

List of Subjects in 19 CFR Part 101

Customs duties and inspections, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 continues to read as follows:

Authority: U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 Amended

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by inserting in appropriate alphabetical order "Port Hueneme, Calif. (T.D. 92-10)" in the column headed "Port of entry" in the Los Angeles, California, District of the Pacific Region.

§ 101.4 [Amended]

3. The list of Customs stations in § 101.4(c) is amended by removing the entry "Los Angeles, Calif." in the column headed "District", by removing the entry "Port Hueneme, Calif." in the column headed "Customs stations", and by removing the entry "Los Angeles" in the column headed "Port of entry having supervision".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: January 24, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-2945 Filed 2-6-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR PART 520****Oral Dosage Form New Animal Drugs Not Subject to Certification; Prednisolone Tablets**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug

application (NADA) filed by Vet-A-Mix, Inc. The NADA provides for the use of prednisolone tablets as an anti-inflammatory agent in dogs.

EFFECTIVE DATE: February 7, 1992.

FOR FURTHER INFORMATION CONTACT:

Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8614.

SUPPLEMENTARY INFORMATION: Vet-A-Mix, Inc., P.O. Box A, Shenandoah, IA 51601, has applied for approval of NADA 140-921, which provides for the oral use of 5-milligram prednisolone tablets as an anti-inflammatory agent in dogs.

The NADA is approved as of November 8, 1991, and the regulations are amended by adding new 21 CFR 520.1880 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

The approval of this NADA is based on a demonstration of bioequivalence with a pre-1962 National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) reviewed product; therefore, the product does not qualify for marketing exclusivity.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 36b).

2. New § 520.1880 is added to read as follows:

§ 520.1880 Prednisolone tablets.

(a) *Specifications.* Each tablet contains 5 milligrams prednisolone.

(b) *Sponsor.* See No. 011789 in § 510.600(c)(2) of this chapter.

(c) *Special considerations.* (1) Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate parturition followed by dystocia, fetal death, retained placenta, and metritis.

(2) Do not use in viral infections. Systemic therapy with prednisolone is contraindicated in animals with peptic ulcer, corneal ulcer, and Cushingoid syndrome. The presence of diabetes, osteoporosis, predisposition to thrombophlebitis, hypertension, congestive heart failure, renal insufficiency, and active tuberculosis necessitates carefully controlled use. Some of the above conditions occur only rarely in dogs but should be kept in mind.

(3) Anti-inflammatory action of corticosteroids may mask signs of infection.

(d) *Conditions of use.* (1) *Amount.* Dogs: 2.5 milligrams per 4.5 kilograms (10 pounds) body weight per day. Administer total daily dose orally in equally divided doses 6 to 10 hours apart until response is noted or 7 days have elapsed. When response is attained, dosage should be gradually reduced until maintenance level is achieved.

(2) *Indications for use.* For use in dogs as an anti-inflammatory agent.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 31, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-2985 Filed 2-6-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Part 1

(T.D. 8360)

RIN 1545-AM95

Nondiscrimination Requirements for Qualified Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations published in the *Federal Register* for Thursday, September 19, 1991, at page 47524 (56 FR 47524). The final regulation interprets the section 401(a)(4) requirement that contributions or benefits provided under a tax-qualified retirement plan not discriminate in favor of highly compensated employees.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, Patricia McDermott, David Munroe and Rebecca Wilson at (202) 377-9372 (not a toll-free number).

Background

These final regulations relate to section 401(a)(4) of the Internal Revenue Code of 1986.

Need for Correction

As published, the final regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which was the subject of FR Doc 91-21924, is corrected as follows:

1. On page 47524, column 1, in the preamble, under the heading "EFFECTIVE DATES", line 3, the language "December 31, 1991, and applied to those" is corrected to read "December 31, 1991, and are applied to those".

2. On page 47525, column 1, in the preamble, under the heading "Summary of Significant Modifications", line 4 from the top of the column, the language "restructuring methods; and the" is corrected to read "restructuring method, and the".

3. On page 47527, column 1, in the preamble, under the heading "Defined Contribution Safe Harbors", the first complete paragraph, line 9, the language "84-155, 84-2 C.B. 95. Thus, under the" is corrected to read "84-155, 1984-2 C.B. 95. Thus, under the".

4. On page 47533, column 2, in the preamble, under the paragraph heading "6. Cross-Testing Defined Benefit and

Defined Contribution Plans", line 21, the language "As discussed above, the cross testing" is corrected to read "As discussed above, the cross-testing".

5. On page 47535, column 2, in the preamble, under the paragraph heading "15. Effective Dates", second paragraph under that heading, line 1, the language "In Rev. Proc. 90-73, 1990-2 C.B. 788," is corrected to read "In Notice 90-73, 1990-2 C.B. 353,".

6. On page 47536, column 2, in the preamble, under the paragraph heading "19. Additional Authority", line 6, the language "that the commissioner may, in revenue" is corrected to read "that the Commissioner may, in revenue".

§ 1.401 [Corrected]

7. On page 47539, column 3, in § 1.401(a)(4)-0, the entries in the table for §§ 1.401(a)(4)-9 (b) and (c) are flush to the left.

8. On page 47540, column 1, in § 1.401(a)(4)-0, the entries in the table for § 1.401(a)(4)-10(b)(3) (iii)(D) and (iv) should read § 1.401(a)(4)-10(b)(3) (iv) and (v), respectively.

9. On page 47543, column 3, line 6 of § 1.401(a)(4)-2(b)(5)(ii), the language "attributable to disparities permitted" is corrected to read "attributable to uniform disparities permitted".

10. On page 47546, column 1, under § 1.401(a)(4)-2(c)(3)(v), last line in the paragraph, the language "§ 1.410(b)-5(f)," is corrected to read "§ 1.410(b)-5(f)".

11. On page 47547, column 3, under § 1.401(a)(4)-3(b)(2)(iv), lines 7 and 8, the language "substantially all employees in the plan, the same criteria apply as in" is corrected to read "an employee, the same criteria apply as in".

12. On page 47547, column 3, under § 1.401(a)(4)-3(b)(2)(iv), lines 10 and 11, the language "benefits is currently available to a group of employees in the plan under" is corrected to read "benefit is currently available to an employee in the plan under".

13. On page 47549, column 1, under § 1.401(a)(4)-3(b)(4)(ii), in *Example 2*, last line in the paragraph, the language "percentage of average annual compensation." is corrected to read "percent of average annual compensation".

14. On page 47549, column 2, under § 1.401(a)(4)-3(b)(4)(ii), lines 1 and 2 of *Example 4*, the language "Plan D is a section 401(l) plan that provides a normal retirement benefit" is corrected to read "Plan D provides a normal retirement benefit".

15. On page 47549, column 2, under § 1.401(a)(4)-3(b)(4)(ii) paragraphs (1) and (2) of *Example 4*, are correctly designated as (a) and (b), respectively.

16. On page 47550, column 1, under § 1.401(a)(4)-3(b)(5)(ii), in *Example 3*, line 2, the language "Example 1, except that plan determines each" is corrected to read "Example 1, except that the plan determines each".

17. On page 47550, column 2, under § 1.401(a)(4)-3(b)(7)(iii), line 20, the language "See paragraph (b)(5)(ii), Example 3, of" is corrected to read "See paragraph (b)(5)(ii), Example 4, of".

18. On page 47550, column 2, under § 1.401(a)(4)-3(b)(7)(iii), line 23, the language, "on September 19, 1991 may continue to" is corrected to read "on September 19, 1991, may continue to".

19. On page 47550, column 2, under § 1.401(a)(4)-3(b)(7)(v), line 2, the language "employee who continues participation" is corrected to read "employee who continues benefiting".

20. On page 47552, column 1, under § 1.401(a)(4)-3(b)(8)(xii)(C), lines 16 through 18, the language "(adjusted, if applicable, in accordance with § 1.401(a)(4)-13(c)(5) (i), (ii) and (iv), but not § 1.401(a)(4)-13(c)(5)(iii))." is corrected to read "(adjusted as provided in paragraph (b)(8)(xii)(B) of this section)".

21. On page 47552, column 2, under § 1.401(a)(4)-3(b)(8)(xiii)(C), line 10, the language "solely to all nonhighly compensated" is corrected to read "solely to some or all nonhighly compensated".

22. On page 47552, column 2, under § 1.401(a)(4)-3(b)(8)(xiii)(D)(2), line 6, the language "solely to all nonhighly compensated" is corrected to read "solely to some or all nonhighly compensated".

23. On page 47552, column 2, under § 1.401(a)(4)-3(b)(8)(xiii)(D)(2), line 10, the language "formula that was available solely to all" is corrected to read "formula that was available solely to some or all".

24. On page 47553, column 1, under § 1.401(a)(4)-3(b)(8)(xiii)(F), in *Example 4*, the third line from the bottom of the paragraph, the language "because the formula is available solely to all" is corrected to read "because the formula is available solely to some or all".

25. On page 47553, column 2, under § 1.401(a)(4)-3(b)(8)(xiii)(F), the last line in *Example 6*, the language "(b)(8)(xi)(B) of this section." is corrected to read "(b)(8)(xi)(D) of this section".

26. On page 47553, column 2, under § 1.401(a)(4)-3(b)(8)(xiii)(F), in *Example 7*, the fifth line from the bottom of the paragraph, the language "solely to all nonhighly compensated" is corrected to read "solely to some or all nonhighly compensated".

27. On page 47556, column 3, § 1.401(a)(4)-3(d)(2)(iii), in the *Example*, line 24, the language "QJSA in Steps A and B, respectively. For this" is corrected to read "QJSA in steps A and B, respectively. For this".

28. On page 47563, column 3, § 1.401(a)(4)-3(d)(6)(vii)(D), in *Example 1*, line 27, the language "section) of each QJSA in Steps 1 and 2," is corrected to read "section) of each QJSA in steps 1 and 2,".

29. On page 47564, column 1, under § 1.401(a)(4)-3(d)(6)(vii)(D), in *Example 1*, the first column in the table preceding the column with the heading "Step 1", the word "Age" is added as the heading for the first column.

30. On page 47564, column 1, under § 1.401(a)(4)-3(d)(6)(vii)(D), in *Example 2*, lines 5 through 8, the language beginning with "QJSA. The new factor * * *" and ending with "Although this change increases" is corrected to read "QJSA as permitted under § 1.401(a)(4)-13(c)(6)(ii). The new factor applies to benefits accrued both before and after the fresh-start date. Although this change increases".

31. On page 47564, column 1, under § 1.401(a)(4)-3(d)(6)(vii)(D), in *Example 2*, the fifth line from the bottom of the paragraph, the language "(d)(6)(vii)(B)(2) of this section does not" is corrected to read "(d)(6)(vii)(C)(2) of this section does not".

32. On page 47565, column 1, under § 1.401(a)(4)-3(d)(6)(viii)(F), under the *Example*, the first column in the table preceding the column with the heading "Step 1", the word "Age" is added as the heading for the first column.

33. On page 47567, column 1, under § 1.401(a)(4)-3(e)(4), in the last line of paragraph (b) of *Example 6*, the language "plus \$15,000 plus \$15,000 divided by 5)." is corrected to read "plus \$15,000 plus \$15,000 divided by 5).".

34. On page 47567, column 3, under § 1.401(a)(4)-3(f)(4)(ii)(A), lines 14 and 15, the language "plan year, but who did not elect the window in that plan year." is corrected to read "plan year.".

35. On page 47569, column 2, under § 1.401(a)(4)-4(b)(2)(iv), the last line in the paragraph, the language "dollar amount is disregarded." is corrected to read "dollar amount is disregarded. In addition, the condition that an employee's vested accrued benefit have an actuarial present value less than or equal to the specified dollar amount (not to exceed \$3,500) may be disregarded in determining the employees to whom the mandatory cash-out described in the preceding sentence is available.".

36. On page 47571, column 1, under § 1.401(a)(4)-4(d), paragraph (d)(3) is corrected to read:

"(3) *Early retirement window benefits.*

A benefit, right, or feature that is only available to employees who terminate employment within a specified time period must separately satisfy the requirements of this section. Nonetheless, if the benefit, right, or feature meets the definition of an early retirement window benefit in § 1.401(a)(4)-3(f)(4)(iii) (or would meet that definition if the definition applied to all benefits, rights, and features) and if the benefit, right, or feature is available for a specified period that begins in one plan year and ends in the immediately succeeding plan year, the benefit, right, or feature is disregarded for purposes of applying this section to the plan for the second plan year. The preceding sentence applies solely in the case of employees to whom the benefit, right, or feature was treated as currently available for purposes of applying this section to the plan for the first plan year."

37. On page 47573, column 3, under § 1.401(a)(4)-5(a)(6), in *Example 9*, line 2, the language "*Example 7*, except that the Plan F limits the" is corrected to read "*Example 7*, except that Plan F limits the".

38. On page 47578, column 2, under § 1.401(a)(4)-7(c)(2), line 11, the language "determined under paragraph (c)(4)(iii)" is corrected to read "determined under paragraphs (c)(4)(iii)".

39. On page 47579, column 2, under § 1.401(a)(4)-7(c)(5), paragraph (b) of the *Example*, line 2, the language "compensation does not exceeds covered" is corrected to read "compensation does not exceed covered".

40. On page 47580, column 3, under § 1.401(a)(4)-8(b)(2)(i)(D), line 5, the language "§ 1.401(a)(4)-7(c)(4)(iv)(C). In" is corrected to read "§ 1.401(a)(4)-7(c)(4)(iii)(C). In".

41. On page 47580, column 3, under § 1.401(a)(4)-8(b)(2)(i)(D), the last line in the paragraph, the language "rate." is corrected to read "rate. If permitted disparity is taken into account, it must be taken into account for all employees in the plan."

42. On page 47580, column 3, under § 1.401(a)(4)-8(b)(2)(i)(E), last line in the paragraph, the language "(b)(2)(i)(D) of this section." is corrected to read "(b)(2)(i)(D) of this section)".

43. On page 47580, column 3, under § 1.401(a)(4)-8(b)(2)(ii)(A), the last line in the paragraph, the language "7(c)(4)(iv)(D) must be applied." is

corrected to read "7(c)(4)(iii)(D) must be applied."

44. On page 47581, column 1, under § 1.401(a)(4)-8(b)(3)(i)(B), line 2, the language "employee's stated benefit is determined" is corrected to read "employee's stated benefit is determined as a straight life annuity".

45. On page 47582, column 2, under § 1.401(a)(4)-8(b)(3)(vi), paragraph (a) in *Example 1*, the sixth line from the bottom of the paragraph, the language "participated in the plan for 5 years, and has" is corrected to read "participated in the plan for 6 years, and has".

46. On page 47583, column 1, under § 1.401(a)(4)-8(b)(3)(vi), paragraph (b)(4) in *Example 2*, line 2, the language "*Example* is multiplied by 0.0857, the" is corrected to read "*Example 2* is multiplied by 0.0857, the".

47. On page 47583, column 2, under § 1.401(a)(4)-8(c)(2)(i)(F), last line in the paragraph, the language "(c)(2)(i)(E) of this section" is corrected to read "(c)(2)(i)(E) of this section)".

48. On page 47586, column 1, under § 1.401(a)(4)-8(c)(3)(x), the second line from the bottom of the paragraph, the language "(certain conditions on accruals), or (x)" is corrected to read "(certain conditions on accruals), or (xi)".

49. On page 47586, column 3, under § 1.401(a)(4)-9(a), line 19, the language "of the general test in § 1.401(a)(3)-" is corrected to read "of the general test in § 1.401(a)(4)-".

50. On page 47587, column 3, under § 1.401(a)(4)-9(b)(2)(iv), the first two lines in the column, the language "employees' aggregate accrual or equivalent allocation rates under" is corrected to read "employees' aggregate allocation or aggregate accrual rates under".

51. On page 47587, column 3, under § 1.401(a)(4)-9(b)(2)(v)(A), line 8, the language "DB/DC plan, each separately-" is corrected to read "DB/DC plan, each separately".

52. On page 47588, column 1, § 1.401(a)(4)-9(b)(2)(v)(B), line 14, the language "(government plan method) or (b)(6)" is corrected to read "(government plan method), or (b)(6)".

53. On page 47588, column 1, under § 1.401(a)(4)-9(b)(3)(i), line 7, the language "this purpose, non-core benefits, rights" is corrected to read "this purpose, non-core benefits, rights,".

54. On page 47589, column 2, under § 1.401(a)(4)-9(c)(6), in *Example 1*, the tenth line in the column, the language "satisfies sections 401(a)(4) and section 410(b)" is corrected to read "satisfies sections 401(a)(4) and 410(b)".

55. On page 47589, column 2, under § 1.401(a)(4)-9(c)(6), fourth and fifth lines from the bottom of *Example 2.*, the language "each component plan satisfied section 401(a)(4) and section 410(b) as if it were a" is corrected to read "each component plan satisfied sections 401(a)(4) and 410(b) as if it were a".

56. On page 47589, column 2, under § 1.401(a)(4)-9(c)(6), in *Example 3.*, the twelfth line from the bottom of the column, the language "§ 1.401(a)(4)-3(b)(2)(vii), *Example 7.* Under" is corrected to read "§ 1.401(a)(4)-3(b)(2)(vii), *Example 7.* Under".

57. On page 47590, column 1, under § 1.401(a)(4)-10(b)(3)(i), the fifth line from the bottom of the paragraph, the language "(iv) of this section provide certain" is corrected to read "(v) of this section provide certain".

58. On page 47590, column 3, under § 1.401(a)(4)-10, paragraph (b)(3)(iii)(D) is correctly designated as paragraph (b)(3)(iv) and revised to read as follows:

"(iv) *Special section 410(b) test for former employees.* In determining whether a rate group (within the meaning of § 1.401(a)(4)-3(c) or § 1.401(a)(4)-8(c)(1)) or a component plan (within the meaning of § 1.401(a)(4)-9(c)) consisting of former employees satisfies section 410(b), the special rule in § 1.410(b)-2(c)(2)(ii) may be applied. For purposes of applying the 95-percent test of § 1.410(b)-2(c)(2)(ii)(A), the term "plan" means a plan as defined in § 1.401(a)(4)-12 and does not include a rate group or component plan."

59. On page 47590, column 3, under § 1.401(a)(4)-10, paragraph (b)(3)(iv) is correctly designated as paragraph (b)(3)(v).

60. On page 47591, column 2, under § 1.401(a)(4)-10(b)(4)(iv), in *Example 2.*, line 4, the language "purposes of determining former employees" is corrected to read "purposes of determining former employees".

61. On page 47592, column 1, under § 1.401(a)(4)-11(c)(1), line 15, the language "any plan provision that directly affects" is corrected to read "any plan provision that directly affects".

62. On page 47592, column 1, under § 1.401(a)(4)-11(c)(2), the third line from the bottom of the paragraph, the language "satisfy section 401(a)(4) when treated as" is corrected to read "satisfy this paragraph (c) when treated as".

63. On page 47594, column 1, under § 1.401(a)(4)-11(g)(6), in *Example 5.*, line 2, the language "defined contribution plan that covers all" is corrected to read "defined benefit plan that covers all".

64. On page 47597, column 3, § 1.401(a)(4)-12, in the definition of "Testing service," paragraph (4) *Time of determination*, line 7, the language "project method in § 1.401(a)(4)-" is corrected to read "projected method in § 1.401(a)(4)-".

65. On page 47599, column 1, under § 1.401(a)(4)-13(c)(7), paragraph (a) in *Example 1.*, line 15, the language "requirements of § 1.401(a)(4)-2(b)(2) and" is corrected to read "requirements of § 1.401(a)(4)-3(b)(2) and".

66. On page 47599, column 2, under § 1.401(a)(4)-13(c)(7), paragraph (c) in *Example 2.*, the last line in the paragraph, the language "\$4,762, the greater of—" is corrected to read "\$4,552, the greater of—".

67. On page 47599, column 2, under § 1.401(a)(4)-13(c)(7), paragraph (c)(1) in *Example 2.*, line 1, the language "(1) \$4,762, the sum of Employee C's accrued" is corrected to read "(1) \$4,552, the sum of Employee C's accrued".

68. On page 47599, column 2, under § 1.401(a)(4)-13(c)(7), paragraph (c)(1) in *Example 2.*, the last line in the paragraph, the language "percent $\times$ \$8,000 $\times$ 1 year, or \$562), or" is corrected to read "percent $\times$ \$8,000 $\times$ 1 year, or \$352), or".

69. On page 47601, column 1, § 1.401(a)(4)-13(d)(7), paragraph (b) in *Example 3.*, line 4, the language "normal retirement age of 65. Employee A also" is corrected to read "normal retirement age of 25 years. Employee A also".

70. On page 47601, column 1, § 1.401(a)(4)-13(d)(7), paragraph (b) in *Example 3.*, last line in the paragraph, the language "percent $\times$ \$10,000) $\times$ 10/25)" is corrected to read "percent $\times$ \$10,000) $\times$ 10/25)".

71. On page 47601, column 3, § 1.401(a)(4)-13(e)(2)(i), first line in the column, the language "retirement, determine the actuarial" is corrected to read "retirement age, determine the actuarial".

72. On page 47602, column 2, under § 1.401(a)(4)-13(f)(3)(i), line 6, the language "fresh-start date, under § 1.410(a)(4)-" is corrected to read "fresh-start date, under § 1.401(a)(4)-".

73. On page 47602, column 3, under § 1.411(d)-4, paragraph (a)(2) of "A-1", second line from the top of the column, the language "defined in § 1.401(a)(4)-12(q), and" is corrected to read "defined in § 1.401(a)(4)-12, and".

Dale D. Goode,
Federal Register Liaison Officer, Assistant
Chief Counsel (Corporate).

[FR Doc. 92-2177 Filed 2-6-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 750

General Claims Provisions

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations pertaining to the Department of the Navy's claims program. This rule reflects changes to JAG Instruction 5800.7C, Chapter VIII of the Manual of the Judge Advocate General, and changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States.

EFFECTIVE DATE: February 7, 1992.

FOR FURTHER INFORMATION CONTACT: Captain Milton D. Finch, JAGC, USN, Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, (703) 325-9880.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 133, 939, 5013, and 5148; E.O. 11476; and 32 CFR 700.206 and 700.1202; the Judge Advocate General revises 32 CFR part 750. This revision reflects changes to JAG Instruction 5800.7C, Chapter VIII of the Manual of the Judge Advocate General, and changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States. This part has been revised and shortened. It sets forth the responsibilities and procedures for the supervision and management of the Navy's claims program and the investigation of claims under the various Federal Claims Statutes. It also sets forth the procedures and responsibilities for the administrative processing and consideration of claims against the United States.

This revision was adopted on January 17, 1991. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rulemaking process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of 32 CFR 296 and 701. It has

also been determined that this final rule is not a "major rule" within the criteria specified in Executive Order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 750

Claims.

For the reasons set out in the preamble, title 32, part 750 of the Code of Federal Regulations is revised to read as follows:

PART 750—GENERAL CLAIMS REGULATIONS

Subpart A—General Provisions for Claims

Sec.

- 750.1 Scope of subpart A.
- 750.2 Investigations: In general.
- 750.3 Investigations: The report.
- 750.4 Claims: In general.
- 750.5 Claims: Proper claimants.
- 750.6 Claims: Presentment.
- 750.7 Claims: Action by receiving command.
- 750.8 Claims: Responsibility of adjudicating authority.
- 750.9 Claims: Payments.
- 750.10 Claims: Settlement and release.
- 750.11 Claims: Denial.
- 750.12 Claims: Action when suit filed.
- 750.13 Claims: Single service responsibility.
- 750.14—750.20 [Reserved]

Subpart B—Federal Tort Claims Act

- 750.21 Scope of subpart B.
- 750.22 Exclusiveness of remedy.
- 750.23 Definitions.
- 750.24 Statutory/regulatory authority.
- 750.25 Scope of liability.
- 750.26 The administrative claim.
- 750.27 Information and supporting documentation.
- 750.28 Amendment of the claim.
- 750.29 Investigation and examination.
- 750.30 Denial of the claim.
- 750.31 Reconsideration.
- 750.32 Suits under the Federal Tort Claims Act (FTCA).
- 750.33 Damages.
- 750.34 Settlement and payment.
- 750.35 Attorney's fees.
- 750.36 Time limitations.
- 750.37—750.40 [Reserved]

Subpart C—Military Claims Act

- 750.41 Scope of subpart C.
- 750.42 Statutory authority.
- 750.43 Claims payable.
- 750.44 Claims not payable.
- 750.45 Filing claim.
- 750.46 Applicable law.
- 750.47 Measure of damages for property claims.
- 750.48 Measure of damages in injury or death cases.
- 750.49 Delegations of adjudicating authority.
- 750.50 Advance payments.
- 750.51 Final disposition.
- 750.52 Appeal.
- 750.53 Cross-servicing.
- 750.54 Payment of costs, settlements, and judgements related to certain medical or legal malpractice claims.
- 750.55 Attorney's fees.

750.56—750.80 [Reserved]

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

- 750.81 Scope of subpart D.
- 750.82 Statutory authority.
- 750.83 Definitions.
- 750.84 Claim procedures.
- 750.85 Statute of limitations.
- 750.86 Officials with authority to settle.
- 750.87 Scope of liability.
- 750.88 Claims not payable.
- 750.89 Measure of damages.

Authority: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

Subpart A—General Provisions for Claims

§ 750.1 Scope of subpart A.

(a) *General.* (1) The Judge Advocate General is responsible for the administration and supervision of the resolution of claims arising under the Federal Tort Claims Act (subpart B of this part), the Military Claims Act (subpart C of this part), the Nonscope Claims Act (subpart D of this part), the Personnel Claims Act (part 751 of this chapter), the Foreign Claims Act, the International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements, the Federal Claims Collection Act of 1966 (subpart A of part 757 of this chapter), the Medical Care Recovery Act (subpart B of part 757 of this chapter), and postal claims.

(2) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation) is the functional manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising under the acts listed above and is responsible to the Judge Advocate General for the management of that system. The claims system consists of field activities delegated claims processing and adjudicating authority and the attorneys and support personnel assigned to the Claims and Tort Litigation Division of the Office of the Judge Advocate General. For economy of language, Naval Legal Service Offices and Naval Legal Service Office Detachments are referred to as Naval Legal Service Command Activities.

(3) Commanding officers of commands receiving claims are responsible for complying with the guidance on investigations in §§ 750.2 and 750.3 and the guidance on handling and forwarding claims found in § 750.5.

(b) This 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 subpart of this part, the specific provisions govern.

§ 750.2 Investigations: In general.

(a) *Conducting the investigation.* The command where the incident giving rise to the claim is alleged to have happened is responsible for conducting an investigation in accordance with this part.

(b) *Thorough investigation.* Every incident that may result in a claim against or in favor of the United States shall be promptly and thoroughly investigated under this part. Investigations convened for claims purposes are sufficiently complex that they should be performed with the assistance and under the supervision of a judge advocate or other attorney. Where the command has an attorney assigned, he shall be involved in every aspect of the proceedings. When an attorney is not assigned to the investigating command, consultation shall be sought from the appropriate Naval Legal Service Command activity.

(c) *Recovery barred.* Even when recovery may be barred by statute or case law, all deaths, serious injuries, and substantial losses to property that are likely to give rise to claims must be investigated while the evidence is available. Claims against persons in the naval service arising from the performance of their official duties shall be investigated as though they were claims against the United States. When an incident involves an actual or potential claim against the United States for property damage only and the total amount likely to be paid does not exceed \$5,000.00, an abbreviated investigative report may be submitted. Where this monetary figure may be exceeded, but the circumstances indicate an abbreviated report may be adequate to preserve the facts and protect the Government's claims interests, approval to submit a limited investigative report may be sought from the nearest Naval Legal Service Command activity.

(d) *Developing the facts.* Any investigation convened for claims purposes must focus on developing the facts of the incident, i.e., the who, what, where, when, why, and how of the matter. Opinions on the possible liability of the United States under any of the claims statutes listed above shall not be expressed. Early and continuous consultation with claims attorneys at Naval Legal Service Command activities is essential to ensure the timely development of all necessary facts, the identification and preservation of

relevant evidence, and to void the need for supplemental inquiries.

(e) *Attorney work product.* (1) The convening order and the preliminary statement of an investigative report prepared to inquire into the facts of an incident giving or likely to give rise to a claim against the United States shall include the following:

This investigation has been convened and conducted, and this report prepared, in contemplation of claims adjudication and litigation and for the express purpose of assisting attorneys representing the interests of the United States.

(2) When an investigation is prepared by or at the direction of an attorney representing the Department of the Navy and is prepared in reasonable anticipation of litigation, it is exempt from mandatory disclosure under the Freedom of Information Act exemption (b)(5) and is normally privileged from discovery in litigation under the attorney work product privilege. 5 U.S.C. 552(b)(5). Unless an attorney prepares the report or personally directs its preparation, the investigation may not be privileged, even if it was prepared in reasonable anticipation of litigation.

(f) *Advance copy.* An advance copy of any investigation conducted because a claim has been, or is likely to be, submitted shall be forwarded to the Naval Legal Service Command activity claims office responsible for the area where the incident giving rise to the claim occurred.

§ 750.3 Investigations: The report.

(a) *Purpose.* The purpose of investigations into claims incidents is to gather all relevant information about the incident so adjudicating officers can either pay or deny the claim. The essential task of the investigating officer is to answer the questions of who, what, where, when, why and how? The Navy's best interests are served when the investigation is thorough and is performed in a timely manner so the claimant can be advised promptly of the action on the claim.

(b) *Duties of the investigating officer.* It is the investigating officer's responsibility:

(1) To interview all witnesses to the incident and prepare summaries of their comments. Obtaining signed statements of Government witnesses is not necessary. Summaries of the witnesses' remarks prepared by the investigating officer are quite sufficient and generally expedite the gathering of information. On the other hand, written signed statements should be obtained from the claimant, wherever possible;

(2) To inspect the property alleged to have been damaged by the action of Government personnel;

(3) To determine the nature, extent, and amount of any damage, and to obtain pertinent repair bills or estimates and medical, hospital, and associated bills necessary to permit an evaluation of the claimant's loss;

(4) To obtain maintenance records of the Navy motor vehicle, plane, or other piece of equipment involved in the claim;

(5) To reduce to writing and incorporate into an appropriate investigative report all pertinent statements, summaries, exhibits, and other evidence considered by the investigator in arriving at his conclusions; and,

(6) To furnish claim forms to any person expressing an interest in filing a claim and to advise such personnel where they should file their claim.

(c) *Content of the report.* The written report of investigation shall contain information answering the questions mentioned in § 750.3(a) and, depending on the nature of the incident, will include the following:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, or road;

(2) A concise but complete statement of the incident with reference to physical facts observed and any statements by the personnel involved;

(3) Names, grades, organizations, and addresses of military personnel and civilian witnesses;

(4) Opinions as to whether military or civilian employees involved in the incident were acting within the scope of their duties at the time;

(5) Description of the Government property involved in the incident and the nature of any damage it sustained; and,

(6) Descriptions of all private property involved.

(d) *Immediate report of certain events.* The Navy or Marine Corps activity most directly involved in the incident shall notify the Judge Advocate General and the appropriate adjudicating authority immediately by message, electronic mail, or telephone 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 that could result in litigation that would involve a new precedent or point of law.

(3) Claims or possible claims that involve or are likely to involve an agency other than the Department of the Navy.

(e) *Request for assistance.* When an 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 with responsibility for performing the investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Likewise, if a commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from a naval commanding officer or officer in charge, the latter should normally comply. If a complete investigation is requested it will be performed in compliance with the regulations of the requested service. These investigations are normally conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating unit or installation.

(f) *Report of Motor Vehicle Accident, Standard Form 91, RCS OPNAV 5100-6.* The operator 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 91. This operator's report shall be made even though the operator of the other vehicle, or any other person involved, states that no claim will be filed, or the only vehicles involved are Government owned. An accident shall be reported by the operator regardless of who was injured, what property was damaged, or who was responsible. The operator'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.

(g) *Priority of the investigation.* To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an investigating officer shall ordinarily have priority over any other assignments he may have.

(h) *Contents of the report of investigation.* The report should include the following items in addition to the requirements in § 750.3(c):

(1) If pertinent to the investigation, the investigating officer should obtain a statement from claimant's employer showing claimant's occupation, wage or salary, and time lost from work as a result of the incident. In case of personal injury, the investigating officer should ask claimant to submit a written statement from the attending physician

setting forth the nature and extent of injury and treatment, the duration and extent of any disability, the prognosis, and the period of hospitalization or incapacity.

(2) A Privacy Act statement for each person who was asked to furnish personal information shall be provided. Social Security numbers of military personnel and civilian employees of the U.S. Government should be included in the report but should be obtained from available records, not from the individual.

(3) Names, addresses, and ages of all civilians or military personnel injured or killed; names of insurance companies; information on 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 should be included.

(4) If straying animals are involved, a statement as to whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(5) 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.

(6) A statement on whether a police investigation was made. A copy of the police report of investigation should be included if available.

(7) A statement on whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(i) *Expert opinions.* In appropriate cases the opinion of an expert may be required to evaluate the extent of damage to a potential claimant's property. In such cases the investigating officer should consult Navy-employed experts, experts employed by other departments of the U.S. Government, or civilian experts to obtain a competent assessment of claimant's damages or otherwise to protect the Government's interest. Any cost involved with obtaining the opinion of an expert not employed by the Navy shall be borne by the command conducting the investigation. Any cost involved in obtaining the opinion of a Navy-employed expert shall be borne by the command to which the expert is attached. Medical experts shall be employed only after consultation with

the Chief, Bureau of Medicine and Surgery.

(j) *Action by command initiating the investigation and subsequent reviewing authorities.* (1) The command initiating the investigation in accordance with § 750.3 or § 750.5 shall review the report of investigation. If additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly returned with an endorsement indicating that a supplemental investigative report will be submitted. If the original or supplemental report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. An advance copy of the investigation shall be forwarded to the Naval Legal Service Command activity having territorial responsibility for the area where the incident giving rise to the claim occurred as indicated in § 750.34(c)(2)(ii).

(2) A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that the supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendations including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim that 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.

(3) It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) as implemented by 32 CFR part 701, subpart F. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, corrected. The adjudicating Naval Legal Service Command activity listed in § 750.34(c)(2)(ii) has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

§ 750.4 Claims: In general.

(a) *Claims against the United States.* Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly

and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, a check issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

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

(c) *Assistance to Claimants.* Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims will be referred to a claims officer. The officer will provide claim forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims officers may provide advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim. While claims officers have a responsibility to provide general information about claims, they must consider 18 U.S.C. 205 which makes it a crime for an officer or employee of the United States to act as an agent or an attorney in the prosecution of any claim against the United States.

§ 750.5 Claims: Proper claimants.

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

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

(c) *Subrogation.* A subrogor and a subrogee may file claims jointly or separately. When separate claims are filed and each claim individually is within local adjudicating authority limits, they may be processed locally, even if the aggregate of such claims exceeds local monetary jurisdiction, if they do not exceed the sum for which approval of the Department of Justice is

required (currently, \$100,000.00) under the Federal Tort Claims Act. Where they exceed this amount, they shall be referred to the Claims and Tort Litigation Division.

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

§ 750.6 Claims: Presentment.

(a) *Written demand and Standard Form 95.* A claim shall be submitted by presenting a written statement with the amount of the claim expressed in a sum certain, and, as far as possible, describing the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, shall be used whenever practical for claims under the Federal Tort and Military Claims Acts. Claims under the Personnel Claims Act shall be submitted on DD Form 1842. The claim and all other papers requiring the signature of the claimant shall be signed by the claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment. When more than one person has a claim arising from the same incident, each person shall file a claim separately. A subrogor and a subrogee may file a claim jointly or separately.

(b) *To whom submitted.* Claims under the Federal Tort and Military Claims Acts shall be submitted to the commanding officer of the Navy or Marine Corps activity involved, if known. Otherwise, they shall be submitted to the commanding officer of any Navy or Marine Corps activity, preferably the one nearest to where the accident occurred, the local Naval Legal Service Command activity, or to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

§ 750.7 Claims: Action by receiving command.

(a) *Record date of receipt.* The first command receiving a claim shall stamp or mark the date of receipt on the letter or claim form. The envelope in which the claim was received shall be preserved.

(b) *Determine the military activity involved.* The receiving command shall determine the Navy or Marine Corps activity most directly involved with the claim—usually the command where the incident is alleged to have occurred—and forward a copy of the claim to that activity. The original claim (and the transmittal letter, if a copy is forwarded to a more appropriate activity) should immediately be sent to the servicing Naval Legal Service Command activity claims office.

(c) *Initiate an investigation.* An investigation under this part shall be commenced immediately by the command most directly involved with the claim. Once the investigation has been completed, an advance copy shall be forwarded by the convening authority to the Naval Legal Service Command activity providing claims support. Waiting until endorsements have been obtained before providing a copy of the investigation to the cognizant claims adjudicating authority is neither required nor desirable. The facts of the incident must be made known to cognizant claims personnel as soon as possible.

§ 750.8 Claims: Responsibility of the adjudicating authority.

(a) *Reviewing prior actions.* The adjudicating authority determines whether an adequate investigation has been conducted, whether the initial receipt date is recorded on the face of the claim, and whether all holders of the investigation, if completed, are advised of the receipt of the claim.

(b) *Determining sufficiency of the claim.* The claim should be reviewed and a determination of its sufficiency made. If the claim is not sufficient as received, it shall be returned to the party who submitted it along with an explanation of the insufficiency. This does not constitute denial of the claim. The claim shall not be considered "presented" until it is received in proper form.

(c) *Adjudicating the claim.* (1) The adjudicating authority shall evaluate and either approve or disapprove all claims within its authority, except where the payment of multiple Federal Tort Claims Act claims arising from the same incident will exceed \$100,000.00 in the aggregate and thereby require approval of the Department of Justice. In this latter instance, the claims and the

investigative report shall be forwarded to the Judge Advocate General for action.

(2) The adjudicating authority shall evaluate and, where liability is established, attempt to settle claims for amounts within its adjudicating authority. Permission of higher authority to conduct settlement negotiations to effect such settlements is not necessary. Negotiation at settlement figures above the adjudicating authority's payment limits may be attempted if the claimant is informed that the final decision on the claim will be made at a higher level.

(3) If a claim cannot be approved, settled, compromised, or denied within the adjudicating authority limits established in this instruction, the claim shall be referred promptly to the Judge Advocate General. The following materials shall be forwarded with the claim:

(i) An official endorsement or letter of transmittal containing a recommendation on resolution of the claim.

(ii) A memorandum of law containing a review of applicable law, an evaluation of liability, and recommendation on the settlement value of the case. This memorandum should concentrate on the unusual aspects of applicable law, chronicle the attempts to resolve the claim at the local level, provide information about the availability of witnesses, and outline any other information material to a resolution of the claim, i.e. prior dealings with the claimant's attorney, local procedural rules, or peculiarities that may make trial difficult. The memorandum should not repeat information readily obtained from the investigative report and should be tailored to the complexity of the issues presented. An abbreviated memorandum should be submitted if the claim is statutorily barred because of the statute of limitations or Federal Employees' Compensation Act or otherwise barred because of the *Feres* doctrine.

(iii) The original investigative report and all allied papers.

(iv) The original claim filed by the claimant (and the envelope in which it arrived, if preserved). The adjudicating authority shall retain at least one copy of all papers forwarded to the Judge Advocate General under this section.

(d) *Preparing litigation reports.* A litigation report is prepared when a lawsuit is filed and a complaint received. The report is addressed to the Department of Justice official or the U.S. Attorney having cognizance of the matter. The report is a narrative

summary of the facts upon which the suit is based and has as enclosures the claims file and a memorandum of law on the issues presented.

(1) When the claim has been forwarded to the Judge Advocate General prior to the initiation of a suit, litigation reports originate in the Claims and Tort Litigation Division of the Office of the Judge Advocate General.

(2) When, however, the claim has not been forwarded and is still under the cognizance of the Naval Legal Service Command claims office, that command will ordinarily be required to prepare and forward the litigation report to the requesting organization. In this instance, the litigation report should be sent directly to the cognizant Department of Justice official or U.S. Attorney with a copy of the report and all enclosures to the Judge Advocate General.

§ 750.9 Claims: Payments.

Claims approved for payment shall be expeditiously forwarded to the disbursing office or the General Accounting Office depending on the claims act involved and the amount of the requested payment. Generally, payment of a Federal tort claim above \$2,500.00 requires submission of the payment voucher to the General Accounting Office. All other field authorized payment vouchers are submitted directly to the servicing disbursing office for payment.

§ 750.10 Claims: Settlement and release.

(a) *Fully and partially approved claims.* When a claim is approved for payment in the amount claimed, no settlement agreement is necessary. When a federal tort, military, or non-scope claim is approved for payment in a lesser amount than that claimed, the claimant must indicate in writing a willingness to accept the offered amount in full settlement and final satisfaction of the claim. In the latter instance, no payment will be made until a signed settlement agreement has been received.

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

(2) The claimant's acceptance of an award or settlement made under the provisions governing the administrative settlement of Federal tort claims or the civil action provisions of 28 U.S.C. 1340(b) also constitutes a complete

release of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.11 Claims: 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 with return receipt requested. The denial notification shall include a statement of the reason or reasons for the denial. The notification shall include a statement that the claimant may:

(a) If the claim is cognizable under the Federal Tort Claims Act, file suit in the appropriate United States District Court within 6 months of the date of the denial notification.

(b) If the claim is cognizable under the Military Claims Act, appeal in writing to the Secretary of the Navy within 30 days of the receipt of the denial notification. The notice of denial shall inform the claimant or his representative that suit is not possible under the Act.

§ 750.12 Claims: Action when suit filed..

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b)), of any action against the United States and involving the Navy, that comes to the attention of any official in connection with his official duties, shall be reported immediately to the commanding officer of the servicing Naval Legal Service Command activity who shall take any necessary action and provide prompt notification to the Judge Advocate General. The commencement of a civil action against an employee of the Navy for actions arising from the performance of official duties shall be reported in the same manner.

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice or other source that a civil action involving the Navy has been initiated under the civil action provisions of the Federal Tort Claims Act, and there being no investigative report available at the headquarters, a request shall be made to the commanding officer of the appropriate Naval Legal Service Command activity for an investigative report into the incident. If there is not a completed investigation, the request shall be forwarded to the appropriate naval activity to convene and complete such a report. The commanding officer of the Naval Legal Service Command activity shall determine whether an administrative claim had been filed and, if available information indicates none

had, advise the Office of the Judge Advocate General (Claims and Tort Litigation Division) immediately.

§ 750.13 Claims: Single service responsibility.

(a) The Department of Defense has assigned single-service responsibility for processing claims in foreign countries under the following acts. The service and country assignments are in DODDIR 5515.8 of 9 June 1990.¹

(1) Foreign Claims Act (10 U.S.C. 2734);

(2) Military Claims Act (10 U.S.C. 2733);

(3) International Agreements Claims Act (10 U.S.C. 2734a and b), on the pro-rata cost sharing of claims pursuant to international agreement;

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;

(5) Medical Care Recovery Act (42 U.S.C. 2651-2653) claims for reimbursement for medical care furnished by the United States;

(6) Nonscope Claims Act (10 U.S.C. 2737), claims not cognizable under any other provision of law;

(7) Federal Claims Collection Act of 1966 (31 U.S.C. 3701); the Act of June 1921 (31 U.S.C. 3702), claims and demands by the U.S. Government; and

(8) Public Law 87-212 (10 U.S.C. 2736), advance or emergency payments.

(b) Single service assignments for processing claims mentioned above are as follows:

(1) *Department of the Army:* Austria, Belgium, El Salvador, France, the Federal Republic of Germany, Grenada, Honduras, Korea, the Marshall Islands, and Switzerland and as the Receiving State Office in the United States under 10 U.S.C. 2734a and 2734b and the NATO Status of Forces Agreement, and other Status of Forces Agreements with countries not covered by the NATO agreement.

(2) *Department of the Navy:* Bahrain, Iceland, Israel, Italy, Portugal, and Tunisia.

(3) *Department of the Air Force:* Australia, Azores, Canada, Cyprus, Denmark, Greece, India, Japan, Luxembourg, Morocco, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, the United Kingdom, Egypt, Oman, and claims involving, or generated by, the U.S. Central Command (CENTCOM) and the U.S. Special Operations Command

¹ Copies may be obtained if needed, from Commanding Officer, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(USSOC), that arise in countries not specifically assigned to the Departments of the Army and the Navy.

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

§ 750.14-750.20 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.21 Scope of subpart B.

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

§ 750.22 Exclusiveness of remedy.

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

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

§ 750.23 Definitions.

(a) *Negligent conduct.* Generally, negligence is the failure to exercise that degree of care, skill, or diligence a

reasonable person would exercise under similar circumstances. Negligent conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government. 28 U.S.C. 1346(b) and 2674.

(b) *Intentional torts.* Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An "investigative or law enforcement officer" is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. 28 U.S.C. 2680(h).

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

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

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

(3) *Employees of nonappropriated-fund activities.* Nonappropriated-fund activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be "arms" of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps

Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund activity not located in a foreign country, acting within the scope of employment, is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

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

§ 750.24 Statutory/regulatory authority.

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

§ 750.25 Scope of liability.

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country. 28 U.S.C. 2680(k) and *Beattie v. United States*, 756 F.2d 91 (D.C. Cir. 1984).

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

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

- (i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;
- (ii) Admiralty claims under 46 U.S.C. 741-752 or 781-790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under part 752 of this Chapter;
- (iii) Claims arising from intentional torts, except those referred to in § 750.23(b);

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

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

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare *United States v. Johnson*, 481 U.S. 681 (1987); *Feres v. United States*, 340 U.S. 135 (1950) with *Brooks v. United States*, 337 U.S. 49 (1949);

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations, 32 CFR part 751;

(iii) Any claim by employees of nonappropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in 32 CFR part 756;

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

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

(vi) That portion of any claim for personal injury or property damage, caused by the negligence or fault of a Government contractor, to the extent such contractor may have assumed liability under the terms of the contract (see *United States v. Seckinger*, 397 U.S. 203 (1969) and § 750.23(c)(2);

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

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

§ 750.26 The administrative claim.

(a) *Proper claimant.* See § 750.5 of this part.

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

(c) *Proper claim.* A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete. A suit may be dismissed on the ground of lack of subject matter jurisdiction based on claimant's failure to present a proper claim as required by 28 U.S.C. 2675(a).

(d) *Presentment.* A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. Claims officers shall coordinate with all other affected agencies and ensure a lead agency is designated. 28 CFR 14.2.

§ 750.27 Information and supporting documentation.

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

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

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

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

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

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

(vi) Itemized bills for medical and burial expenses;

(vii) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the

decedent's physical condition during the interval between injury and death; and,

(viii) Any other evidence or information which may affect the liability of the United States.

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

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

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

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

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

(vi) Any other evidence or information which may affect the liability of the United States for the personal injury or the damages claimed.

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

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

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

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

(v) Any other evidence or information which may affect the liability of the United States for the property damage claimed.

(b) *Failure to submit necessary documentation.* If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after notice of the deficiency, including reference to 28 CFR 14.4, the information is still not supplied, two follow-up requests should be sent by certified mail, return receipt requested. If after a reasonable period of time the information is still not provided, the appropriate adjudicating authority should deny the claim.

§ 750.28 Amendment of the claim.

A proper claim may be amended at any time prior to settlement, denial, or the filing of suit. An amendment must be submitted in writing and must be signed by the claimant or duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under § 750.31 may be amended.

§ 750.29 Investigation and examination.

Subpart A of this part requires an investigation for every incident that may result in a claim against or in favor of the United States. Where a previously unanticipated claim is filed against the Government and an investigation has not already been conducted, the appropriate claims officer shall immediately request an investigation. See subpart A of this part for specific action required by an adjudicating authority.

§ 750.30 Denial of the claim.

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial shall include the reasons for the denial. The notification shall include a statement informing the claimant of his right to file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification. 28 CFR 14.9(a).

§ 750.31 Reconsideration.

(a) *Request.* Prior to the commencement of suit and prior to the expiration of the 6-month period for filing suit, a claimant or his duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request for reconsideration is presented on the date it is received by the DON. 28 CFR 14.9(b).

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

(c) *Effect of presentment of request.* The presentment of a proper request for reconsideration starts a new 6-month period for the DON to act on the request to reconsider. The claimant may not file suit until the expiration of the new 6-month period, or until after the date of mailing of the final denial of the request. Final denial of a request for reconsideration shall be accomplished in the manner prescribed in § 750.30. 28 CFR 14.9(b).

§ 750.32 Suits under the Federal Tort Claims Act (FTCA).

(a) *Venue.* Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. 28 U.S.C. 1402.

(b) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA. 28 U.S.C. 2402.

(c) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. 28 U.S.C. 2677.

(d) *Litigation support.*—(1) *Who provides.* The adjudicating authority holding a claim at the time suit is filed shall be responsible for providing necessary assistance to the Department of Justice official or U.S. Attorney responsible for defending the Government's interests.

(2) *Litigation report.* A litigation report, including a legal memorandum emphasizing anticipated issues during litigation, shall be furnished to the appropriate Department of Justice official or U.S. Attorney.

(3) *Pretrial discovery.* Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided. The Judge Advocate General should be notified promptly when special problems are encountered in providing the requested assistance.

(4) *Preservation of evidence.* Tort litigation is often accomplished over an extended period of time. Every effort shall be made to preserve files, documents, and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines defense of a case.

§ 750.33 Damages.

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs. 28 U.S.C. 1346(b).

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages. 28 U.S.C. 2674.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including CHAMPUS payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101-800) must be considered. *Brooks v. United States*, 337 U.S. 49 (1949).

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. 28 U.S.C. 2675(b). Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentment of the claim or on intervening facts relating to the amount of the claim.

§ 750.34 Settlement and Payment.

(a) *Settlement agreement.*—(1) *When required.* A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

- (i) Settled for less than the full amount claimed, or
- (ii) The claim was not presented on a Standard Form 95.

(2) *Contents.* Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. 28 CFR 14.10(b). In cases where partial payment will benefit both claimant and the Government, such as payment for property damage to an automobile, the

settlement agreement shall be tailored to reflect the terms of the partial settlement. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorneys fees. 28 U.S.C. 2678.

(b) *DON role in settlement negotiations involving the U.S. Attorney or DOJ.* Agency concurrence is generally sought by the Department of Justice or U.S. Attorney's office prior to settlement of suits involving the DON. Requests for concurrence in settlement proposals shall be referred to the appropriate DON adjudicating authority with primary responsibility for monitoring the claim. Adjudicating authorities shall consult with the Judge Advocate General concerning proposed settlements beyond their adjudicating authority.

(c) *Payment of the claim—(1) Statutory authority.* Pursuant to 28 U.S.C. 2672 and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of \$100,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title

28 CFR 14.6 requires consultation with the Department of Justice prior to compromise or settlement of a claim in any amount 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;
- (iv) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$100,000.00; or
- (v) The DON is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(2) *Specific delegation and designation.—(i) Payment authority.*

Delegated and designated authority	Federal Tort Claims Act
Judge Advocate General	Unlimited.
Deputy Judge Advocate General	Unlimited.

Delegated and designated authority	Federal Tort Claims Act
Assistant Judge Advocate General (General Law).	Unlimited.
Deputy Assistant Judge Advocate General (Claims and Tort Litigation) and Deputy Division Director.	\$100,000.00.
Head, Federal Tort Claims Branch, Claims and Tort Division, OJAG.	\$50,000.00.
Commanding Officers of Naval Legal Service Offices; Officers in Charge of Naval Legal Service Office Detachments when Specifically Designated by Cognizant Commanding Officers of Naval Legal Service Offices.	\$25,000.00.

Any payment of over \$100,000.00 must be approved by the Department of Justice. In addition, the authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) may deny Federal Tort Claims in any amount.

(ii) *Territorial responsibility.*

Responsible command	Territory
NAVLEGSVCOFF Newport.....	Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut.
NAVLEGSVCOFF Philadelphia.....	Pennsylvania, New Jersey, Ohio, and New York.
NAVLEGSVCOFF Washington, DC.	Maryland, the District of Columbia, and Northern Virginia area (zip 220-223).
NAVLEGSVCOFF Norfolk.....	Virginia (less Northern Virginia area—zip 220-223), and West Virginia, North Carolina (counties of Currituck, Camden, Pasquotank, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, and Onslow only), Bermuda, Iceland, Greenland, Azores, The Caribbean, The Republic of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama, Belize, Colombia, Venezuela, Guyana, French Guiana, Surinam, Brazil, Bolivia, Paraguay, Uruguay, Argentina, and all Atlantic and Arctic Ocean areas and islands not otherwise assigned.
NAVLEGSVCOFF Charleston.....	North Carolina (less counties of Currituck, Camden, Pasquotank, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, Onslow), and Georgia (less Counties of Charlton, Camden, and Glynn).
NAVLEGSVCOFF Jacksonville.....	That portion of Florida east of the western boundaries of Gadsden, Liberty, and Franklin Counties and Georgia (counties of Charlton, Camden, and Glynn).
NAVLEGSVCOFF Pensacola.....	Florida (Pensacola/Panama City area (zip 324-325)), Alabama, Louisiana and Mississippi (that portion south of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties, and that portion of the Gulf of Mexico East of longitude 90 W).
NAVLEGSVCOFF Memphis.....	Missouri, Tennessee, Kentucky, Arkansas, and that portion of Mississippi north of the southern boundaries of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties.
NAVLEGSVCOFF Great Lakes.....	North Dakota, South Dakota, Nebraska, Minnesota, Michigan, Iowa, Wisconsin, Illinois, and Indiana.
NAVLEGSVCOFF Corpus Christi.	Texas.
NAVLEGSVCOFF San Diego.....	California (Imperial County, San Diego County, and that area included in Marine Corps Base, Camp Pendleton extending into Orange County, only), that portion of Mexico including and West of the States of Chihuahua, Durango, Nayarit, Jalisco, and Colima, Pacific Ocean areas and islands South of Latitude 45N and East of Longitude 135W, Ecuador, Peru, Chile, Arizona, New Mexico, Oklahoma, and Nevada (Clark County only).
NAVLEGSVCOFF Long Beach.....	That portion of California in Kern, Santa Barbara, Ventura, Los Angeles and Orange Counties (excluding Marine Corps Base, Camp Pendleton), Riverside, San Bernardino, and the China Lake Naval Weapons Station Center.
NAVLEGSVCOFF San Francisco.	Northern California (Counties of San Luis Obispo, Kings, Tulare, Inyo, and all counties North thereof), Colorado, Nevada (less Clark County), Utah, and Kansas.
NAVLEGSVCOFF Puget Sound.....	Washington, Oregon, Idaho, Montana, Wyoming, and Alaska.
NAVLEGSVCOFF Pearl Harbor.....	Hawaii, including Midway and Pacific Island possessions serviced from Hawaii.
NAVLEGSVCOFF Mayport.....	Claims involving commands located at Naval Station, Mayport, Florida.
NAVLEGSVCOFF Guam.....	Guam, The Trust Territory of The Pacific Islands, The Republic of The Marshall Island, The Federated States of Micronesia and The Commonwealth of The Northern Marianas.
NAVLEGSVCOFF Yokosuka.....	Japan, Okinawa, Korea, that portion of the Eurasian Continent North of latitude 30N and East of longitude 60E, and those Pacific and Arctic Ocean areas and islands North of latitude 30N that are East of longitude 60E and West of longitude 170W.
NAVLEGSVCOFF Naples.....	Europe, the African Continent (excluding that portion thereof assigned to NLSO Subic Bay), the Eurasian Continent (excluding that portion thereof assigned to NLSO Yokosuka and NLSO Subic Bay), and the Mediterranean.
NAVLEGSVCOFF Subic Bay.....	Philippines, Hong Kong, Singapore, Diego Garcia, and unless otherwise specified, all Pacific and Indian Ocean areas and islands located between longitude 135E and longitude 15E; Ethiopia, Somalia, Kenya, Tanzania, Mozambique, Swaziland, Lesotho, and South Africa; that portion of the Eurasian Continent South of latitude 30N and East of longitude 60E.

(3) *Funding.* Claims approved for \$2,500.00 or less are paid from DON appropriations. Claims approved in excess of \$2,500.00 are paid from the judgment fund and must be forwarded to the United States General Accounting Office (GAO) for payment. 28 CFR 14.10(a). Claims arising out of the operation of nonappropriated-fund activities and approved for payment shall be forwarded to the appropriate nonappropriated-fund activity for payment.

§ 750.35 Attorney's fees.

Attorney's fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award. 28 U.S.C. 2678.

§ 750.36 Time limitations.

(a) *Administrative claim.* Every claim filed against the United States under the FTCA must be presented in writing within 2 years after the claim accrues. 28 U.S.C. 2401(b). Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

(b) *Amendments.* Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentment of an amendment. 28 CFR 14.2(c).

(c) *Suits.* A civil action is barred unless suit is filed against the United States not later than 6 months after the date of mailing of notice of final denial of the claim. 28 U.S.C. 2401(b). The failure of the DON to make final disposition of a claim within 6 months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. 28 U.S.C. 2675(a).

§§ 750.37-750.40 [Reserved]

Subpart C—Military Claims Act

§ 750.41 Scope of subpart C.

This section prescribes the substantive bases and special procedural requirements for the settlement of claims against the United

States for death, personal injury, or damage, loss, or destruction of property:

(a) *Caused by military personnel or civilian employees of the Department of the Navy (DON) (hereinafter DON personnel).* For the purposes of this section, DON personnel include all military personnel of the Navy and Marine Corps, volunteer workers, and others serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON. DON personnel does not include DON contractors or their employees.

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

(c) *Territorial limitation.* There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under that statute. See 10 U.S.C. 2733(b)(2).

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

§ 750.42 Statutory authority.

10 U.S.C. 2733, as amended, commonly referred to as the Military Claims Act (MCA).

§ 750.43 Claims payable.

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

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

(2) Incident to noncombat activities of the DON. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the U.S. Government has historically assumed a broad liability, even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Examples include practice firing of missiles and weapons, sonic booms, training and field exercises, and maneuvers that include operation of aircraft and vehicles, use and occupancy of real

estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether or not in time of war, and use of DON personnel during civil disturbances are excluded.

(b) *Specific claims payable.* Claims payable by the DON under § 750.43(a) (1) and (2) shall include, but not be limited to:

(1) *Registered or insured mail.* Claims for damage to, loss, or destruction, even if by criminal acts, of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that to which the claimant would be entitled from the Postal Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees.

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

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

(4) *Property of U.S. military personnel.* Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in § 750.43(a) (1) and (2) occurring on a military installation, not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA.

(5) *Health care and Legal Assistance Providers.* Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements, or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See § 750.54.

§ 750.44 Claims not payable.

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

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

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:

(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

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

(3) 10 U.S.C. 7622, relating to admiralty claims. See part 752 of this Chapter.

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

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

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

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

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.43(b) (2) and (3)].

(f) Any claim for rent of real or personal property [except as provided in § 750.43(b) (2) and (3)].

(g) Any claim involving infringement of patents.

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

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

(j) Any claim for personal injury or death of a member of the Armed Forces

or civilian employee incident to his service. 10 U.S.C. 2733(b)(3).

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

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

(m) Any claim based solely on compassionate grounds.

§ 750.45 Filing claim.

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

(1) U.S. citizens and inhabitants.

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

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

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

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

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

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

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

(c) *When to file/statute of limitations.*

Claims against the DON must be presented in writing within 2 years after they accrue. In computing the 2 year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, an MCA claim, on good cause shown, may be presented within 2 years after the war or armed conflict is terminated. For the purposes of the MCA, the date of termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President. See 10 U.S.C. 2733(b)(1).

(d) *Where to file.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if it is 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, 200 Stovall Street, Alexandria, VA 22332-2400.

(e) *Claim form.* A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain. A Standard

Form 95 is preferred. A claim should be substantiated as discussed in section 750.27 of this part. A claim must be substantiated as required by this Part in order to be paid. See 10 U.S.C. 2733(b)(5).

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

(g) *Payment.* 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. If the Secretary of the Navy considers that a claim in excess of \$100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and § 750.43, he may make a partial payment of \$100,000.00 and refer the excess to the General Accounting Office for payment from appropriations provided therefore.

§ 750.46 Applicable law.

(a) *Claims arising within the United States, Territories, Commonwealth, and Possessions.* The law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant's right of recovery.

(b) *Claims within foreign countries.*

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

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

(c) *Clarification of terms.* The principles of absolute liability and punitive damages do not apply to claims under the MCA. Federal law determines the meaning and construction of the MCA.

§ 750.47 Measure of damages for property claims.

Determine the measure of damages in property claims arising in the United States or its territories, commonwealth, or possessions under the law of the place where the incident occurred. Determine the measure of damages in property claims arising overseas under general principles of American tort law, stated as follows:

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

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

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

and used by the claimant, loss of use is normally not payable.

§ 750.48 Measure of damages in injury or death cases.

(a) Where an injury or death arises within the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the location where the injury arises.

(b) Where an injury or death arises in a foreign country and is otherwise cognizable and meritorious under this provision, damages will be determined in accordance with general principles of American tort law. The following is provided as guidance.

(1) *Measure of Damages for Overseas Personal Injury Claims.* Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, compensation for lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

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

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

§ 750.49 Delegations of adjudicating authority.

(a) *Settlement Authority.* (1) The Secretary of the Navy may settle claims in any amount. The Secretary may pay the first \$100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304. See 10 U.S.C. 2733(d).

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

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) have delegated authority to settle claims for \$25,000.00 or less.

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to settle claims for \$15,000.00 or less.

(5) Officers in charge of Naval Legal Service Office Detachments, when specifically designated by cognizant commanding officers of Naval Legal Service Offices; and the Claims Officer at the U.S. Naval Station, Panama Canal have delegated authority to settle claims for \$10,000.00 or less.

(6) Overseas commands with a Judge Advocate General's Corps officer or a judge advocate of the Marine Corps attached, have delegated authority to settle claims for \$5,000.00 or less.

(b) *Denial Authority.* (1) The Secretary of the Navy may deny a claim in any amount.

(2) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) have delegated authority to deny claims in any amount.

(3) All other adjudicating authorities have delegated authority to deny claims only to the amount of their settlement authority.

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

§ 750.50 Advance Payments.

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

(b) *Statutory authority.* Title 10 U.S.C. 2736 authorizes the Secretary of the Navy or designee to pay an amount not in excess of \$100,000.00 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the MCA (10 U.S.C. 2733). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

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

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

(3) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation) has delegated authority to make advance payments up to \$25,000.00.

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to make advance payments up to \$5,000.00.

(5) Officers in Charge of Naval Legal Service Office Detachments, when specifically designated by cognizant Commanding Officers of Naval Legal Service Offices; and the Staff Judge Advocate at the U.S. Naval Station, Panama Canal have delegated authority to make advance payments up to \$3,000.00.

(6) Overseas commands with a Judge Advocate General's Corps officer or a judge advocate of the Marine Corps attached, have delegated authority to make advance payments up to \$3,000.00.

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

(1) The injury, death, damage, or loss would be payable under the MCA (10 U.S.C. 2733);

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

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

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

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

(6) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 U.S.T. 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss

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

(ii) Occurred "incident to noncombat activities" of the DON as defined in § 750.43.

§ 750.51 Final disposition.

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

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

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

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

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

§ 750.52 Appeal.

(a) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal shall be in writing and state the grounds relied upon. An appeal is not an adversary proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

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

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

authority, who is the appellate authority for that claim.

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

§ 750.53 Cross-servicing.

(a) See § 750.13 or information about single-service claims responsibility under DODDIR 5515.8 of 9 June 1990.

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

§ 750.54 Payment of costs, settlements, and judgments related to certain medical or legal malpractice claims.

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

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

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

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

§ 750.55 Attorney's fees.

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

§§ 750.56—750.60 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law**§ 750.61 Scope of subpart D.**

This section provides information on payment of claims against the United States, not payable under any other statute, caused by the act or omission, negligent, wrongful, or otherwise involving fault, of Department of the Navy (DON) military and civilian personnel (hereinafter DON personnel) acting outside the scope of their employment.

§ 750.62 Statutory authority.

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

§ 750.63 Definitions.

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

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land. See 1 U.S.C. 4.

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

§ 750.64 Claim procedures.

(a) The general provisions of subpart A of this part shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be investigated and processed under 10 U.S.C. 2737 and this section.

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

(c) A claimant may amend a claim at any time prior to final action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

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

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

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

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

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

(i) Claims submitted solely under 10 U.S.C. 2737 shall be promptly considered. If a nonscope claim is denied, the claimant shall be informed of reasons in writing and advised he may appeal in writing to the Secretary of the Navy (Judge Advocate General) provided the appeal is received within 30 days of the notice of denial. The provisions of § 750.51(b) of subpart C also apply to denials of nonscope claims.

§ 750.65 Statute of limitations.

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

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

§ 750.66 Officials with authority to settle.

Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General (General Law); Deputy Assistant Judge Advocate

General (Claims and Tort Litigation Division); Head, Federal Tort Claims Branch (Claims and Tort Litigation Division); Head, Military Claims Branch (Claims and Tort Litigation Division), and commanding officers of Naval Legal Service Offices may settle a nonscope claim.

§ 750.67 Scope of liability.

(a) Subject to the exceptions in § 750.68 of specific claims not payable, the United States shall not pay more than \$1,000.00 for a claim against the United States, not cognizable under any other provision of law, except Article 139, UCMJ.

(b) Article 139, UCMJ, 10 U.S.C. 939, is not preemptive. The prohibition in 10 U.S.C. 2737 on paying claims "not cognizable under any other provisions of law" applies only to law authorizing claims against the United States. Article 139 authorizes claims against servicemembers. See part 755 of this chapter.

§ 750.68 Claims not payable.

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

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

(c) A subrogated claim.

§ 750.69 Measure of damages.

Generally, the measure-of-damage provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with §§ 750.47 and 750.48 of subpart C, except damages for personal injury or death under this section shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.

Dated: January 30, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.
[FR Doc. 92-2889 Filed 2-6-92; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 756**Nonappropriated-Fund Claims Regulations**

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.