

§ 750.50 Scope of Subpart C.

The regulations of this subpart C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 U.S.C. 2733).

§ 750.51 Definitions.

As used in this part (§§ 750.50-750.59):

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health

Service who are serving with the Navy or Marine Corps.

(c) Military includes "naval."

§ 750.52 Statutory authority.

(a) *General authorization.* Subject to the statutory exceptions set forth in § 750.53(d), the Secretary of the Navy—or the Judge Advocate General, subject to appeal to the Secretary—may settle and pay, in an amount not in excess of \$15,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 U.S.C. 2733(a)).

(b) *Authorization for payment of claims in excess of \$15,000.* If the Secretary of the Navy considers that a claim in excess of \$15,000 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and subsection (a) of this section, he may make a partial payment of \$15,000 and refer the excess to the Office of Management and Budget for submission to Congress for its consideration (10 U.S.C. 2733(d)).

(c) *Delegable authorization to pay claims not in excess of \$2,500.* In any case where the amount to be paid is not more than \$2,500, the Secretary of the Navy may delegate the authority of 10 U.S.C. 2733(a) and paragraph (a) of this section, subject to appeal to the Judge Advocate General (10 U.S.C. 2733(g)). See § 750.80 for the Navy and Marine Corps officials with delegated authority to pay claims under this subsection.

(d) *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 U.S.C. 1346(b) only, and, by virtue of 10 U.S.C. 2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

(e) *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under Part 753 of this chapter.

§ 750.53 The administrative claim.

(a) *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of §§ 750.11 and 750.34(a) apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to § 750.56(b).

(b) *Proper claim and presentation.* A claim is proper in form and presentation

¹ Filed as a part of original document.

if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

(c) *Evidence and information in support of the claim.* See § 750.13 for the evidence and information required to substantiate a claim. 10 U.S.C. 2733(b) (5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

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

(e) *Payment of the claim.* Payment of a claim shall be accomplished in accordance with § 750.17.

(f) *Settlement agreement.* See § 750.18 and appendix page 20b.

(g) *Denial of the claim.* See § 750.19.

(h) *Appeal of the claim.* 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. Such appeal shall be in writing and shall state the grounds relied upon. An appeal may be decided either by the Secretary of the Navy or by the Judge Advocate General—except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary. See § 750.20(c) for the procedure for disposing of an appeal.

§ 750.54 Authority to settle.

See § 750.80.

§ 750.55 Scope of liability.

(a) *Caused by a member or employee.* Subject to the exceptions of paragraph (d) of this section, the Navy shall be responsible under 10 U.S.C. 2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

(b) *Otherwise incident to noncombat activities.* Subject to the exceptions of paragraph (d) of this section a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to non-combat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises;

practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barrage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

(c) *Specific claims payable.* Claims payable by the Navy under paragraphs (a) and (b) of this section shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to non-combat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the 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 deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as a contract claim.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occupancy thereof by the Government,

whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(d) *Claims not payable.* Notwithstanding paragraphs (a), (b), and (c) of this section, the following claims shall not be paid under 10 U.S.C. 2733:

(1) 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, his agent, or his 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 that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. 240-243) and applicable regulations (Part 751 of this chapter);

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. 2734) and applicable regulations thereto (Part 753 of this chapter);

(6) Any claim cognizable under 10 U.S.C. 7622 relating to admiralty claims and to claims for damages caused by naval vessels (Part 752 of this Chapter);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in subparagraphs (2) and (4) of paragraph (c) of this section;

(8) Any claim for rent of real or personal property, except as provided in subparagraphs (2) and (4) of paragraphs (c) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and Subpart B of this part.

§ 750.56 Measure of damages.

In cases cognizable under the Military Claims Act (10 U.S.C. 2733), the measure of damages shall be as follows:

(a) *Damage to property.* (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 restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, 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, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All 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 thereof immediately after the incident. All 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, but only for such period as is reasonably necessary for repairs: *And provided*, That idle substitute property of the claimant was not employed. 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 is not obtained and used by the claimant, loss of use is normally not payable.

(b) *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(c) *Limitations.* Payment shall not be made for the following elements of damage: Interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

(d) *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

§ 750.57 Statute of limitations.

No claim may be settled under the Military Claims Act unless it is presented in writing within 2 years after it accrues. If such accident or incident occurs in time of war of armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, any claim may, on good cause shown, be presented within 2 years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 U.S.C. 2733(b)(1)).

§§ 750.58-750.59 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

§ 750.60 Scope of Subpart D.

The regulations of this subpart D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 U.S.C. 2737. These claims are sometimes referred to as "nonscope" claims and are

claims that are not cognizable under any other provision of law.

§ 750.61 Definitions.

(a) *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

(c) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

§ 750.62 Statutory authority.

(a) *General authorization.* 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed \$1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

(b) *No right to sue.* There is no right to sue the United States on a claim arising under 10 U.S.C. 2737.

(c) *Territorial application.* There is no geographical limitation on the application of 10 U.S.C. 2737.

§ 750.63 Proper claim and claimant/processing of the claim.

(a) *General.* The general claims provisions of subpart A of this part 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 Part 750.

(b) *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

(c) *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 U.S.C. 2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see § 750.19(b)) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See § 750.20(b)(2).

§ 750.64 Officials with authority to settle.

See appendix section A-20-(e).¹

¹ Filed as part of original document.

§ 750.65 Scope of liability and measure of damages.

(a) *Scope of liability.* Subject to the exceptions of paragraph (b) of this section, the responsibility of the United States shall be in money damages, not to exceed \$1,000, for damage to or loss or destruction of property or for personal injury or death caused by military personnel or civilian officials or employees:

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

(2) Incident to the use of any other property of the United States on a Government installation; and

(3) Not cognizable under any other provision of law.

(b) *Specific claims not payable.* A claim may not be allowed under 10 U.S.C. 2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within 2 years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

(c) *Measure of damages.* Compensation under 10 U.S.C. 2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with § 750.56, except that damages for personal injury or death under this part 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, and except that in no case under this part shall an award for damages be in excess of \$1,000.

§ 750.66 Statute of limitations.

A claim against the United States under 10 U.S.C. 2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

§§ 750.67-750.69 [Reserved]

Subpart E—Advance Payments

§ 750.70 Scope of subpart E.

The regulations of the subpart E apply exclusively to the payment of amounts not to exceed \$1,000 under 10 U.S.C. 2736 in advance of submission of a claim.

§ 750.71 Statutory authority.

10 U.S.C. 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of \$1,000 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 Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734). 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.

§ 750.72 Officials with authority to make advance payments.

See § 750.80.

§ 750.73 Conditions for advance payments.

Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(a) The injury, death, damage, or loss would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734);

(b) The payee, insofar as can be determined, would be a proper claimant under this Part (753 of this chapter), or under the Foreign Claims Regulations or is the spouse or next of kin of a proper claimant who is incapacitated;

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

(d) 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;

(e) 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

(f) 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 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (1) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (2) occurred "incident to non-combat activities" of the Department of Navy as defined in § 750.55(b).

§§ 750.74-750.79 [Reserved]

Subpart F—Authorization To Adjudicate

§ 750.80 Table of delegation and designated authority to pay claim.

See Appendix A-20-e.¹

PART 751—PERSONNEL CLAIMS REGULATIONS

Part 751 of title 32 is revised to read as follows:

Sec.	
751.0	Authority.
751.1	Definitions.
751.2	Scope.
751.3	Claims payable.
751.4	Claims not payable.
751.5	Type and quantity of property.
751.6	Computation of award.
751.7	Statute of limitations.
751.8	Demand on carrier, contractor and/or insurer.
751.9	Concurrent claims on the carrier, contractor, or insurer and the government.
751.10	Form of demand on carrier, contractor, or insurer.
751.11	Responsibilities of the claimant regarding claims against carriers, contractors, and/or insurers.
751.12	Transfer of right against the carrier, contractor, or insurer.
751.13	Recoveries from carrier, contractor, and/or insurer.
751.14	Claims within provisions of other regulations.
751.15	Claimants.
751.16	Form of claim.
751.17	Evidence in support of claim.
751.18	Filing of claim.
751.19	Appointment of claims investigating officers.
751.20	Investigation of claims.
751.21	Action of claims investigating officer in transportation losses.
751.22	Preparation of claims investigating officer's report.
751.23	Action by commanding officer.
751.24	Adjudicating authority.
751.25	Limitation on agent or attorney fees.
751.26	Separation from service.
751.27	Meritorious claims not otherwise provided for.
751.28	Reconsideration.
751.29	Authorization for issuance of instructions.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 751.0 Authority.

Sections 751.1 to 751.29 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 751.1 Definitions.

In this part:

(a) *Claim.* "Claim" means any claim filed under oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture, or abandonment of their personal property incident to their service.

(b) *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

¹ Filed as part of original document.

(c) *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

(d) *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

(e) *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

§ 751.2 Scope.

Under this part, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable on a claim is \$10,000.

§ 751.3 Claims payable.

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

(a) *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurrence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see subparagraphs (1) and (2) of this paragraph), designated by superior authority for the reception of the property.

(b) *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) When shipped under orders; or

(2) In connection with travel under orders irrespective of the purpose of such travel; or

(3) In connection with travel in performance of military duty with or without troops.

(c) *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

(d) *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerrilla, organized brigandage or other belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

(e) *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

(f) *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(g) *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

(h) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him (see Article 1922, U.S. Navy Regulations, 1948).

(i) *Motor vehicles.* Claims are allowable for damage to or loss of automobiles and other motor vehicles if:

(1) The claim would otherwise be allowable under paragraph (a) of this section, or

(2) The claim would otherwise be allowable under paragraph (a) of this section, or

(3) The damage or loss occurred while the vehicle was located on a military installation, provided that the loss or damage was caused by fire, flood, hurricane, or other unusual occurrence or by theft or vandalism, or

(4) The damage or loss occurred during overseas shipment provided by the Government.

(i) "Motor vehicles" include utility trailers, camping trailers, boat and boat trailers. "Military installation" means any fixed land area, wherever situated, controlled and used by military activities or the Department of Defense. "Other unusual occurrence" does not in-

clude collision with another vehicle. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels or by Government bills of lading on commercial vessels, and includes storage, on-loading and off-loading incident thereto.

(j) *Housetrainers.* (1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, housetrainers and their contents while in storage on Government property pursuant to shipment under orders are payable under paragraph (a) (3) of this section. Claims for loss of, or damage to, housetrainers and their contents arising incident to shipment are payable under paragraph (b) (1) of this section: *Provided*, That, when transported by other than the service member or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the housetrailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the housetrailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the housetrailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a house-trailer for shipment by a carrier is presumptive evidence that the housetrailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a prima facie case by proving that the damage occurred during transportation. Damage which is due to (i) the negligence of the carrier, or (ii) collision while the house trailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (e.g., a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (e.g., that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a house trailer claim

should include, but is not necessarily limited to, the following:

(i) Copy of the premove inspection report;

(ii) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(iii) Copy of the damage report (generally prepared by the carrier);

(iv) Government inspection (include photographs of each area or item of damage where this may prove helpful);

(v) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(vi) Repair bills or estimates as to the cost of repairs;

(vii) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(viii) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(ix) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(x) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

§ 751.4 Claims not payable.

Claims may not be allowed for:

(a) *Money or currency.* Money or currency except when deposited with authorized personnel as contemplated by § 751.3(h), or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) *Unserviceable property.* Worn-out or unserviceable property.

(c) *Easily pilferable articles.* Easily pilferable articles—such as jewels and jewelry; other small articles of substantial value usually worn or carried, such as cameras and accessories, watches, rings, binoculars, and necklaces; and items of greater size particularly subject to theft, including firearms, portable electronic equipment, and articles for which a substantial illegal market exists—when shipped with household goods by ordinary means or as unaccompanied baggage. (Shipment includes storage.) Claims for such articles are allowable when their loss is incident to shipment when special handling has been arranged

and performed in accordance with current Naval Supply Systems Command guidelines or Marine Corps Order P4600.7A. This prohibition does not apply to baggage in the personal custody of the claimant or properly checked, provided reasonable protection or security measures have been taken. However, if small items of substantial value are lost or destroyed because of fire, flood, hurricane, the sinking of a vessel or other unusual occurrence in which the mode of shipment is not material to the type of loss, the claim may be allowed.

(d) *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

(e) *Articles of extraordinary value.* Articles of extraordinary value, including articles of gold, silver, or other precious metals, paintings, antiques other than bulky furnishings, relics, authentic oriental or similar expensive rugs, and other articles of extraordinary value, are not payable when shipped with household effects by ordinary means or as unaccompanied baggage. Claims for the loss of such articles are payable when their loss is incident to shipment when special handling has been arranged and performed in accordance with current Naval Supply Systems Command guidelines or Marine Corps Order P4600.7A. This prohibition does not apply to baggage checked, or in the personal custody of the claimant or his agent, provided reasonable protection or security measures have been taken.

(f) *Articles being worn.* Articles being worn, except under the circumstances described in § 751.3 (c), (d), and (e).

(g) *Intangible property.* Intangible property, such as bankbooks, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(h) *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

(i) *Motor vehicles.* Motor vehicle claims, except as cognizable under §§ 751.3(a), 751.3(e), or 751.3(i), ordinarily will not be paid.

(j) *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

(k) *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

(l) *Losses recovered from insurers or carriers.* Losses, or any portion thereof,

which have been recovered from an insurer or carrier.

(m) *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under § 751.3(a) are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

(n) *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(o) *Negligence of claimant.* Claims for damage to or loss of personal property caused in whole or in part by any negligence or any wrongful act on the part of the claimant, his dependents, his agents, or his employees.

(p) *Business property.* Property normally used for business or profit.

(q) *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations. Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(r) *Theft from possession of claimant.* In all cases where a claim is made for articles lost by theft from the possession of the claimant, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, burglary, or housebreaking.

(s) *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in § 751.3(j). Household effects contained in trailers may be considered under § 751.3 (a) (1) when the trailer is located in an assigned area on a Government installation.

(t) *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

§ 751.5 Type and quantity of property.

(a) *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

(b) *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (e.g., borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

§ 751.6 Computation of award.

(a) *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of § 751.13(b). If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

(b) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its costs, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

(c) *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

(d) *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

(e) *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

(f) *Maximum allowance.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

§ 751.7 Statute of limitations.

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues: *Provided*, That if the claim accrues in time of war, or in time of armed conflict in which the Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

§ 751.8 Demand on carrier, contractor, and/or insurer.

(a) *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

- (1) The payment voucher;
- (2) The completed personnel claim form;
- (3) The estimated or actual cost of repair;
- (4) A document indicating the conditions of the item upon delivery to the carrier; and
- (5) A document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in appendix section A-21(a).¹

(c) *Insurer.* Whenever the property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in § 751.9.

(d) *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

§ 751.9 Concurrent claims on the carrier, contractor, or insurer and the Government.

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

§ 751.10 Form of demand on carrier, contractor, or insurer.

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (appendix section A-21(b))¹ with a copy of DD Form 1845 appendix section A-21(d)¹ attached.

¹ Filed as part of original document.

Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

§ 751.11 Responsibilities of the claimant regarding claims against carriers, contractors and/or insurers.

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

§ 751.12 Transfer of right against the carrier, contractor, or insurer.

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

§ 751.13 Recoveries from carrier, contractor, and/or insurer.

After payment of the claim by the United States, and upon receipt of any recovery from a carrier, contractor, and/or insurer, the United States shall be reimbursed as follows:

(a) *Monetary recoveries*—(1) *Damage not exceeding \$10,000.* If the damage or loss adjudicated in accordance with § 751.6 is \$10,000 or less, the proceeds will be paid to the United States to the extent of the payment received from the United States less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item; and

(2) *Damage exceeding \$10,000.* If the damage or loss adjudicated in accordance with § 751.6 exceeds \$10,000, the United States shall be reimbursed to the extent that the payments from the carrier, contractor and insurer, plus the \$10,000 paid by the Government are in excess of the adjudicated loss less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item.

(b) *Recovered property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures or otherwise used for the benefit of the Government.

ance with standard disposal procedures or otherwise used for the benefit of the Government.

§ 751.14 Claims within provisions of other regulations.

(a) *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under part 750, "General Claims" of this chapter.

(b) *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.15 Claimants.

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence.

- (a) Spouse;
- (b) Child or children;
- (c) Father or mother, or both;
- (d) Brothers or sisters, or both.

§ 751.16 Form of claim.

The claim will be submitted by presenting a detailed statement in duplicate, signed by or on behalf of the claimant, on DD Form 1842 (see appendix section A-21(c)) with DD Form 1845 attached (see appendix sections A-21(d)). If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a third copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

§ 751.17 Evidence in support of claims.

(a) *General.* The claim should be supported by the evidence required on the

¹ Filed as part of original document.

claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be properly fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should submit at least one written estimate of the value from a competent person: "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less

than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

(b) *Waiver of written estimates.* (1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than \$100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

(c) *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

- (i) Geographical location;
- (ii) Whether quarters were assigned or provided in kind by the Government;
- (iii) Whether quarters were regularly occupied by the claimant;
- (iv) Name of authority, if any, who designated the place of storage of the property, if other than quarters;
- (v) Measures taken to protect the property; and
- (vi) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

- (i) Geographical area of the loss;
- (ii) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and
- (iii) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

- (i) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(ii) All bills of lading, and inventories of property shipped;

(iii) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (see §§ 751.8 and 751.9);

(iv) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(v) Where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer.

Date property was turned over.
Condition when property was turned over.
When and where property was packed, and by whom.

Date of shipment and re-shipment.
Copies of all manifests, bills of lading and contracts.

Date and place of delivery to claimant.
Date property was unpacked.

Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage.

Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and

Whether the last common carrier or local civilian carrier was given a clear receipt.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(i) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(ii) A detailed statement of facts and circumstances showing applicable causes enumerated in § 751.3 (d) and (e).

(6) For property used for benefit of Government:

(i) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(ii) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(i) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(ii) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(iii) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

§ 751.18 Filing of claim.

All claims coming within the cognizance of this part should, if practicable,

be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

(a) *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

(b) *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

(c) *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

§ 751.19 Appointment of claims investigating officers.

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this part. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

§ 751.20 Investigation of claims.

Upon receipt of a claim filed in accordance with the provisions of this part, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects.

§ 751.21 Action of claims investigating officer in transportation losses.

(a) *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer

will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

(b) *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

(c) *Approval or denial of concurrent claim by carrier, contractor, or insurer.* (1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(i) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speed-letter format is shown in appendix section A-21(e)).¹

(ii) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to § 751.13, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

(d) *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A

sample certificate is contained in appendix section A-21(f).² If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

(e) *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within 10 days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

(f) *Unjustified denials by the carrier, contractor, or insurer.* If a carrier, contractor, or insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in addition to initiation of administrative action as appropriate under Interstate Commerce Commission regulations, military tender of service, or other applicable regulation or agreement, the matter shall be reported to the adjudicating authority which paid the claim. The letter report shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims officer's opinion as to liability. A copy of the letter report with enclosures will be sent to the origin transportation officer. The carrier should be notified of this action by a copy of the letter report or by separate correspondence.

(g) *Action by adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further

demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not effected within 30 days from this demand, or negotiations likely to result in an adequate recovery in the near future are not underway at that time, the file will be forwarded to the Judge Advocate General with appropriate recommendations, and itemization of the amount recommended for involuntary collection from a carrier, and a recitation of the evidence upon which clear liability for each item is based. The carrier should be notified of this action by a copy of the forwarding letter or by separate correspondence. The Judge Advocate General will take whatever action is necessary to recover from the carrier, contractor, or insurer when liability is clear.

§ 751.22 Preparation of claims investigating officer's report.

(a) *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (see appendix A-21 (h))³ as a worksheet in appropriate cases and attach a copy of the form to his report.

(b) *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to pre-existing damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with § 751.17(b) of this chapter and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix section A-21(g)¹ shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see appendix section A-21(c)(2))² when investigation of the claim is complete.

(c) *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer

¹ Filed as a part of original document.

² Filed as part of original document.

may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

(d) *Small-claims procedure.* When the total amount claimed is \$500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (see appendix section A-21c(3))¹ in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable.

(e) *Forwarding of claim.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

§ 751.23 Action by commanding officer.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (See § 751.24(e).) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, and replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved.

(a) *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

(b) *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

(c) *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in appendix section A-21(j).¹

§ 751.24 Adjudicating authority.

(a) *Claims by Navy personnel.* The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (litigation and claims); the Director, Litigation and Claims Division; and the Head, Personnel Claims Branch, Litigation and Claims Division and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, adjust, and determine claims of Navy personnel both military and civilian up to \$10,000. Commandants of naval districts and their staff judge advocates, Directors of Law Centers, and, subject to the restriction of superior authority, all staff judge advocates attached to Law Centers are hereby designated and authorized to adjudicate and to authorize payment of personnel claims up to \$5,000. In addition to the above, all Navy judge advo-

cates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to \$500 filed under this chapter. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Requests to implement adjudicating authority may be directed to the Judge Advocate General, Washington, D.C. 20370. Appendix A-21(j)¹ lists those commands currently authorized to adjudicate personnel claims.

(b) *Claims by Marine Corps personnel.* The Commandant of the Marine Corps; the Director of Personnel of the Marine Corps; the Deputy Director of Personnel of the Marine Corps; the Head, Personal Affairs Branch, Personnel Department, Headquarters, U.S. Marine Corps; and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, ascertain, adjust and determine claims of Marine Corps personnel, both military and civilian, filed under this chapter.

(c) *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this part and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated-fund activities should be referred directly to the appropriate nonappropriated-fund activity for investigation and payment.

(d) *Partial payments when hardship exists.* Every instance of loss or damage cognizable under this part can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the Judge Advocate General may authorize a partial payment of up to \$5,000; any adjudicating authority authorized to adjudicate claims up to \$5,000 may authorize a partial payment of up to \$2,000; and any other adjudicating authority may, with the specific approval of a \$5,000 adjudicating authority or the Judge Advocate General, authorize a partial payment of up to \$500. Each authorization of partial payment must be accompanied by:

(1) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a

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statement that he is aware of the penalties imposed by title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personal Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(2) A statement by the Claims Investigating Officer confirming that the claimant is a proper claimant under the provisions of this part and setting forth his opinion regarding the reasonableness of the estimated total value of the claim, the extent to which the claim has been substantiated, the amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(3) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this part and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this subparagraph. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(e) *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in paragraph (a) of this section, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is specified in Navy Comptroller Manual section 023304 paragraph 3.

(f) *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

(g) *Reports.* Commands adjudicating personnel claims shall forward reports to the Judge Advocate General on the last day of any calendar month when the number of personnel claims pending adjudication on that date exceeds one-third of the number of claims adjudicated during the reporting month. The report will contain the number and dollar amount of claims received for adjudication during the month, the number and dollar value of claims allowed, the number of claims denied, the number of claims forwarded to a higher authority for adjudication, and the number of claims pending as of the reporting date. The report should contain relevant information relating to the cause for the backlog of claims pending adjudication. In lieu of making periodic reports, adjudicating authorities will maintain in their files data for the current and preceding fiscal year.

§ 751.25 Limitation on agent or attorney fees.

(a) *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243), the statutory authority underlying this part, provides in section 243 that:

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240-243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240-243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

(b) *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in § 751.39.

(c) *Other prohibition.* The provisions concerning an attorney's fee set forth in (a) above does not authorize a fee in those cases where a fee is prohibited for other reasons (see SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

§ 751.26 Separation from service.

Separation from the service or termination of employment shall not bar military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provisions of these regulations when such claim accrued prior to separation or termination.

§ 751.27 Meritorious claims not otherwise provided for.

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the

Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

§ 751.28 Reconsideration.

(a) A claim may be reconsidered which was previously disapproved in whole or in part even though final settlement has been made when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or subsequently submitted. A request for reconsideration shall be made in writing to the adjudicating authority originally acting on the claim and should include all documents which have been returned to the claimant. All requests for reconsideration shall be made within 6 months from the date the claimant received notice of the initial adjudication of his claim. Any adjudicating authority shall reconsider a claim upon which he has originally acted upon the request of a claimant or someone acting in the claimant's behalf and may settle it by granting such relief as may be warranted. If it is determined that the original action was incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. An adjudicating authority may also, on his own initiative, reconsider a claim which he has denied in whole or in part.

(b) If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire file and the adjudicating authority's recommendation, to the nearest appropriate higher adjudicating authority for final disposition. Final reconsideration of claims originally adjudicated by authorities authorized to pay claims up to \$500 or \$1,000 can be made by any adjudicating authority authorized to pay claims up to \$5,000. Final reconsideration of claims originally adjudicated by adjudicating authorities authorized to pay claims up to \$5,000 can be made by the Judge Advocate General.

§ 751.29 Authorization for issuance of instructions.

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this part.

PART 753—FOREIGN CLAIMS REGULATIONS

Part 753 of Title 32 is revised to read as follows:

Sec.	General.
753.1	Purpose.
753.2	Territorial application.
753.3	Acts not within scope of employment.
753.4	Criminal acts.
753.5	Elements of damage in case of personal injury and death.
753.6	Bailed or leased property.
753.7	

- Sec. 753.8 Use and occupancy of real property.
 753.9 Other noncombat activities.
 753.10 Persons excluded as claimants.
 753.11 Claims excluded.
 753.12 Negligence or wrongful act on the part of claimant.
 753.13 Combat activities.
 753.14 Claims of subrogees.
 753.15 Statute of limitations.
 753.16 Nature of claim.
 753.17 Claims for damage occasioned by naval vessels.
 753.18 Creation of Foreign Claims Commission.
 753.19 Qualifications of Commission members.
 753.20 No formal procedure prescribed.
 753.21 Report of proceedings.
 753.22 Notification of award and payment.
 753.23 Releases.
 753.24 Appeal and reconsideration.
 753.25 Meritorious claims in excess of \$15,000.
 753.26 Claims outside the jurisdiction of the Commission.
 753.27 Claims arising in specified foreign countries.
 753.28 Claims generated by civilian employees of the Department of Defense.
 753.29 Advance payments.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 753.1 General.

Claims for personal injury to, or death of, any inhabitant of a foreign country or damage to, or loss of, real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, Commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to non-combat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. 2734). The word "claims" as used in this chapter refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and States, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies.

§ 753.2 Purpose.

The purpose of the Foreign Claims Act (10 U.S.C. 2734) is "to promote and maintain friendly relations" in foreign countries "through the prompt settlement of meritorious claims." The regulations of this chapter are to be so administered as to effectuate this expressed purpose of Congress.

§ 753.3 Territorial application.

The provisions of this chapter are applicable to claims arising outside the United States, its territories, Commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a

claim which would otherwise be within the Foreign Claims Act.

§ 753.4 Acts not within scope of employment.

The doctrine of scope of employment has no application to foreign claims arising from the acts of military personnel and other-than-indigenous civilian personnel. Foreign claims arising from the acts of indigenous civilian personnel may be allowed only if such employee was acting within the scope of his employment, unless, and only to the extent that, an employer or owner of the property involved would be held liable under local law under the circumstances.

§ 753.5 Criminal acts.

The fact that the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

§ 753.6 Elements of damage in case of personal injury and death.

Actual and reasonable medical and hospital expenses, reasonable compensation for pain and suffering and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. Claims of dependents for loss of prospective support are allowable only if such claims are recognized by the law of the country where the injury occurred. In computing damages in cases of personal injury or death, local standards will be taken into consideration as the controlling factor. In case of death, only one claim will be considered. In such a case the amount approved will be apportioned among the beneficiaries in the proportions prescribed by the law or customs of the place where the accident or incident occurred to the extent that it is practicable or feasible.

§ 753.7 Bailed or leased property.

Claims for damage to, or loss or destruction of, personal property, otherwise within the Foreign Claims Act, may be settled notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied. Claims for rent of personal property are not payable under these regulations.

§ 753.8 Use and occupancy of real property.

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, expressed or implied, or otherwise, are payable under the provisions of these regulations even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of § 753.13. Claims payable under this section may be

processed as contract claims if it is deemed to be in the best interests of the Government. Claims for rent of real property are not payable under this part.

§ 753.9 Other noncombat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general, the claims within this category are those arising out of authorized activities which are peculiarly military in nature, having little parallel in civilian pursuits, and which arise out of situations that historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present. Claims arising out of activities which involve the use of dangerous instrumentalities, such as explosives, or which result from maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft equipment, movement of combat vehicles or other vehicles designed especially for military use, or the use of instrumentalities having latent mechanical defects are also included regardless of whether such resulting damage, injury, or death is traceable to acts or omissions of military personnel or civilian employees of the United States.

§ 753.10 Persons excluded as claimants.

The following classes of claimants are among those excluded:

(a) *Inhabitants of the United States.* Members and civilian employees of the Armed Forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders; and

(b) *Enemy aliens.* Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

§ 753.11 Claims excluded.

The following classes of claims are excluded:

- (a) Claims purely contractual in character;
- (b) Private contractual and domestic obligations of individual military personnel or civilian employees;
- (c) Claims based solely on compassionate grounds;
- (d) Bastardy claims; and
- (e) Claims for patent infringements.

§ 753.12 Negligence or wrongful act on the part of claimant.

No claim will be allowed where the damage, injury, or death is proximately caused, in whole or in part, by negligence

or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where, under the law of the country where the claim arises, contributory negligence bars recovery. However, if, under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then such local law or custom will be applied as far as practicable in determining the effect of such negligence or wrongful act.

§ 753.13 Combat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act. But see 10 U.S.C. 2734(b) (3).

§ 753.14 Claims of subrogees.

In cases of damage to or loss or destruction of property or personal injury or death covered by insurance, settlement will be made solely with the insured or his legal representative, rather than with the insurer, or with both the insured and the insurer. No inquiry will be made into the relative interests as between insured and insurer. The entire claim, including any portion covered by insurance, will be filed by, or on behalf of, the insured and payment of the entire amount allowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act and will not be considered. Insurers presenting such claims shall be informed that subrogation claims are not recognized under the Act. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney or other documentary evidence satisfactory to the Foreign Claims Commission.

§ 753.15 Statute of limitations.

A claim may be allowed under this part only if presented within 2 years after it accrued. A claim presented to a foreign government under applicable treaty or agreement within the time limit satisfies this requirement.

§ 753.16 Nature of claim.

Any claim will be considered if it states the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by, or on behalf of, the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

§ 753.17 Claims for damage occasioned by naval vessels.

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurrence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General: Attention Admiralty Division.

§ 753.18 Creation of Foreign Claims Commission.

(a) *Appointing Authority.* All Navy commanding officers are hereby granted authority to appoint Foreign Claims Commissions. All Marine Corps commanding officers are granted authority to appoint Foreign Claims Commissions, provided a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps is appointed to the commission. All claims which are presented to Marine Corps commands which do not have a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps attached will be forwarded to the nearest Navy or Marine Corps command with an active Foreign Claims Commission. For the purposes of the Foreign Claims Act and these regulations, the Judge Advocate General; the Officer in Charge, U.S. Sending State Office for Italy; the Officer in Charge, U.S. Sending State Office for Australia; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs, Military Assistance Advisory Groups (including Chiefs, Naval Section, MAAGS); Senior Naval Advisor to Argentina; and naval attachés are to be considered commanding officers. Commissions may be appointed to consider each claim as presented or one commission constituting a standing claims commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to such a commission.

(b) *Composition of commissions and limitations on adjudicating authority.* Claims commissions are delegated the following authority:

(1) A one-officer commission may consider, approve in full or in part, or disapprove claims in amounts up to and including \$1,000.

(2) A one-officer commission composed of a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps, may consider, approve in full or in part, or disapprove claims in amounts up to and including \$2,000.

(3) A three-officer commission may consider claims in any amount. It may approve in full or in part when the award is in an amount up to and including \$3,000, provided the claimant accepts any partial award. It may recommend awards in full or in part in amounts over

\$3,000 and up to and including \$15,000 respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia. Claims in excess of \$15,000 may be processed in accordance with § 753.25. It may deny claims in amounts up to and including \$3,000.

(4) A three-officer commission which includes one or more members of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps may consider claims of any amount. It may approve in full or in part when the award is in an amount up to and including \$5,000, provided the claimant accepts any partial award. It may recommend awards in full or in part in amounts over \$5,000 and up to and including \$15,000 to the Judge Advocate General or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia. Claims in excess of \$15,000 may be processed in accordance with § 753.25. It may deny claims in amounts up to and including \$5,000.

§ 753.19 Membership of commissions.

Foreign claims commissions shall consist of one or three commissioned officers of the Navy or Marine Corps whose grades and experience are commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act.

§ 753.20 No formal procedure prescribed.

No formal procedure for the conduct of an investigation of a foreign claim is prescribed. However, the investigative procedures as set forth in Part 719 of this chapter should be followed as a guide. A transcript of the testimony of witnesses is not required and only the substance of statements of witnesses need be recorded. It is desirable, however, that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to, and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

§ 753.21 Report of proceedings.

(a) The commission shall make a written report of each claim. The report shall include:

- (1) A copy of the appointing order creating the commission,
- (2) The claim document,
- (3) The dates of the proceedings,
- (4) The amount claimed stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange on the date of initial consideration of the claim, to the Judge Advocate General or, with
- (5) A brief summary of the facts, including the date of incident giving rise to the claim, the date the claim was filed, the nature and extent of the damages or

injuries, and the necessary jurisdictional facts.

(6) Signed statements of material witnesses or transcripts of their oral testimony for claims in excess of the commission's authority.

(7) An evaluation of applicable local laws and customs.

(8) The date the commission reached its final determination.

(9) The amount awarded, or recommended to be awarded, stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange on the date of final determination.

(10) An explanation of the basis of any recommendation in excess of the commission's authority.

(11) A release from the claimant as required by § 753.23 when an award has been accepted, or a copy of the notice of denial when the claim has been disallowed.

(b) When the commission has approved a claim which is within its final adjudicating authority, the original of the report and all allied papers shall be submitted to the appointing authority.

(c) When the commission recommends approval of a claim in excess of its adjudicating authority, a legible copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain the original of all papers for its files.

(d) When the commission has disallowed for any reason a claim within its final adjudicating authority or has recommended disallowance of a claim in excess of its final adjudicating authority, the original and one copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain one copy for its files.

(e) The commission's report will not be released or shown to the claimant without the express approval of the Judge Advocate General.

§ 753.22 Notification of award and payment.

(a) *Notification.* When a commission determines that a claim is meritorious and approves an award within its authority to pay in accordance with § 753.18(b), or when a larger award has been approved by the Judge Advocate General, the claimant shall be notified. When a commission determines that a claim is meritorious and recommends payment of an amount in excess of its authority, the commission may advise the claimant that the matter has been referred to the Judge Advocate General for consideration. Under no circumstances may the claimant be notified of the amount of the recommended award.

(b) *Payment.* When a commission has approved an award for payment within its final adjudicating authority, or when a larger award has been approved by the Judge Advocate General, the convening authority shall submit the original and one copy of the commission's report and the release required by § 753.23 to the

nearest Navy or Marine Corps disbursing officer, or to any U.S. disbursing officer if no Navy or Marine Corps disbursing officer is reasonably available, for payment of the claim. Foreign claims are paid under an open allotment with fund citation as follows: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 420, bureau control number 11003, authorization accounting activity 000020, transaction type 2D, cost code 000000099252. Copies of paid vouchers will be forwarded immediately to the Navy Accounting and Finance Center (NAFC 321), Washington, D.C. 20390.

§ 753.23 Releases.

(a) A release shall be obtained from the claimant in every case in which an award is accepted.

(b) The release executed by the claimant should release the United States and also release the tort-feasor or the persons who have occasioned the damage, injury, or death, if their identity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant.

(c) The release should preclude any possible future assertion of the claim for which the United States has made compensation.

(d) A suggested release is contained in appendix section 22.¹

§ 753.24 Appeal and reconsideration.

(a) *Appeal.* While there is no right to appeal from the action of a Foreign Claims Commission, the commission may reconsider its action upon the written request of the claimant or on its own initiative. If, after reconsideration, the commission again denies a claim, or the claimant declines to accept an award in full satisfaction of his claim, the commission's report shall be forwarded to the Judge Advocate General in accordance with § 753.21(d).

(b) *Reconsideration.* The Judge Advocate General may refer a claim for reconsideration to the original commission, a successor commission, or to a commission convened by the Judge Advocate General.

§ 753.25 Meritorious claims in excess of \$15,000.

(a) Claims within the Foreign Claims Act where the total amount due on account of damage, injury, and death exceeds \$15,000, and where the claimant will not accept \$15,000 in full satisfaction and final settlement of his claim, shall be forwarded directly to the Judge Advocate General for legal review and appropriate administrative action. The record in such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission shall forward

¹ Filed as part of the original document.

with and such claim its findings and recommendations as to the action to be taken (including its findings as to the extent and nature of the damage, injury, and/or death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and final settlement of his claim. In all such cases, the original and two copies of the report, claim, and supporting papers shall be forwarded. The remaining copy should be retained by the commission for its files.

(b) When, after review of the records, the Judge Advocate General considers that a claim in excess of \$15,000 is meritorious and would otherwise be covered by this section, he will recommend to the Secretary partial payment of \$15,000 and report the excess to Congress for its consideration.

§ 753.26 Claims outside the jurisdiction of the commission.

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission. See § 753.17. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country, or is not the government or a political subdivision of a foreign country, reports shall be forwarded in triplicate to the Judge Advocate General as in cases under § 753.25.

§ 753.27 Claims arising in specified foreign countries.

(a) *NATO Status of Forces and similar agreements.* The United States has ratified the NATO Status of Forces Agreement and has entered into similar agreements with other foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. Accordingly, directives of the cognizant area commander shall be consulted and claims shall not be referred to Foreign Claims Commissions until it has been determined that such action is consistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL), directs that, where a single service has been assigned responsibility for claims in a country or area, all claims arising under the Foreign Claims Act (10 U.S.C. 2734) and the Military Claims Act (10 U.S.C. 2733) shall normally be settled and paid by claims commissions or other claims settlement authorities appointed by the Secretary of that military department, or his designee, in accordance with the department's regulations. In countries in which the NATO Status of Forces Agreement or other similar agreement is in force, incidents which may give rise to tort claims against the United States arising from acts or omissions of naval personnel, or

members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage, or discharge of its cargo, shall be investigated and reports shall be made in accordance with instructions promulgated by the cognizant naval commanders.

(b) *Single-service responsibility and cross-servicing.* Single-service responsibility for processing claims under this part shall be accomplished as provided in Part 750, § 750.24 of this chapter. Where cross-servicing of claims has been accomplished, the forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

§ 753.28 Claims generated by civilian employees of the Department of Defense.

Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL), provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by civilian employees of the Department of Defense other than an employee of a military department.

§ 753.29 Advance payments.

Advance payments may be made pursuant to the provisions of §§ 750.70-750.73 and 750.80 of this chapter. In addition to the adjudicating authorities authorized by § 753.72 to make advance payments, all three-member Foreign Claims Commissions may make advance payments provided such action is approved by the Commanding Officer appointing the commission.

PART 756—NONAPPROPRIATED FUND CLAIMS REGULATIONS

Part 756 of Title 32 is revised to read as follows:

- Sec.
- 756.1 General.
- 756.2 Notification.
- 756.3 Processing claims.
- 756.4 Payment of claims.
- 756.5 Claims by employees.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 756.1 General.

(a) Non-appropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or prefatory. Compare *United States v. Holcombe*, 277 F. 2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F. Supp. 846, (D. Ga. 1963). To the extent that sovereign immunity is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of non-appropriated-fund-activity claims. It is policy to pay these claims from non-appropriated funds and to process them primarily through non-appropriated-

fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

(b) Claims arising out of the operation of non-appropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the non-appropriated-fund activity involved.

§ 756.2 Notification.

Many non-appropriated-fund activities carry 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 Naval Supply Systems Command determine whether non-appropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of non-appropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. 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.

§ 756.3 Processing claims.

(a) *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from non-appropriated-fund activities is normally with the non-appropriated-fund activity and its insurer. The standard procedures described in Part 750 of this chapter for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

(b) *Negotiations.* (1) When a non-appropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the non-appropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by

the Navy, the recommended award will be forwarded to the non-appropriated-fund activity, or its insurer, for payment from nonappropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the non-appropriated-fund activity nor its insurer is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

(c) *Denial.* Claims resulting from non-appropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a non-appropriated-fund activity or its insurer should not be denied 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 in court. Claimants shall be notified of a denial in accordance with § 750.7 of this chapter.

§ 756.4 Payment of claims.

(a) *Small claims.* Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for \$100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

(b) *Other claims.* Claims in excess of \$100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a non-appropriated-fund activity. In the event the non-appropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.5 Claims by employees.

(a) *Property.* Claims by employees of non-appropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Part 751 of this chapter and forwarded to the appropriate non-appropriated-fund activity for payment from nonappropriated funds.

(b) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950) was extended to provide for employees of non-appropriated-fund activities who suffered injury or death arising out of and in the course of their

employment (5 U.S.C. 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 U.S.C. 8173).

(c) *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 of the Continental United States, are protected by private insurance of the non-appropriated-fund activity or by other arrangements (5 U.S.C. 8172). When a non-appropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Part 757 of title 32 is revised to read as follows:

Subpart A—Medical Care Claims

- Sec. 757.1 Definitions.
- 757.2 Authority of the Judge Advocate General and JAG designees.
- 757.3 Report of care and treatment.
- 757.4 Investigations.
- 757.5 Determination, assertion, and collection of claims.
- 757.6 Medical records.
- 757.7 Notice of claim.
- 757.8 Statistical reports.
- 757.9 Geographical limitations—single-service responsibility.
- 757.10 Rates for medical care provided in Federal hospitals.
- 757.11 Single demand for medical care and property damage claims.
- 757.12 Statute of limitations.
- 757.13 Reference material.

Subpart B—Property Damage Claim

- 757.14 Regulations concerning affirmative claims.
- 757.15 Pursuit, settlement, and termination of claims.
- 757.16 Collection of claims.
- 757.17 Repair of Government property by the tort-feasor.
- 757.18 Referral of cases to the Department of Justice or GAO.
- 757.19 Statute of limitations.
- 757.20 Reports.

Subpart C—Joint Regulations on Claims Collection

- 757.21 Joint regulations of the General Accounting Office and Department of Justice on Federal claims collection standards.

Authority: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

Subpart A—Medical Care Claims

§ 757.1 Definitions.

For purposes of this subpart.

(a) *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division;

(2) The commandants of all naval districts and their district judge advocates;

(3) The officers in command and the directors of all Navy law centers outside the United States, except for law centers in countries where another service has single-service responsibility;

(4) The officers in charge of U.S. Sending State Offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

(c) *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee e.g., where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) *The Act.* "The Act" means the Medical Care Recovery Act (42 USC 2651-53).

(e) *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

(f) *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge

of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General and JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) A claim not in excess of \$20,000 may be waived completely or compromised and a release executed therefor by either the Judge Advocate General or the Deputy Judge Advocate General.

(3) A claim not in excess of \$15,000 may be waived completely or compromised and a release executed therefor by any Assistant Judge Advocate General.

(4) A claim not in excess of \$10,000 may be waived completely or compromised and a release executed therefor by the Deputy Assistant Judge Advocate General (Litigation and Claims).

(c) *Authority of other JAG designees.* All other JAG designees are authorized to (1) accept payment for the full amount of a claim and execute a release therefor, or (2) waive completely or compromise and execute a release of any claim not in excess of \$5,000.

(d) *Waiver and compromise.* A claim may be waived or compromised for the convenience of the Government or if it is determined that collection would result in undue hardship to the person who suffered the injury or disease giving rise to the claim.

(e) *Claims exceeding \$20,000.* Claims in excess of \$20,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice or (2) a suit has been instituted by the third party against the United States or against the individual who received or is receiving the medical care described above, and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(g) *Restrictions on contact with Department of Justice and U.S. attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. attorneys except in those cases (1) where the Department of Justice or a U.S. attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3)

where such action is authorized by the Judge Advocate General.

§ 757.3 Report of care and treatment.

(a) **NAVJAG Form 5890/12.** NAVJAG Form 5890/12 (see appendix section 24d)¹ shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases).

(b) **Computations.** NAVJAG Form 5890/12 shall be computed by using the rates set out in appendix section 24c.¹ The term "inpatient days" excludes periods charged to leave (annual or convalescent), periods of weekend liberty, and periods during which the injured party was attached to the hospital for the convenience of the Government (e.g., awaiting the arrival of his ship).

(c) **Submission of NAVJAG Form 5890/12.** The NAVJAG Form 5890/12 shall be submitted to the action JAG designee at the following times:

(1) An "initial" submission of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted if it appears that inpatient care will exceed 2 days, or that more than 10 outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of NAVJAG Form 5890/12 shall be made every 4 months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form.

(d) **Supplementary documents.** A narrative summary (Standard Form 502) should accompany the final NAVJAG Form 5890/12 in all cases involving inpatient care. In addition, when Government care exceeds \$1,000, the hospital should also provide a completed NAVJAG Form 5890/13 (see Appendix 24f). On this form, the determination of "patient status" may be based on local hospital usage. If the hospital prefers, it may furnish in lieu of NAVJAG Form 5890/13 a statement by the treating physician (normally on a locally prepared form) giving the date that necessary inpatient treatment was essentially completed, and the number of outpatient treatments that would have been required if the patient had been discharged on that date.

(e) **Information for health record and for action JAG designees.** Copies of all

NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

(f) **Treatment of nonnaval personnel.** Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) **U.S. Army:** Commanding general of the Army of comparable area commander in which the incident occurred;

(2) **U.S. Air Force:** Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) **U.S. Coast Guard:** Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred;

(4) **Department of Labor:** Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) **Veterans' Administration:** Director of the Veterans' Administration Hospital responsible for medical care of the injured party;

(6) **Department of Health, Education, and Welfare:** Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

(g) **Treatment of naval personnel by other Federal agencies.** Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

(h) **Civilian medical care.** The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases).

(i) **CHAMPUS cases.** CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colo. 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

§ 757.4 Investigations.

(a) **When required.** Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in Part 750 of this chapter. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed 3 inpatient days or 10 outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See § 757.3(f) for addresses of other departments and agencies.

(b) **Consolidation.** Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

(c) **Information for action JAG designee.** All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

§ 757.5 Determination, assertion, and collection of claims.

(a) **Determination and notice of claim.** Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

(b) **Foreign claims.** Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof

¹ Filed as part of original document.

shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(c) *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (i) Furnish the action JAG designee any pertinent information concerning the incident; (ii) notify the action JAG designee of any settlement offer from the third party or his insurer; and (iii) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

(d) *Pursuit of claims.* (1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by § 757.2(c). Before action is taken on a file, the action JAG designee shall determine:

- (i) Whether the injured party has retained or intends to retain counsel;
- (ii) Whether the tortfeasor denies liability and/or refuses to pay;
- (iii) In cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and
- (iv) Whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

(e) *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in paragraphs (a) and (b) of this section, and shall forward the file to the Judge

Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by the insurer in accordance with a State requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to insure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States—i.e., whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

(f) *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by paragraph (e) of this section, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out-of-pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

(g) *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

§ 757.6 Medical records.

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See Part 720 of this chapter concerning certifications where necessary for litigation.

§ 757.7 Notice of claim.

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tortfeasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

§ 757.8 Statistical reports.

Action JAG designees shall forward monthly reports to the Judge Advocate General setting forth the following information:

(1) The number of claims asserted during the month;

(2) The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(3) The dollar amount of claims asserted during the month;

(4) The dollar amount of recoveries made during the month (including partial recoveries); and

(5) The total number of active claims on file at the end of the month.

Report Symbol JAG-5800-2 is assigned for this reporting requirement.

§ 757.9 Geographical limitations—single-service responsibility.

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See § 750.24 of this chapter for single-service responsibility.

§ 757.10 Rates for medical care provided in Federal hospitals.

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in Appendix section A-24(c).¹

§ 757.11 Single demand for medical care and property damage claims.

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

§ 757.12 Statute of limitations.

Pursuant to the provisions of 28 U.S.C. 2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

§ 757.13 Reference material.

The following aids and reference materials are contained in Appendix section A-24(c).¹

(a) Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

(b) Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

(c) Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

(d) NAVJAG Form 5890/12, "Hospital and Medical Care 3rd Party Liability Case;"

(e) Standard Form 96, "Notice of Claim."

(f) NAVJAG Form 5890/13, "Supplemental Statement for Hospital and Medical Care Third Party Liability Case."

(g) Promissory Note containing Agreement for Judgment.

(h) Property damage claims in favor of the United States.

Subpart B—Property Damage Claims

§ 757.14 Regulations concerning affirmative claims.

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (part C of this chapter). Department of Defense Directive 5515.11 of 10 December 1966 (see appendix, section 24g)¹ delegates to the Secretary of the Navy, and his designee, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

§ 757.15 Pursuit, settlement, and termination of claims.

(a) *Authority to handle claims.* Subject to paragraph (b) of this section, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States.

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division;

(2) The commandant or the district judge advocate of a naval district;

(3) The officer in command or the director of a Navy law center; and

(4) Such other officers as may be designated by the Secretary of the Navy.

(b) *Claims over \$20,000.* Claims in excess of \$20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by paragraph (a) of this section should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Subpart C of this part).

(c) *Release.* The officers designated by paragraph (a) of this section are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under \$20,000, or (3) when permission to compromise has been granted by the Department of Justice.

§ 757.16 Collection of claims.

(a) *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

(b) *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne

by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. See Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

§ 757.17 Repair of Government property by the tort-feasor.

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer-in-charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer-in-charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigate report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer-in-charge that the property has been satisfactorily repaired, and that all bills for repairs have been paid.

§ 757.18 Referral of cases to the Department of Justice or CAO.

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by Subpart C of this part) have been completed.

§ 757.19 Statute of limitations.

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. 2415(b). Uncollected affirmative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (see appendix section A-24(h)).¹

§ 757.20 Reports.

The officers designated by § 757.15(a) (2)-(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

- Number of claims asserted.
- Dollar amount of claims asserted.
- Number of claims collected.
- Dollar amount of claims collected.

¹ Filed as a part of original document.

¹ Filed as part of original document.

Subpart C—Joint Regulations on Claims Collection

§ 757.21 Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards.

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are found in 4 CFR Part 101 et seq.

[SEAL] H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

FEBRUARY 16, 1973.

[FR Doc.73-3511 Filed 3-5-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[73-327]

PART 545—OPERATIONS

Borrowing, Issuance of Obligations, and Giving of Security

FEBRUARY 27, 1973.

Section 545.24 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.24) was amended by the Federal Home Loan Bank Board on December 9, 1972 (Document No. 72-1406; 37 FR 26315; effective on January 8, 1973). That amendment was made in connection with the Board's adoption of amendments relating to the issuance of subordinated debt securities (12 CFR 563.8-1). Said amendment to § 545.24 inadvertently omitted the phrase "to the same extent that it would have authority to do so if said paragraph (2) had not been enacted" which appeared in § 545.24 prior to the amendment. The Board now considers it desirable to amend said section to replace that phrase with an appropriate modification to exclude subordinated debt securities as defined in 12 CFR 561.24. Accordingly, the Board hereby amends said § 545.24 by revising it to read as set forth below, effective March 5, 1973.

Since the above amendment is for the purpose of clarification, the Board finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and since publication of said amendment for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendment would in the opinion of the Board likewise be unnecessary for the same reason, the Board provides that said amendment shall become effective on March 5, 1973.

§ 545.24 Borrowing, issuance of obligations, and giving of security.

An association may borrow to such extent as is authorized by the terms of its charter or by the Board by advice in writing. An association may issue such notes, bonds, debentures, or other obli-

gations, or other securities, as are not inconsistent with the terms of paragraph (2) of subsection (b) of section 5 of the Home Owners' Loan Act of 1933, as amended, (a) to the extent that such issuance is in compliance with the provisions of § 563.8-1 of this chapter, (b) to such extent as is otherwise authorized by the Board by advice in writing, or (c), except in the case of subordinated debt securities as that term is defined in § 561.24 of this chapter, to the same extent that it would have authority to do so if said paragraph (2) had not been enacted. To such extent as is authorized by the terms of its charter or by the Board by advice in writing, an association may give security, but an association shall not give security for any of its shares or share accounts or for any of its savings accounts representing share interests in the association.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL]

JACK CARTER,
Secretary.

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SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[73-328]

PART 561—DEFINITIONS

PART 563—OPERATIONS

Subordinated Debt Security

FEBRUARY 27, 1973.

The Federal Home Loan Bank Board, in Document No. 72-1406, dated November 30, 1972, amended Parts 561 and 563 of the rules and regulations for Insurance of Accounts (12 CFR Parts 561 and 563) to permit insured institutions to issue subordinated debt securities, with the prior written approval of the Federal Savings and Loan Insurance Corporation. The said amendments to Parts 561 and 563 were published in the FEDERAL REGISTER on December 9, 1972 (37 FR 26315-17) and were effective on January 8, 1973. The Board now considers it desirable to further amend Parts 561 and 563 in order to clarify certain ambiguities and to resolve several problems which arose under the January 8, 1973 amendments.

The definition of "net worth" in § 561.13 has been amended to make clear that only subordinated debt securities issued pursuant to § 563.8-1 may be used to satisfy up to 20 percent of the annual closing net worth requirement of § 563.13(b). An insured institution may use subordinated debt securities issued pursuant to § 563.8-1 or otherwise with the specific prior written approval of the Corporation to satisfy any other net worth requirement to the extent the institution is explicitly authorized to do so in writing by the Corporation.

Section 563.7-2 has been amended to make clear that the Corporation thereby approves for insured institutions, pur-

suant to section 403(b) of the National Housing Act, as amended, each of the securities referred to in said § 563.7-2 as to form, return and maturity.

The Board has made several technical amendments to § 563.8, *Limitation on borrowing* in order to clarify that section. The substance of the section has not been changed.

Paragraph (a) of § 563.8-1 has been amended by deleting the second sentence thereof which had provided: "If the issuance of such securities is requested in writing by the Corporation, such issuance shall be effected in accordance with such request without regard to the eligibility requirements contained in paragraph (b) of this section." Waiver of the eligibility requirements for insured institutions issuing subordinated debt securities pursuant to § 563.8-1 at the request of the Corporation will be considered on a case-by-case basis under paragraph (b) of § 563.8-1. As a result, the third sentence in such paragraph (a) has been amended by revising "In all other cases" to read "In each case".

Paragraph (a) of 563.8-1 has also been amended to make it clear that the prior written approval by the Corporation is also necessary for any amendment of the terms of the securities after issuance.

Paragraph (d) of § 563.8-1 has been amended in several respects. The reference to post-default interest in subdivision (ii) of subparagraph (1) thereof has been rearranged to make it clear that the payment of principal, interest and premium on subordinated debt securities is subordinated to post-default interest on savings accounts and other claims of the same or any higher priority. An additional part (d) has been added to subdivision (ii) of subparagraph (1) to make clear that each certificate evidencing subordinated debt issued by an insured institution pursuant to § 563.8-1 must state that such security will be offered and sold (including any resale) only in negotiated transactions and not by means of any form of general advertising.

Subdivision (iii) of subparagraph (1) presently provides that an insured institution must have the right to prepay its subordinated debt securities. That subdivision (iii) has been amended to make clear that this right to prepay shall not be subject to any premium or other prepayment penalty during the 15 months prior to the maturity date. Subdivision (iv) of subparagraph (1) has been amended to permit an insured institution to make required sinking fund payments and other prepayments or reserve allocations regardless of the effect of such payments on the institution's ability to meet its Federal insurance reserve or net worth requirements under § 563.13. (It should be noted, however, that subdivision (iv) continues to prohibit an insured institution from making accelerated payments of principal which would cause the institution to fail to meet its Federal insurance reserve or net worth requirements under § 563.13.)

Subparagraph (2) of paragraph (d) of § 563.8-1 has been amended to make clear that an insured institution may not