

(i) Maintain for public access a reading file and associated index of records of NDRB proceedings in all reviews undertaken subsequent to July 1, 1975.

Subpart G—Organization of the Naval Discharge Review Board

§ 724.701 Composition.

The NDRB acting in plenary review session shall be composed of five members. Normally the members shall be career military officers, assigned to the Naval Council of Personnel Boards or otherwise made available; inactive duty officers of the Navy and Marine Corps Reserve may serve as members when designated to do so by the President, NDRB.

(a) Presiding officers of the NDRB shall normally be Navy or Marine Corps officers in the grade of Captain/Colonel or above.

(b) The remaining NDRB membership shall normally be not less than the grade of Lieutenant Commander/Major with preference being given to senior grades.

(c) At least three of the five members of the NDRB shall belong to the service from which the applicant whose case is under review was discharged.

(d) Individual membership in the NDRB may vary within the limitations of the prescribed composition.

(e) Any member of a panel of the NDRB other than the presiding officer may act as recorder for cases assigned. The recorder will participate as a voting member of the panel.

§ 724.702 Executive management.

The administrative affairs of the NDRB shall be managed by the Executive Secretary. This responsibility shall include schedules, records, correspondence and issuance of NDRB decisions.

§ 724.703 Legal counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In addition, the

NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Subpart H—Procedures of Naval Discharge Review Board

§ 724.801 Matters to be considered in discharge review.

In the process of its review of discharges, the NDRB shall examine available records and pertinent regulations of the Department of the Navy, together with such information as may be presented by the applicant and/or representative, which will normally include:

(a) The application for discharge review;

(b) Statements, affidavits or documentation, if any, accompanying the application or presented during hearings;

(c) Testimony, if any, presented during hearings;

(d) Service and health records;

(e) A brief of pertinent facts extracted from the service and health records, prepared by the NDRB recorder.

§ 724.802 Applicant's responsibilities.

(a) *Request for change of discharge.* An applicant may request a change in the character of or reason for discharge (or both).

(1) *Character of discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Other than Honorable Discharge to General or Honorable Discharge). A person separated on or after 1 October 1982 while in an entry level status may request a change from Other Than Honorable Discharge to Entry Level Separation. A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(2) *Reason for discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change

in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the NDRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the NDRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the NDRB are consistent with the request for change in discharge set forth in block 7 of the DD Form 293. If an ambiguity is created by a difference between an applicant's issue and the request in block 7, the NDRB will respond to the issue in the context of the action requested in block 7. In the case of a personal appearance hearing, the NDRB will attempt to resolve the ambiguity under § 724.802(c).

(b) *Request for consideration of specific issues.* An applicant may request the Board to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both. In addition to the guidance set forth in this section, applicants should consult the other sections in this manual before submitting issues for consideration by the Board.

(1) *Submission of issues on DD Form 293.* Issues must be provided to the NDRB on DD Form 293 (82 Nov) before the NDRB closes the review process for deliberation.

(i) *Issues must be clear and specific.* An issue must be stated clearly and specifically in order to enable the NDRB to understand the nature of the issue and its relationship to the applicant's discharge.

(ii) *Separate listing of issues.* Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the NDRB.

(iii) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the NDRB, and its use:

(A) Provides a means for an applicant to set forth clearly and specifically

those matters that, in the option of the applicant, provide a basis for changing the discharge;

(B) Assists the NDRB in focusing on those matters considered to be important by an applicant;

(C) Assists the NDRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue, and those matters submitted simply as background or supporting materials;

(D) Provides the applicant with greater rights in the event that the applicant later submits a complaint concerning the decisional document;

(E) Reduces the potential for disagreement as to the content of an applicant's issue.

(iv) *Incorporation by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the NDRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the NDRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the NDRB, the NDRB shall respond to such an issue. (See §§ 724.805 and 724.806.)

(v) *Effective date of the new Form DD 293.* With respect to applications pending (before November 1982, the effective date of the new DD Form 293), the NDRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received after November 1982, if the applicant submits an obsolete DD Form 293, the NDRB shall accept the application, but shall provide the applicant with a copy of the new form and advise the applicant that it will only respond

to issues submitted on the new form in accordance with this instruction.

(2) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant is encouraged, but not required, to identify the issue as applying to either the character of or the reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the NDRB will presume that it applies solely to the character of discharge.

(3) *Relationship of issues to the standards for discharge review.* The NDRB reviews discharges on the basis of issues of propriety and equity. The standards used by the NDRB are set forth in § 724.804. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based.

(i) *Issues concerning the equity of the discharge.* An issue of equity is a matter that involves a determination whether a discharge should be changed under the equity standards of this part. This includes any issue, submitted by the applicant in accordance with § 724.802(b)(1), that is addressed to the discretionary authority of the NDRB.

(ii) *Issues concerning the propriety of a discharge.* An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of this part. This includes an applicant's issue, submitted in accordance with § 724.802(b)(1), in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion). Although a numerical reference to the regulation or other sources of law alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the NDRB ade-

quately of the basis for the applicant's position.

(iii) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to specify that each issue pertains to the propriety or the equity of the discharge. This will assist the NDRB in assessing the relationship of the issue to propriety or equity.

(4) *Citation of matter from decisions.* The primary function of the NDRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements with respect to applications received on or after November 27, 1982 apply:

(i) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(ii) If an applicant's issue cites a prior decision (of the NDRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(iii) To ensure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Corrective Board Reading Room), applicants must provide the NDRB with copies of such decisions or of the relevant portion of the treatise, manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(iv) If the applicant fails to comply with requirements in § 724.802(b)(4), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(c) *Identification by the NDRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under § 924.803, is made.

(1) *Issues on DD Form 293.* The NDRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein).

(2) *Amendment of issues.* The NDRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(i) Limits the NDRB's authority to question an applicant as to the meaning of such matter;

(ii) Precludes the NDRB from developing decisional issues based upon such questions;

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or

(iv) Prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the NDRB believes that an applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the NDRB from developing its own decisional issues.

§ 724.803 The decisional document.

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(a) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

(1) Information concerning the discharge under review, including:

(i) Date (YYMMDD) of discharge;

(ii) Character of discharge;

(iii) Reason for discharge;

(iv) The specific regulatory authority under which the discharge was issued;

(v) Date (YYMMDD) of enlistment;

(vi) Period of enlistment;

(vii) Age at enlistment;

(viii) Length of service;

(ix) Periods of unauthorized absence;

(x) Conduct and efficiency ratings (numerical or narrative);

(xi) Highest rank achieved;

(xii) Awards and decorations;

(xiii) Educational level;

(xiv) Aptitude test scores;

(xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment);

(xvi) Convictions by court-martial;

(xvii) Prior military service and type of discharge received.

(2) Any other matters in the applicant's record which pertains to the discharge or the issues, or provide a clearer picture of the overall quality of the applicant's service.

(b) A list of the type of documents submitted by or on behalf of the applicant (including written briefs, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

(c) A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

(d) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the

relevant portion of the form may be attached. Issues that have been withdrawn or modified with the written consent of the applicant need not be listed.

(f) The response to the items submitted as issues by the applicant.

(g) A list of decisional issues and a discussion of such issues.

(h) NDRB's conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.

(2) The specific changes to be made, if any.

(i) A record of the voting, including:

(1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.

(2) The NDRB members' names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(j) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the applicant shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

(k) The recommendation of the NDRB president when required.

(l) The addendum of the SRA when required.

(m) Index entries for each decisional issue under appropriate categories listed in the index of decisions.

(n) An authentication of the document by an appropriate official.

§ 724.804 Decision process.

(a) The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standard set forth in subpart I.

(b) The presiding officer is responsible for the conduct of the discharge

review. The presiding officer shall convene, recess, and adjourn the NDRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair review. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the military department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this Manual.

(d) The NDRB shall identify and address issues after a review of the following material obtained and presented in accordance with this Manual and any implementing instructions of the NDRB: available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

(e) If an applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted and available service records.

(f) *Application of standards.* (1) When the NDRB determines that an applicant's discharge was improper, the NDRB will determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the service regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable, the provisions as to the characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

(2) When the NDRB determines that an applicant's discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and relevant regulations of the service of which the applicant was a member.

(g) Voting shall be conducted in closed session, a majority of the votes of the five members constituting the NDRB decision.

(h) Details of closed session deliberations of the NDRB are privileged information and shall not be divulged.

(i) There is no requirement for a statement of minority views in the event of a split vote.

(j) The NDRB may request advisory opinions from appropriate staff officers of the naval service. These opinions are advisory in nature and are not binding on the NDRB in its decision-making process.

(k) The preliminary determinations required by 38 U.S.C. 3103(e) shall be made upon majority vote of the NDRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in this Manual.

§ 724.805 Response to items submitted as issues by the applicant.

(a) *General guidance.* (1) If any issue submitted by an applicant contains two or more clearly separate issues, the NDRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(2) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(3) Nothing in this paragraph precludes the NDRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

(b) *Decisional issues.* An item submitted as an issue by an applicant in accordance with this Manual shall be addressed as a decisional issue in the following circumstances:

(1) When the NDRB decides that a change in discharge should be granted, and the NDRB bases its decision in whole or in part on the applicant's issue; or

(2) When the NDRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the NDRB's disagreement on the merits with an issue submitted by the applicant.

(c) *Response to items not addressed as decisional issues.* (1) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(2) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the NDRB shall address the items submitted by the applicant under § 724.806, (Decisional Issues) unless one of the following responses is applicable:

(i) *Duplicate issues.* The NDRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(ii) *Citations without principles and facts.* The NDRB may state that the applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of § 724.802(b)(4).

(iii) *Unclear issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered.

(iv) *Nonspecific issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. A submission

is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the NDRB disagrees with the applicant as to the relevance of matters set forth in the submission, the NDRB normally will set forth the nature of the disagreement with respect to decisional issues, or it will reject the applicant's position. If the applicant's submission is so general that none of those provisions is applicable, then the NDRB may state that it cannot respond because the item is not specific.

§ 724.806 Decisional issues.

(a) *General.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the NDRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(1) *Partial change.* When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) *Relationship of issue of character of or reason for discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(3) *Relationship of an issue to propriety or equity.* (i) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB will consider it under both standards.

(ii) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required

as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in § 724.806(a)(3)(d), the NDRB is not required to consider such an issue under the equity standards.

(iii) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under § 724.806 (a) or (b).

(iv) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends that the NDRB is required as a matter of law to follow the prior case, the decisional document shall note that the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered and addressed under the equity standards.

(v) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

(b) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors of expressly retroactive changes in policy or violations of regulations that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be set forth.

(c) *Denial of the full change requested: issues of propriety.* (1) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(2) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstances, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following guidance ap-

plies in addition to the guidance in § 724.806(c)(2) (a) and (b):

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802(b)(4)).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802(b)(4)) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the NDRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

(E) If the applicant take the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the NDRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the NDRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue.

(F) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the NDRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and

by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(d) *Denial of the full change in discharge requested when propriety is not at issue.* If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the propriety of the discharge.

(e) *Change of discharge: issues of equity.* If the NDRB concludes that a change in the discharge is warranted under the equity standards, the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed.

(f) *Denial of the full change in discharge requested: issues of equity.* (1) If the NDRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(2) The NDRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discre-

tion on the issue of equity in the applicant's case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in paragraphs above:

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's

issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agrees with the applicant's position.

(E) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the NDRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(iv) When NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required however, to explain why it relied on any such factors unless the applicability or weight of such a factor is expressly raised as an issue by the applicant.

(v) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the

service record portion of the decisional document.

§ 724.807 Record of NDRB proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, audio and/or videotape recordings, or a combination.

(b) At a minimum, the record will include the following:

- (1) The application for review;
- (2) A record of the testimony in either verbatim, summarized, or recorded form at the option of the NDRB;
- (3) Documentary evidence or copies, other than the military service record considered by the NDRB;
- (4) Briefs and arguments submitted by or on behalf of the applicant;
- (5) Advisory opinions considered by the NDRB, if any;
- (6) The findings, conclusions, and reasons developed by the NDRB;
- (7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;
- (8) A copy of the decisional document.

§ 724.808 Issuance of decisions following discharge review.

The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the service manager concerned.

(a) Notification to applicants, with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

(b) Notification to the service manager shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

(c) Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as

to the notification of the review decision.

§ 724.809 Final disposition of the record of proceedings.

The original decisional document and all appendices thereto, shall in all cases be incorporated in the military service record of the applicant and the service record shall be returned to the custody of the appropriate record holding facility. If a portion of the original record of proceedings cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored. Other copies including any electromagnetic records, audio and/or videotape recordings or any combination thereof shall be filed in the NDRB case folder and disposed of in accordance with appropriate naval regulations.

§ 724.810 Availability of Naval Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with subpart H of this enclosure shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying.

(1) Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(2) The NDRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint.

(c) Any other privileged or classified material contained in or appended to any documents required by this Manual to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted only if a written statement on the basis for the deletions is provided the applicant and

counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) NDRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(1) The reading file index shall include, in addition to any other item determined by the NDRB, the case number, the date, character of, reason and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the FEDERAL REGISTER by the Department of the Army. The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the NDRB is present and in operation. An applicant who has requested a traveling panel review shall be advised, in the notice of such review, of the permanent index locations.

(3) The Armed Forces Discharge Review/Corrections Board Reading Room shall publish indexes quarterly for all DRBs. The NDRB shall be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. In addition, the NDRB shall be responsible for submission of new index categories based upon published changes in policy, procedures, or standards. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. When the NDRB

has accepted an application, information concerning the availability of the index shall be provided in the NDRB's response to the application.

§ 724.811 Privacy Act information.

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of SECNAVINST 5211.5C shall be observed throughout the processing of a request for review of discharge or dismissal.

§ 724.812 Responsibilities of the Reading Room.

(a) Copies of decisional documents will be provided to individuals or organizations outside the NCR in response to written requests for such documents. Although the Reading Room shall try to make timely responses to such requests, certain factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties may cause some delays. A fee may be charged for such documents under appropriate DOD and Department of the Army directives and regulations. The manual that accompanies the index of decisions shall notify the public that if an applicant indicates that a review is scheduled for a specific date, an effort will be made to provide requested decisional documents before that date. The individual or organization will be advised if that cannot be accomplished.

(b) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

§ 724.813 The recommendation of the NDRB president.

(a) *General.* The president of the NDRB may forward cases for consideration by the Secretarial Review Authority (SRA). There is no requirement that the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be

prepared under the guidance in § 724.813b.

(b) *Format for recommendation.* If a recommendation is provided, it shall contain the president's view whether there should be a change in the character of or reason for discharge (or both). If the president recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the president's position on decisional issues and issues submitted by the applicant under the following guidance:

(1) *Adoption of the NDRB's decisional document.* The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this enclosure.

(2) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) *Response to issues not included in matter adopted from the majority.* The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(i) The issues on which the president's recommendation is based. Each such decisional issue shall be addressed by the president.

(ii) The president's response to items submitted as issues by the applicant.

(iii) Reasons for rejecting the conclusion of the majority with respect to the decisional document which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Such issues shall be addressed under the principles in § 724.806.

§ 724.814 Secretarial Review Authority (SRA).

(a) *Review by the SRA.* The Secretarial Review Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(i) Any specific case in which the SRA has an interest.

(ii) Any specific case that the president of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the standards set forth in this part.

(b) *Processing the decisional document.*

(1) The decisional document shall be transmitted by the NDRB president under § 724.813.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion, without the participation of the applicant or the applicant's counsel:

(i) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the NDRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(ii) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. Any issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB president on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the president's recommendation.

(c) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the decision by the NDRB (or NDRB president) of the issues raised by the majority or the applicant.

(d) *The addendum of the SRA.* The decision of the SRA shall be in writing

and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) *The SRA's decision.* The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the NDRB or the NDRB president, the decisional document shall contain a reference to the matter adopted.

(2) *Discussion of issues.* In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant and issues raised by the NDRB and the NDRB president in accordance with the following guidance:

(i) *Adoption of the NDRB president's recommendation.* The addendum may state that the SRA has adopted the NDRB president's recommendation.

(ii) *Adoption of the NDRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the NDRB.

(iii) *Adoption of specific statements from the majority or the NDRB president.* If the SRA adopts the views of the NDRB or the NDRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB president, the addendum shall set forth the modification.

(iv) *Response to issues not included in matter adopted from the NDRB or the NDRB president.* The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

(A) A list of the issues on which the SRA's decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant

than that afforded by the SRA's decision. Such issues shall be addressed under the principles in § 724.806(f).

(B) The SRA's response to items submitted as issues by the applicant.

(3) *Response to the rebuttal.* (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in § 724.806.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material, that fact shall be noted.

(4) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the NDRB's proposed decisional document.

§ 724.815 Complaints.

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically identified violation of 32 CFR part 70 or any references thereto. Complaints will be reviewed pursuant to 32 CFR part 70.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.

The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of the review and the underlying factors

which aid in determining whether the standards are met shall be consistent with historical criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in a discharge. Neither the NDRB nor the Secretary of the Navy shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the NDRB shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

§ 724.902 Propriety of the discharge.

(a) A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(b) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court) the NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight

given to factors in such decisions) do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

(d) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the NDRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood v. Secretary of Defense* to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An other than honorable (formerly undesirable) discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

§ 724.903 Equity of the discharge.

A discharge shall be deemed to be equitable unless:

(a) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge, if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(b) At the time of issuance, the discharge was inconsistent with standards

of discipline in the military service of which the applicant was a member.

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct and proficiency ratings (numerical and narrative);

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

(vii) Level of responsibility at which the applicant served;

(viii) Other acts of merit that may not have resulted in formal recognition through an award or commendation;

(ix) Length of service during the service period which is the subject of the discharge review;

(x) Prior military service and type of discharge received or outstanding post service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(xi) Convictions by court-martial;

(xii) Records of nonjudicial punishment;

(xiii) Convictions by civil authorities while a member of the service, reflected in the discharge proceedings or otherwise noted in the service records;

(xiv) Records of periods of unauthorized absence;

(xv) Records relating to a discharge in lieu of court-martial.

(2) Capability to serve, as evidenced by factors such as:

(i) *Total capabilities.* This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given as to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(ii) *Family and personal problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(iii) *Arbitrary or capricious actions.* This includes actions by individuals in authority which constitute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge the individual or unduly influence the characterization of service.

(iv) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.

APPENDIX A TO PART 724—POLICY STATEMENT BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES

Secretary of Defense memorandum of August 13, 1971, to the Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy

will be in accordance with 10 United States Code 1553.

"This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971".

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

"Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971, subject: 'Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.'

"My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

"It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issued solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

"Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, sections 874(b), 1552 and 1553.

"This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

"Former service members requesting a review will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized."

APPENDIX B TO PART 724—OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

Oath/Affirmation

I, ———, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual

judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

APPENDIX C TO PART 724—SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD

Attachment	Form	Title
1	Letter	En Block Notification of Decision to Commander, Naval Military Personnel Command (No Change).
2do	En Block Notification of Decision to Commander, Naval Military Personnel Command (Change).
3do	En Block Notification of Decision to Commandant, Marine Corps (No Change).
4do	En Block Notification of Decision to Commandant, Marine Corps (Change).

NOTE: The Forms appearing in Appendix C are not carried in the Code of Federal Regulations.

APPENDIX D TO PART 724—VETERANS' BENEFITS

91 Stat. 1106
 Pub. L. 95-126, Oct. 8, 1977
 95th Congress

An Act

To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) Inserting "or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence." after "deserter," in subsection (a), and by inserting a coma and "notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553

of title 10" before the period at the end of such subsection; and

(2) Adding at the end of such section the following new subsection:

"(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Veterans' Administration shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standard (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions: and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

"(2) Notwithstanding any other provision of law—

"(A) No person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Veterans' Administration except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharged under such standards;

"(B) Such determination shall be made by such board, (i) on an expedited basis after notification by the Veterans' Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph

in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

"If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Veterans' Administration, or the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph."

(b)(1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by subsection (a)(2) of this section of his or her right to obtain an expedited determination under section 3103(e)(2)(B)(i) of such title and of the implications of the provisions of this Act for each such person.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 3103(a), of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Veterans' Administration only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Administrator of Veterans' Affairs under section 3103 of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans' Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

Section 2. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall provide the type of health care

and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 3103(a) of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge.

Section 3. Paragraph (18) of section 101 of Title 38, United States Code, is amended to read as follows:

"(18) The term 'discharge or release' includes, (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable."

Section 4. In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Veterans' Administration determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Administrator of Veterans' Affairs shall, in keeping with the spirit and intent of this Act, not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans.

Section 5. This Act shall become effective on the date of its enactment, except that—

(1) Section 2 shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

(2) The amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law.

(A) With respect to any person who, on such enactment date is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as

added by section 1(a)(2) of this Act, until, (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

(B) With respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date, the United States shall not make any claim to recover the value of any benefits so provided; and

(C) The amendments made by clause (1) of section 1(a) shall apply, (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act, had not attained general eligibility to such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons.

PART 725—RELEASE OF OFFICIAL INFORMATION FOR LITIGATION PURPOSES AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL

Sec.

725.1 Purpose.

725.2 Policy.

725.3 Authority to act.

725.4 Definitions.

725.5 Applicability.

725.6 Authority to determine and respond.

725.7 Contents of a proper request or demand.

725.8 Considerations in determining to grant or deny a request.

725.9 Action to grant or deny a request.

725.10 Response to requests or demands in conflict with this instruction.

725.11 Fees.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 113, 5013; 31 U.S.C. 9701 and 32 CFR part 97.

SOURCE: 57 FR 2463, Jan. 22, 1992, unless otherwise noted.

§ 725.1 Purpose.

This instruction implements 32 CFR part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates the information contained in Secretary of the Navy Instruction 5820.8A of 27 August 1991¹, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in Federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), however, shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part.

(d) Section 725.2(b) and (c) constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative procedures with respect to civilian employees. Moreover, violations of this instruction by DON personnel may, under certain circumstances, be actionable under 18 U.S.C. 207.

¹ Copies may be obtained, if needed, from the Naval Publications and Forms Directorate, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates [hereafter “determining authorities” described in § 725.4(a)], shall respond to litigation requests or demands for official DOD information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities’ responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, a response may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.11; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

§ 725.4 Definitions.

(a) *Determining authority.* The cognizant DON or DOD official designated

to grant or deny a litigation request. In all cases in which the United States is, or might reasonably become, a party, or in which expert testimony is requested, the Judge Advocate General or the General Counsel of the Navy, depending on the subject matter of the request, will act as determining authority. In all other cases, the responsibility to act as determining authority has been delegated to all officers exercising general court-martial convening authority, or to their subordinate commands, and to other commands and activities indicated in § 725.6.

(b) *DON personnel.* Active duty and former military personnel of the naval service including retirees; personnel of other DOD components serving with a DON component; Naval Academy midshipmen; present and former civilian employees of the DON including non-appropriated fund activity employees; non-U.S. nationals performing services overseas for the DON under provisions of status of forces agreements; and other specific individuals or entities hired through contractual agreements by or on behalf of DON, or performing services under such agreements for DON (e.g., consultants, contractors and their employees and personnel).

(c) *Factual and expert or opinion testimony.* DON policy favors disclosure of factual information if disclosure does not violate the criteria stated in § 725.8. The distinction between factual matters, and expert or opinion matters (where DON policy favors non-disclosure), is not always clear. The considerations set forth below pertain.

(1) Naval personnel may merely be percipient witnesses to an incident, in which event their testimony would be purely factual. On the other hand, they may be involved with the matter only through an after-the-event investigation (e.g., JAGMAN investigation). Describing the manner in which they conducted their investigation and asking them to identify factual conclusions in their report would likewise constitute factual matters to which they might testify. In contrast, asking them to adopt or reaffirm their findings of fact, opinions, and recommendations, or asking them to form or express any other opinion—particularly one based

upon matters submitted by counsel or going to the ultimate issue of causation or liability—would clearly constitute precluded testimony under the above policy.

(2) Naval personnel, by virtue of their training, often form opinions because they are required to do so in the course of their duties. If their opinions are formed prior to, or contemporaneously with, the matter in issue, and are routinely required of them in the course of the proper performance of their professional duties, they constitute essentially factual matters (i.e., the opinion they previously held). Opinions formed after the event in question, including responses to hypothetical questions, generally constitute the sort of opinion or expert testimony which this instruction is intended to severely restrict.

(3) Characterization of expected testimony by a requester as fact, opinion, or expert is not binding on the determining authority. When there is doubt as to whether or not expert or opinion (as opposed to factual) testimony is being sought, advice may be obtained informally from, or the request forwarded, to the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for resolution.

(d) *Litigation*. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving, or reasonably anticipated to involve, civil or criminal litigation.

(e) *Official information*. All information of any kind, however stored, in the custody and control of the DOD and its components including the DON; relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components,

while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces (determining whether “official information” is sought, as opposed to non-DOD information, rests with the determining authority identified in § 725.6, rather than the requester).

(f) *Request or demand (legal process)*. Subpoena, order, or other request by a federal, state, or foreign court of competent jurisdiction, by any administrative agency thereof, or by any party or other person (subject to the exceptions stated in § 725.5) for production, disclosure, or release of official DOD information or for appearance, deposition, or testimony of DON personnel as witnesses.

§ 725.5 Applicability.

(a) This instruction applies to all present and former civilian and military personnel of the DON whether employed by, or assigned to, DON temporarily or permanently. Affected personnel are defined more fully in § 725.4(b).

(b) This instruction applies only to situations involving existing or reasonably anticipated litigation, as defined in § 725.4(d), when DOD information or witnesses are sought, whether or not the United States, the DOD, or its components are parties thereto. It does not apply to formal or informal requests for information in other situations.

(c) This instruction provides guidance only for DON operation and activities of its present and former personnel in responding to litigation requests. It is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, DOD, or DON.

(d) This instruction is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(e) This instruction does not supersede or modify existing laws, DOD or DON regulations, directives, or instructions governing testimony of DON personnel or release of official DOD or DON information during grand jury proceedings.

(f) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. This instruction does not preclude treating any written request for DON records as a request under the FOIA or Privacy Acts. Activities are encouraged to treat such requests for documents under the FOIA or the Privacy Act if they are invoked by the requestor either explicitly or by fair implication. See 32 CFR 701.3(a), 701.10(a). Activities are reminded that such treatment does not absolve them of the responsibility to respond in a timely fashion to legal process. In any event, if the official information requested pertains to a litigation matter which the United States is a present or potential party, the release authority should notify the delegate of the General Counsel or the Judge Advocate General, under § 725.6.

(g) This part does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such component;

(2) Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party), but the regulation does apply to an action brought under the *qui tam* provisions of the False Claims Act in which a private party brings an action in the name of the United States but in which the Department of Justice either has not yet

determined to intervene in the litigation or has declined to intervene;

(4) As part of the assistance required by the Defense Industrial Personnel Security Clearance Review Program under DOD Directive 5220.6²;

(5) Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent naval personnel;

(6) Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure (in the latter event, compliance with 32 CFR part 97 and this part is required);

(7) Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR 581 and SECNAVINST 7200.16³, or;

(8) Release of information to Federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization.

(h) This part does not preclude official comment on matters in litigation in appropriate cases.

(i) The DOD General Counsel may notify DOD components that DOD will assume primary responsibility for coordinating all litigation requests for demands for official DOD information or testimony of DOD personnel in litigation involving terrorism, espionage, nuclear weapons, and intelligence sources or means. Accordingly, determining officials who receive requests pertaining to such litigation shall notify the Associate General Counsel (Litigation) or the Deputy Assistant Judge Advocate General (International Law or General Litigation) who shall consult and coordinate with DOD General Counsel prior to any response to such requests.

(j) *Relationship with Federal Rules of Procedure.* The requirements imposed by this instruction are intended, among other things, to provide adequate notice to DON regarding the

² See footnote 1 to § 725.1.

³ See footnote 1 to § 725.1.

scope of proposed discovery. This will assure that certain DON information, which properly should be withheld, is not inadvertently released in response to a litigation request or demand, including a subpoena or other request for discovery issued under Federal rules of procedure. When the United States is a party to Federal litigation and the party opponent uses discovery methods (e.g., request for interrogatories and admissions, depositions) set forth in Federal rules of procedure, the Judge Advocate General or General Counsel, in consultation with representatives of the Department of Justice or the cognizant United States Attorney, may determine whether the requirement for a separate written request in accordance with § 725.7 should be waived. Even if this requirement is waived, however, DON personnel who are subpoenaed to testify still will be required to obtain the written permission described in § 725.2.

§ 725.6 Authority to determine and respond.

(a) *Matters proprietary to DON.* If a litigation request or demand is made of DON personnel for official DON or DOD information or for testimony concerning such information, the individual to whom the request or demand is made will immediately notify the cognizant DON official designated in § 725.6(c) and (d), who will determine availability and respond to the request or demand.

(b) *Matters proprietary to another DOD component.* If a DON activity receives a litigation request or demand for official information originated by another DOD component or for non-DON personnel presently or formerly assigned to another DOD component, the DON activity will forward appropriate portions of the request or demand to the DOD component originating the information, to the components where the personnel are assigned, or to the components where the personnel were formerly assigned, for action under 32 CFR part 97. The forwarding DON activity will also notify the requester and court (if appropriate) or other authority of its transfer of the request or demand.

(c) *Litigation matters to which the United States is, or might reasonably be-*

come, a party. Examples of such instances include suits under the Federal Tort Claims Act, Freedom of Information Act, Medical Care Recovery Act, Tucker Act, and suits against Government contractors where the contractor may interplead the United States or seek indemnification from the United States for any judgment paid, e.g., aviation contractors or asbestos matters. Generally, a suit in which the plaintiff is representing the interests of the United States under the Medical Care Recovery Act is not a litigation matter to which the United States is, or might reasonably become, a party. Determining authorities, if in doubt whether the United States is likely to become a party to the litigation, should seek guidance from representatives of the Offices of the Judge Advocate General or General Counsel. The Judge Advocate General and the General Counsel have the authority to determine whether a litigation request should be forwarded to them, or retained by a determining authority, for resolution.

(1) Litigation requests regarding matters assigned to the Judge Advocate General of the Navy under Navy Regulations, art. 0331 (1990)⁴, shall be referred to the Deputy Assistant Judge Advocate General (DAJAG) for General Litigation, 200 Stovall Street, Alexandria, VA 22332-2400, who will respond for the Judge Advocate General or transmit the request to the appropriate Deputy Assistant Judge Advocate General for response.

(2) Litigation requests regarding matters assigned to the General Counsel of the Navy under Navy Regs., art. 0327 (1990)⁵, shall be referred to the cognizant Command Counsel under, and subject to, limitations set forth in § 725.6(d)(2). That Command Counsel may either respond or refer the matter for action to another office. Requests involving asbestos litigation shall be referred to the Office of Counsel, Naval Sea Systems Command Headquarters, Personnel and Labor Law Section (Code 00LD), Washington, DC 20362-5101. Matters not clearly within the purview of a particular command counsel shall

⁴ See footnote 1 to § 725.1.

⁵ See footnote 1 to § 725.1.

be referred to Associate General Counsel (Litigation), who may either respond or refer the matter for action to another office.

(3) Matters involving the Armed Services Board of Contract Appeals shall be forwarded to these respective counsel except where the determination may involve the assertion of the deliberative process privilege before that Board. In such an event, the matter shall be forwarded for determination to the Associate General Counsel (Litigation).

(d) *Litigation matters in which the United States is not, and is reasonably not expected to become, a party—(1) Matters within the cognizance of the Judge Advocate General—(i) Fact witnesses.* Requests to interview, depose, or obtain testimony of any present or former DON personnel as defined in §725.4(b) about purely factual matters shall be forwarded to the Navy or Marine Corps officer exercising general court-martial jurisdiction (OEGCMJ) in whose chain of command the prospective witness or requested documents lie. That determining authority will respond for the Judge Advocate General under criteria set forth in §725.8.

(A) If the request pertains to personnel assigned to the Office of the Chief of Naval Operations, the Office of the Vice Chief of Naval Operations, or an Echelon 2 command located in the Washington, DC, area, it shall be forwarded to that office which will likewise respond for the Judge Advocate General under the criteria set forth in §725.8.

(B) If a request pertains to Marine Corps personnel assigned to Headquarters Battalion, Headquarters Marine Corps, or to other Marine Corps commands located in the Washington, DC, area, it shall be forwarded to the Commandant of the Marine Corps (JAR), Headquarters, U.S. Marine Corps, Washington, DC 20380-0001, which will respond for the Judge Advocate General under criteria set forth in §725.8.

(C) Nothing here shall prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester

shall be notified of the referral. Further, each determining authority specified in this paragraph may further delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor.

(D) In the alternative, the requester may forward the request to the Deputy Assistant Judge Advocate General (General Litigation), who may refer the matter to another determining authority for response, and so notify the requester.

(ii) *Visits and views.* A request to visit a DON activity, ship, or unit, or to inspect material or spaces located there will be forwarded to one of the authorities stated in §725.6(d)(1)(i), who will respond on behalf of the Judge Advocate General. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit at issue, or with his or her staff judge advocate (if applicable). The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography.

(iii) *Documents.* 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all DON books, records, and property. Under DOD Directive 5530.1⁶, the Secretary of the Navy's sole delegate for service of process is the General Counsel of the Navy. See 32 CFR 257.5(c). All process for such documents shall be served upon the General Counsel at the Department of the Navy, Washington, DC, 20350-1000, who will refer the matter to the proper delegate for action. Matters referred to the Judge Advocate General will normally be provided to the determining authorities described in §725.6(c) and (d). That authority will respond per criteria in §725.8. Process not properly served on the General Counsel is insufficient to constitute a legal demand and shall be processed as a request by counsel. Requests for documents maintained by the National

⁶ See footnote 1 to §725.1.

Personnel Records Center will be determined by the official provided in § 725.8(b)(2)(iii).

(iv) *Expert or opinion requests.* Any request for expert or opinion consultations, interviews, depositions, or testimony will be referred to the Deputy Assistant Judge Advocate General (General Litigation) who will respond for the Judge Advocate General, or transmit the request to the appropriate DAJAG for response. Matters not clearly within the purview of a particular Deputy Assistant Judge Advocate General will be retained by the Deputy Assistant Judge Advocate General (General Litigation), who may either respond or refer the matter to another determining authority for response.

(2) *Matters within the cognizance of the General Counsel of the Navy—(i) Matters not involving issues of Navy policy.* Such matters shall be forwarded for determination to the respective counsel for Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Naval Facilities Engineering Command, Space and Naval Warfare Command, Office of the Navy Comptroller, Commandant of the Marine Corps, Office of the Chief of Naval Research, Military Sealift Command, Office of Civilian Personnel Policy, or to the Assistant General Counsel (Acquisition), depending upon who has cognizance over the information or personnel at issue.

(ii) *Matters involving issues of Navy policy.* Such matters shall be forwarded for determination to the General Counsel of the Navy via the Associate General Counsel (Litigation).

(iii) *Matters involving asbestos litigation.* Such matters shall be forwarded to the Office of Counsel, Naval Sea Systems Command Headquarters, Personnel and Labor Law Section (Code 00LD), Washington, DC 20362-5101.

(3) *Matters not clearly within the cognizance of either the Judge Advocate General or the General Counsel.* Such matters may be sent to the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation), who will, in consultation with the other, determine the appropriate authority to respond to the request.

§ 725.7 Contents of a proper request or demand.

(a) *Routine requests.* If official information is sought, through testimony or otherwise, a detailed written request must be submitted to the appropriate determining authority far enough in advance to assure an informed and timely evaluation of the request, and prevention of adverse effects on the mission of the command or activity that must respond. The determining authority shall decide whether sufficient information has been provided by the requester. Absent independent information, the following data is necessary to assess a request.

(1) *Identification of parties, their counsel and the nature of the litigation.* (i) Caption of case, docket number, court.

(ii) Name, address, and telephone number of all counsel.

(iii) The date and time on which the documents, information, or testimony sought must be produced; the requested location for production; and, if applicable, the estimated length of time that attendance of the DON personnel will be required.

(2) *Identification of information or documents requested.* (i) A description, in as much detail as possible, of the documents, information, or testimony sought, including the current military service, status (active, separated, retired), social security number, if known, of the subject of the requested pay, medical, or service records;

(ii) The location of the records, including the name, address, and telephone number, if known, of the person from whom the documents, information, or testimony is sought; and

(iii) A statement of whether factual, opinion, or expert testimony is requested (see §§ 725.4(c) and 725.8(b)(3)(ii)).

(3) *Description of why the information is needed.* (i) A brief summary of the facts of the case and the present posture of the case.

(ii) A statement of the relevance of the matters sought to the proceedings at issue.

(iii) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances

exist justifying such testimony, including why it is not reasonably available from any other source.

(b) *Additional considerations.* The circumstances surrounding the underlying litigation, including whether the United States is a party, and the nature and expense of the requests made by a party may require additional information before a determination can be made. Providing the following information or stipulations in the original request may expedite review and eliminate the need for additional correspondence with the determining authority.

(1) A statement of the requester's willingness to pay in advance all reasonable expenses and costs of searching for and producing documents, information, or personnel, including travel expenses and accommodations (if applicable);

(2) In cases in which deposition testimony is sought, a statement of whether attendance at trial or later deposition testimony is anticipated and requested. A single deposition normally should suffice;

(3) An agreement to notify the determining authority at least 10 working days in advance of all interviews, depositions, or testimony. Additional time for notification may be required where the witness is a DON health care provider or where the witness is located overseas;

(4) An agreement to conduct the deposition at the location of the witness, unless the witness and his or her commanding officer or cognizant superior, as applicable, stipulate otherwise;

(5) In the case of former DON personnel, a brief description of the length and nature of their duties while in DON employment, and a statement of whether such duties involved, directly or indirectly, the information or matters as to which the person will testify;

(6) An agreement to provide free of charge to any witness a signed copy of any written statement he or she may make, or, in the case of an oral deposition, a copy of that deposition transcript, if taken by a stenographer, or a video tape copy, if taken solely by video tape, if not prohibited by applicable rules of court;

(7) An agreement that if the local rules of procedure controlling the litigation so provide, the witness will be given an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government;

(8) A statement of understanding that the United States reserves the right to have a representative present at any interview or deposition; and

(9) A statement that counsel for other parties to the case will be provided with a copy of all correspondence originated by the determining authority so they may have the opportunity to submit any related litigation requests and participate in any discovery.

(c) *Response to deficient requests.* A letter request that is deficient in providing necessary information may be returned to the requester by the determining authority with an explanation of the deficiencies and a statement that no further action will be taken until they are corrected. If a subpoena has been received for official information, counsel should promptly determine the appropriate action to take in response to the subpoena. See § 725.9(g).

(d) *Emergency requests.* Written requests are generally required by 32 CFR part 97.

(1) The determining authority, identified in § 725.6, has discretion to waive that requirement in the event of a bona fide emergency, under conditions set forth here, which were not anticipated in the course of proper pretrial planning and discovery. Oral requests and subsequent determinations should be reserved for instances where factual matters are sought, and compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the litigation for which the information is sought. No requester has a right to make an oral request and receive a determination. Whether to permit such an exceptional procedure is a decision within the sole discretion of the determining authority, unless overruled by the General Counsel or the Judge Advocate General, as appropriate.

(2) If the determining authority concludes that the request, or any portion of it, meets the emergency test, he or

she will require the requester to agree to the conditions set forth in § 725.7(a). The determining authority will then orally advise the requester of the determination, and seek a written confirmation of the oral request. Thereafter, the determining authority will make a written record of the disposition of the oral request including the grant or denial, circumstances requiring the procedure, and conditions to which the requester agreed.

(3) The emergency procedure should not be utilized where the requester refuses to agree to the appropriate conditions set forth in § 725.7(a) or indicates unwillingness to abide by the limits of the oral grant, partial grant, or denial.

§ 725.8 Considerations in determining to grant or deny a request.

(a) *General considerations.* In deciding whether to authorize release of official information, or the testimony of DON personnel concerning official information (hereafter referred to as “the disclosure” under a request conforming with the requirements of § 725.7, the determining authority shall consider the following factors:

(1) The DON policy regarding disclosure in § 725.2;

(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;

(3) Whether disclosure, including release in camera (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;

(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction, or notice;

(5) Whether disclosure, in the absence of a court order or written consent, would violate 5 U.S.C. 552, 552a;

(6) Whether disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, or physician-patient in the case of civilian personnel);

(7) Whether disclosure, except when in camera (i.e., before the judge alone) and necessary to assert a claim of privilege, would reveal information

properly classified under the DOD Information Security Program under DOD 5200.1-R⁷, withholding of unclassified technical data from public disclosure following OPNAVINST 5510.161; privileged Naval Aviation Safety Program information (OPNAVINST 3750.6Q (NOTAL))⁸, or other matters exempt from unrestricted disclosure under 5 U.S.C. 552, 552a;

(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate constitutional rights, reveal the identity of an intelligence source or source of confidential information, conflict with U.S. obligations under international agreement, or be otherwise inappropriate under the circumstances;

(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command; and

(10) Whether, in a criminal case, requiring disclosure by a defendant of detailed information about the relevance of documents or testimony as a condition for release would conflict with the defendant’s constitutional rights.

(b) *Specific considerations*—(1) *Documents, interviews, depositions, testimony, and views (where the United States is, or may become, a party).* All requests pertaining to such matters shall be forwarded to the Judge Advocate General or the General Counsel, as appropriate under § 725.6(c).

(2) *Documents (where the United States is not, and is reasonably not expected to become a party)*—(i) *Unclassified Navy and Marine Corps records.* Where parties or potential parties desire unclassified naval records in connection with a litigation matter, the subpoena duces tecum or court order will be served, under 32 CFR 257.5(c), upon the General Counsel of the Navy, along with a written request complying with § 725.7.

(A) If the determining authority to whom the matter is referred determines to comply with the order or subpoena, compliance will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of an unusual circumstance, an original record

⁷ See footnote 1 to § 725.1.

⁸ See footnote 1 to § 725.1.

must be produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence.

(B) Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order signed by a judge as set forth above may be furnished without a court order, but only upon a request complying with §725.7 and only when such records are not in a "system of records" as defined by the Privacy Act (5 U.S.C. 552a). In determining whether a record not contained in a "system of records" will be furnished in response to a Freedom of Information Act (FOIA) request, SECNAVINST 5720.42E⁹ controls.

(C) Generally, a record in a Privacy Act "system of records" may not be released under a litigation request except with the written consent of the person to whom the record pertains or in response to a court order signed by a judge. See SECNAVINST 5211.5C¹⁰ and 5 U.S.C. 552, 552a for further guidance.

(D) Whenever compliance with a court order or subpoena duces tecum for production of DON records is denied for any reason, the subpoena or court order and complete copies of the requested records will be forwarded to the appropriate Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for action, and the parties to the suit notified in accordance with this part.

(ii) *Classified Navy and Marine Corps records.* Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP-09N) per OPNAVINST 5510.1H.¹¹

(iii) *Records in the custody of the National Personnel Records Center.* Court orders or subpoenas duces tecum demanding information from, or production of, service or medical records of former Navy and Marine Corps personnel in the custody of the National Per-

sonnel Records Center will be served upon the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132. If records responsive to the request are identified and maintained at the National Personnel Records Center, that Center shall make appropriate certified (authenticated) copies of the information requested. These copies will then be forwarded, along with the request, in the case of Navy personnel, to Chief, Bureau of Naval Personnel (Pers-06), Washington, DC 20370-5000, or his delegate, who will respond. In the case of Marine Corps personnel, the copies and request will be sent to the Commandant of the Marine Corps (MMRB-10), Quantico, VA 22134-0001, who will respond. Those requests that do not constitute legal demands will be refused by the Director, National Personnel Records Center, and written guidance provided to the requester.

(iv) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by Federal Personnel Manual, chapter 294 and chapter 339.1-4.¹² Records of civilian employees, other than medical records, may be produced upon receipt of a court order and a request complying with §725.7, provided no classified or for official use only information, such as loyalty or security records, are involved. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor are governed by Secretary of the Navy Instruction 5211.5C (Privacy Act implementation) and Secretary of the Navy Instruction 5720.42E (Freedom of Information Act implementation), as appropriate. Where information is furnished per this subparagraph in response to a court order and proper request, certified copies rather than originals should be furnished. Where original records must be produced because of unusual circumstances, they may not be removed from the custody of the official producing them, but copies may be placed on the record.

⁹ See footnote 1 to §725.1.

¹⁰ See footnote 1 to §725.1.

¹¹ See footnote 1 to §725.1.

¹² See footnote 1 to §725.1.

(v) *JAGMAN investigations (other than to next of kin)*. The Deputy Assistant Judge Advocate General having cognizance over the records at issue for litigation or prospective litigation purposes may release the records if a complete release will result. The Assistant Judge Advocate General (Civil Law) will make determinations concerning the release of the records specified in this subparagraph if a release of less than the complete requested record will result. A release to next of kin of incompetent or deceased DON personnel or their representatives is exempt from these requirements and this part.

(vi) *Affirmative claims files*. Affirmative claims files (including Medical Care Recovery Act files), except to the extent they contain copies of JAGMAN investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by the commanding officer of the Naval Legal Service Office having cognizance over the claim at issue, without compliance with this instruction, to: insurance companies to support claims; to civilian attorneys representing injured service persons, their dependents, and the Government's interests; and to other DOD components. When a request for production involves material related to claims in favor of the Government, either the cognizant Command Counsel or the Naval Legal Service Office having territorial responsibility for the area should be notified.

(vii) *Accounting for disclosures from "systems of records."* When compliance with a litigation request or demand for production of records is appropriate, or when release of records is otherwise authorized, and records contained in a "system of records," are released, the releasing official will consult Secretary of the Navy Instruction 5211.5C regarding disclosure accounting requirements.

(viii) *Pay records*. Official pay records of active-duty, reserve, retired, or former Navy members should be requested from Director, Defense Finance and Accounting Service (DFAS), Cleveland Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. Official pay records of active-duty, reserve, retired, or former Ma-

rines should be requested from Director, Defense Finance and Accounting Service, Kansas City Center (Code G), Kansas City, MO 64197-0001.

(3) *Interviews, depositions, and testimony (where the United States is not, and is reasonably not expected to become, a party)*—(i) *Factual matters*. DON policy favors disclosure of factual matters when disclosure does not violate the criteria stated in this section. Distinguishing between factual matters and expert or opinion matters (where DON policy favors non-disclosure) requires careful analysis. Opinion matters are defined at §725.4(c).

(ii) *Expert, opinion, or policy matters*. Such matters are to be determined, under the delegation in §725.6, by the cognizant Deputy Assistant Judge Advocate General or by General Counsel. General considerations to identify expert or opinion testimony are in §725.4(c). DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DOD or the United States, the appropriate DON official designated in §725.6, may grant, in writing, special authorization for DON personnel to appear and testify at no expense to the United States. In determining whether exceptional need or unique circumstances exist, the determining official should consider whether such expert or opinion testimony is available to the requester from any other source. The burden of demonstrating such unavailability, if any, is solely upon the requester.

(iii) *Visits and views (where the United States is not, and is reasonably not expected to become, a party)*. Such disclosures are normally factual in nature and should not be accompanied by interviews of personnel unless separately requested and granted. The authority of the commanding officer of the activity, ship, or unit at issue is not limited by this part. Accordingly, he or she may prescribe appropriate

conditions as to time, place, and circumstances (including proper restrictions on photography).

(iv) *Non-DOD information.* A request for disclosure under this part, particularly through the testimony of a witness, may involve both official information and non-DOD information (e.g., in the case of a person who has acquired additional and separate knowledge or expertise wholly apart from Government employment). Determining whether or not official information is at issue is within the purview of the determining authority, not the requester. A requester's contention that only non-DOD information is at issue is not dispositive. The requester must still comply with this instruction to support that contention. If non-DOD information is at issue in whole or in part, the determining authority shall so state in the written determination described in §725.9. He or she shall make no other determination regarding that non-DOD information.

§ 725.9 Action to grant or deny a request.

(a) The process of determining whether to grant or deny a request is not an adversary proceeding. This part provides guidance for the operation of DON only and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law against the United States, DOD, or DON.

(b) 32 CFR part 97 and this part apply to testimony by former naval personnel and former civilian employees of DON. A proper request must be made, under §725.7, to obtain testimony by former personnel regarding official DOD information. However, this part is not intended to place unreasonable restraints upon the post-employment conduct of such personnel. Accordingly, requests for expert or opinion testimony by such personnel will normally be granted unless that testimony would constitute a violation of the U.S. Code (e.g., 18 U.S.C. 201 et seq.), conflict with pertinent regulations (e.g., Secretary of the Navy Instruction 5370.2H), or disclose properly classified or privileged information.

(c) A determination to grant or deny should be made as expeditiously as pos-

sible to provide the requester and the court with the matter at issue or with a statement of the reasons for denial. The decisional period should not exceed 10 working days from receipt of a complete request complying with the requirements of §725.7, absent exceptional or particularly difficult circumstances. The requester should also be informed promptly of the referral of any portion of the request to another authority for determination.

(d) Except as provided in §725.7(d), a determination to grant or deny shall be in writing.

(e) The determination letter should respond solely to the specific disclosures requested, stating a specific determination on each particular request. When a request is denied in whole or in part, a statement of the reasons for denial should be provided to fully inform a court of the reasons underlying the determination if it is challenged.

(f) A copy of any denial, in whole or in part, of a request, should be forwarded to the cognizant Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation), as appropriate. Such notification is likewise appropriate when the litigation request has been treated under 5 U.S.C. 552, 552a and §725.5(f). Telephonic notification is particularly appropriate where a judicial challenge or contempt action is anticipated.

(g) In cases in which a subpoena has been received and the requester refuses to pay fees or otherwise comply with the guidance and requirements imposed by this part, or if the determining authority declines to make some or all of the subpoenaed information available, or if the determining authority has had insufficient time to complete its determination as to how to respond to the request, the determining authority must promptly notify the General Litigation Division of the Office of the Judge Advocate General or the Navy Litigation Office of the Office of the General Counsel, which offices will determine, in consultation with the Department of Justice, the appropriate response to be made to the tribunal which issued the subpoena. Because the

Federal Rules of Civil Procedure require that some objections to subpoenas must be made either within 10 days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require consultation with the Department of Justice, timely notice is essential.

§ 725.10 Response to requests or demands in conflict with this instruction.

(a) Except as otherwise provided in this paragraph, DON personnel, including former military personnel and civilian employees, shall not produce, disclose, release, comment upon, or testify concerning any official DOD information in response to a litigation request or demand without prior written approval of the appropriate DON official designated in § 725.6. If a request has been made, and granted, in whole or in part, per 32 CFR part 97 and this part, DON personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in the request and properly approved by the determining authority designated in § 725.6. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(b) If, after DON personnel have received a litigation request or demand and have in turn notified the appropriate determining authority described in § 725.6, a response to the request or demand is required before instructions from the responsible official have been received, the responsible authority designated in § 725.6 shall notify the Deputy Assistant Judge Advocate General or Associate General Counsel (Litigation) who has cognizance over the matter. That official will furnish the requester, the court, or other authority that the request or demand is being reviewed in accordance with this part and seek a stay of the request or demand pending a final determination.

(c) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under § 725.10(b), or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the

appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly. The witness shall, if directed by the appropriate DON official, respectfully decline to comply with the demand. Legal counsel for the command concerned should accompany and advise DON personnel during any court proceedings involving the foregoing circumstances.

(d) It is expected that all DON actions in the foregoing paragraphs will be taken only after active consultation with the appropriate component of the Department of Justice. Generally, DON personnel will be instructed to decline to comply with a court order only if the Department of Justice commits to represent the DON personnel in question.

§ 725.11 Fees.

(a) *Generally.* Except as provided below, determining authorities shall charge reasonable fees and expenses to parties seeking official DON information or testimony under this instruction. Pursuant to 32 CFR 288.4, 288.10, these fees should include all costs of processing a request for information, including time and material expended. Travel for active duty members summoned as witnesses is governed by Joint Travel Regulations, Vol. I, Chap. 7, pt. E. and Navy Travel Instructions, Chap. 6, pt. E.¹³ Travel for civilian personnel summoned as witnesses is governed by the Joint Travel Regulations, Vol. II, Chap. 4, pt. E.¹⁴

(1) *When DON is a party.* No fees normally shall be charged when the DON

¹³ See footnote 1 to § 725.1.

¹⁴ See footnote 1 to § 725.1.

is a party to the proceedings, and the activity holding the requested information or employing the witness shall bear the expense of complying with the request.

(2) *When another federal agency is a party.* No fees shall be charged to the requesting agency. Travel and per diem expenses may be paid by the requesting agency, or by the Navy activity to which the requested witness is assigned, subject to reimbursement from the requesting agency.

(3) *When neither DON nor another federal agency is a party.* Fees shall be charged to the requester for time taken from official duties by DON personnel who are authorized to be interviewed, give testimony, or escort persons on views and visits of installations. At the discretion of the cognizant command, DON personnel need not be made available during duty hours unless directed by subpoena. Time which DON personnel spend in court testifying, or waiting to testify on factual matters shall not be charged. Fees should be charged, however, for expert or opinion testimony based upon the witness's education, training, or experience. Testimony by a treating physician called to testify about his personal knowledge of a specific case is considered fact not expert testimony. Fees are payable to the Treasurer of the United States for deposit in the Treasury's miscellaneous receipts. Rates for uniformed personnel are published in NAVCOMPT Notice 7041 series.¹⁵ Pursuant to 32 CFR 288.4, charges for civilian personnel should include the employee's hourly rate of pay, as well as allowances and benefits. Except as provided in § 725.11(b)(4), no funds may be expended for travel or per diem of active duty members when an agency of the Federal Government is not a party. The requesting party is responsible for travel arrangements and funding. Government funding of travel and per diem for civilian employees is authorized.

(b) *Special circumstances—(1) Refusal to pay fees.* In cases in which a subpoena has been received and the requester refuses to pay appropriate fees, it may become necessary to request the Department of Justice to take appro-

priate legal action before the court issuing the subpoena. Determining authorities should consult promptly with the OJAG General Litigation Division or the Navy Litigation Office of the General Counsel if this course of action appears necessary, because some objections to subpoenas must be made either within ten days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require timely consultation with the Department of Justice. If no subpoena has been issued, the determining authority must decide whether to deny the request or, if appropriate, waive the fees.

(2) *Waiver or reduction of fees.* The determining authority may waive or reduce fees pursuant to 32 CFR 288.4, 288.9, provided such waiver or reduction is in the best interest of the DON and the United States. Fee waivers and reductions shall not be routinely granted, or granted under circumstances which might create the appearance that DON favors one party over another.

(3) *Witness fees required by the court.* Witness fees required by the rules of the applicable court shall be paid directly to the witness by the requester. Such amounts are to defray the cost of travel and per diem. In a case where the Government has paid the cost of travel and per diem, the witness shall turn over to his or her supervisor any payment received from a private party to defray the cost of travel that, when added to amounts paid by the Government, exceed the actual cost of travel. The supervisor shall forward the amount turned over by the witness to the Office of the Comptroller of the Navy for appropriate action.

(4) *Exceptional cases.* If neither the DON, nor an agency of the Federal Government is a party, appropriated funds may be used to pay, without reimbursement, travel and per diem of DON personnel who are witnesses in criminal or civil proceedings, provided, the case is directly related to the Armed Services, or its members, and the Armed Services have a genuine and compelling interest in the outcome.

¹⁵ See footnote 1 to § 725.1.

PART 726—PAYMENTS OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Sec.

726.1 Purpose.

726.2 Scope.

726.3 Authority to appoint trustees.

726.4 Procedures for convening competency boards.

726.5 Procedures for designation of a trustee.

726.6 Travel orders.

726.7 Status of pay account.

726.8 Emergency funds.

726.9 Reports and supervision of trustees.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031, and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.206 and 700.1202.

SOURCE: 56 FR 55088, Oct. 24, 1991, unless otherwise noted.

NOTE: This part 726 is chapter XIV, of the Manual of the Judge Advocate General of the Navy.

§ 726.1 Purpose.

This part explains the procedures for convening competency boards and how to appoint trustees for members of the Naval service who have been determined to be mentally incompetent in accordance with title 11 of chapter 37, United States Code.

§ 726.2 Scope.

(a) The Secretary of the Navy has authority to designate a trustee in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a State court of competent jurisdiction. 37 U.S.C. 601-604. Trustees receive the active duty pay and allowances, amounts due for accrued or accumulated leave, and retired pay or retainer pay, that are otherwise payable to a member found by competent medical authority to be mentally incapable of managing his affairs.

(b) *Member* as used in this chapter refers to:

(1) Members of the Navy or Marine Corps on active duty (other than for training) or on the retired list of the Navy or Marine Corps; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 726.3 Authority to appoint trustees.

The Judge Advocate General or his designee is authorized to act for the Secretary of the Navy to appoint trustees to receive and administer Federal monies for members and to carry out the provisions of this chapter.

§ 726.4 Procedures for convening competency boards.

(a) *Competency Board.* (1) The commanding officer of the cognizant naval medical facility will convene a board of not less than three medical officers or physicians, one of whom will be a psychiatrist, when there is evidence that a member who is a patient in the naval medical facility may be incapable of handling his affairs. The board will be convened in accordance with chapter 18, Manual of the Medical Department. The board may include members of the Reserve components on active or inactive duty. When active duty Navy or Marine corps members are hospitalized in nonnaval medical facilities, the regional Naval Office of the Medical/Dental Affairs will ensure compliance with chapter 18.

(2) The Judge Advocate General or his designee may direct the commanding officer of any naval medical facility, or request the commanding officer of another service medical facility or administrator of a Department of Veterans Affairs medical facility, to convene a board in accordance with this section to determine the mental capability of a member to manage his affairs.

(3) A finding of restoration of competency or capability to manage personal and financial affairs may be accomplished in the same manner specified in chapter 18, Manual of the Medical Department, except that the board may consist of one or two medical officers or physicians, one of whom must be a psychiatrist.

(4) At least one officer on the board, preferably the psychiatrist, will personally observe the member and ensure that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement for the competency board is in addition to and separate from the medical board procedures. Each board member will sign the report of the board and will certify whether the member is or is not mentally capable of managing his affairs. After approval by the convening authority, the original board report is forwarded to the Judge Advocate General.

(b) *Records.* (1) The convening authority will forward the original of each board report to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

(2) In the case of a finding that a member is not mentally capable of managing his affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s), of the member's next of kin and any other data to help identify a prospective trustee.

§ 726.5 Procedures for designation of a trustee.

(a) Upon receipt of a report of a board convened under section 1404 that a member has been found mentally incapable of managing his affairs, the Judge Advocate General or his designee will initiate action to appoint a trustee, provided no notice of appointment of a committee, guardian, or other legal representative by a State court of competent jurisdiction has been received by the Judge Advocate General. The Judge Advocate General or his designee may direct any Navy or Marine Corps activity to appoint an officer to interview a prospective trustee and make recommendations concerning suitability. The Judge Advocate General will provide the interviewing officer with complete instructions pertaining to the interview of the prospective trustee, including the forms required to be completed by the prospective trustee that will be returned by the interviewing officer to the Judge Advocate General.

(b) The interviewing officer will: (1) Determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or his designee;

(2) Ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all monies will be applied to the use and benefit of the member and his legal dependents and that no fee, commission, or charge, for any service performed by the trustee, except for payment of the required bond, will be paid from Federal monies received by the trustee.

(3) Forward recommendations to the Judge Advocate General for appropriate action.

§ 726.6 Travel orders.

The Chief of Naval Personnel or the Director, Personnel Management Division, Headquarters, Marine Corps, may issue travel orders to a member to appear before an examining board convened to determine whether the member is mentally capable of managing his affairs. In the case of permanently retired members, however, travel for an appearance before a board convened pursuant to section 1404, above, will be at no cost to the Government unless the Judge Advocate General or his designee determines that unusual hardship exists and requests that appropriate authority fund the travel expenses.

§ 726.7 Status of pay account.

(a) Upon notification by the commanding officer of the medical facility preparing the incapacitation determination that a member has been declared mentally incompetent to manage his affairs, the cognizant disbursing officer will take appropriate action and immediately send the member's personal financial record to the appropriate finance center following the guidelines in the Department of Defense Military Pay and Allowances Entitlements Manual, Part Four, chapter 2. The Judge Advocate General or his designee will then direct the appropriate finance center to suspend the member's pay. Thereafter, the Judge Advocate General or his designee will direct payment of monies to:

- (1) The appointed trustee;
- (2) The legal representative appointed by a State court of competent jurisdiction; or

(3) Directly to the member following a determination that the member is capable of managing his affairs.

(b) The Commanding Officer, Navy Finance Center, or Commanding Officer, Marine Corps Finance Center, will notify the Judge Advocate General of any fact affecting the pay of a member mentally incapable of managing his affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or, notice of appointment of a legal representative by a State court of competent jurisdiction. At the request of the Judge Advocate General or his designee, the appropriate finance center will report all disbursements from the member's account.

(c) The Navy or Marine Corps Finance Center will seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his affairs.

§ 726.8 Emergency funds.

(a) Until a trustee is appointed, the Judge Advocate General or his designee may appoint the member's commanding officer or other appropriate official to receive emergency funds up to \$1,000.00 from the pay account of the member without bond. The money will be used for the benefit of the member and his legal dependents.

(b) The commanding officer of any naval medical facility may designate an officer of the command to receive and account for up to \$35.00 per month for the health and comfort of a member who is found mentally incapable of handling his affairs and who is a patient at the naval medical facility, if:

(1) A trustee has not been designated under this chapter and a committee, guardian, or other legal representative has not been appointed by a State court of competent jurisdiction;

(2) The member has no other funds available for use in his own behalf; and

(3) The funds are necessary for the purchase of items necessary for the health and comfort of the member.

(c) This section will be cited on the pay voucher as authority for payment and receipt of such funds.

§ 726.9 Reports and supervision of trustees.

(a) *Accounting reports.* The trustee designated under this chapter will submit accounting reports annually or at such other times as the Judge Advocate General or his designee directs. The Judge Advocate General will provide forms to be used by trustees for the required accounting report. The report will account for all funds received from the Navy or Marine Corps on behalf of the member. When payments to a trustee are terminated for any reason, the trustee will submit a final accounting report to the Judge Advocate General. Upon approval of the final accounting report, the trustee and the surety will be discharged from liability.

(b) *Failure to submit a report and default.* If an accounting report is not received by the date designated by the Judge Advocate General or his designee, or an accounting is unsatisfactory, the Judge Advocate General or his designee will notify the trustee in writing. If a satisfactory accounting is not received by the Judge Advocate General within the time specified, the trustee will be declared in default of the trustee agreement and will become liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, the appropriate finance center will be directed to terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by the Judge Advocate General or his designee of the declaration of default. The notification will state the reasons for default, the amount of indebtedness to the Government, and will demand payment for the full amount of indebtedness. If payment in full is not received by the Judge Advocate General within an appropriate period of time from notification of default, the account may be forwarded to the Department of Justice for recovery of funds through appropriate civil action.

PART 727—LEGAL ASSISTANCE

Sec.

727.1 Purpose.

727.2—727.4 [Reserved]

§ 727.1

- 727.5 Persons eligible for assistance.
- 727.6 Functions of legal assistance officers.
- 727.7 Limitations on service provided.
- 727.8 Confidential and privileged character of service provided.
- 727.9 Referrals to civilian lawyers.
- 727.10 Fees, compensation, solicitation, and representation in civilian courts.
- 727.11 Supervision.
- 727.12 Communications.
- 727.13 Reports.
- 727.14 Files and records.
- 727.15 Liberal construction of part.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6026, Mar. 6, 1973, unless otherwise noted.

§ 727.1 Purpose.

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

§§ 727.2—727.4 [Reserved]

§ 727.5 Persons eligible for assistance.

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

§ 727.6 Functions of legal assistance officers.

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

32 CFR Ch. VI (7-1-97 Edition)

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

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines prescribed in the Manual of the Judge Advocate General contemplating agreements or liaison with appropriate civilian bar officials, serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

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

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

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

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

(c) *Duty to client.* A legal assistance officer should exercise his independent

professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

(d) *Professional legal advice.* Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under Canon 3 of the Code of Professional Responsibility of the American Bar Association and particularly EC 3-2, 3-5, 3-6, and DR 3-101(A).

[41 FR 26863, June 30, 1976, as amended at 47 FR 41561, Sept. 21, 1982]

§727.7 Limitations on service provided.

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

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

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

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

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

[41 FR 26863, June 30, 1976]

§727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by §727.13 of this part. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order

to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

[42 FR 35957, July 13, 1977]

§ 727.9 Referrals to civilian lawyers.

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

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

understanding between the client and his civilian lawyer.

§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as a part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity. The prohibition may be waived only by the Judge Advocate General of the Navy or the Director, Naval Legal Service, as appropriate, in extraordinary circumstances on a case by case basis for inactive duty Reserve judge advocates who consulted with or advised an eligible client in an official capacity. Before a waiver may be granted, the following criteria, as well as other relevant criteria, shall be considered:

(1) Whether the waiver is specifically requested by the party concerned or an appropriate representative,

(2) Whether there is a likelihood that undue and substantial prejudice will otherwise be suffered by the party concerned,

(3) Whether adequate continued representation for compensation is otherwise reasonably available, and

(4) Whether the requested representation will violate the Code of Professional Responsibility of the American Bar Association or other applicable legal or ethical requirements.

(b) *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or

advising that any person entitled to legal assistance under this part retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *Provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in § 727.9.

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6 and under guidelines prescribed in the Manual of the Judge Advocate General before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, or the Director, Naval Legal Service, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

[47 FR 41561, Sept. 21, 1982]

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of Naval Legal Service Offices, and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

[42 FR 35957, July 13, 1977]

§ 727.12 Communications.

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

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instruction 5330.2 of July 12, 1968. A sample of the letterhead to be used is:

Legal Assistance Office, Building 200, Washington Navy Yard, Washington, DC 20374,
Tel: 202-433-4331.

Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

[42 FR 35958, July 13, 1977]

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of October of each year, prepare and submit to the Judge Advocate General one copy of the Legal Assistance Report (NAVJAG 5801/3 Rev. 12-78) covering the preceding fiscal year. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG-5801-1 is assigned for this reporting requirement.

[38 FR 6026, Mar. 6, 1973, as amended at 47 FR 41561, Sept. 21, 1982]

§ 727.14 Files and records.

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

(b) [Reserved]

[38 FR 6026, Mar. 6, 1973, as amended at 43 FR 17355, Apr. 24, 1978]

§ 727.15 Liberal construction of part.

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

PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

Subpart A—General

Sec.

- 728.1 Mission of Navy Medical Department facilities.
- 728.2 Definitions.
- 728.3 General restrictions and priorities.
- 728.4 Policies.

Subpart B—Members of the Uniformed Services on Active Duty

- 728.11 Eligible beneficiaries.
- 728.12 Extent of care.
- 728.13 Application for care.
- 728.14 Pay patients.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Programs, and National Guard Personnel

- 728.21 Navy and Marine Corps reservists.
- 728.22 Members of other reserve components of the uniformed services.
- 728.23 Reserve Officers' Training Corps (ROTC).
- 728.24 Navy and Marine Corps Officer Candidate Programs.
- 728.25 Army and Air Force National Guard personnel.

Subpart D—Retired Members and Dependents of the Uniformed Services

- 728.31 Eligible beneficiaries and health benefits authorized.
- 728.32 Application for care.
- 728.33 Nonavailability statement (DD 1251).
- 728.34 Care beyond the capabilities of a naval MTF.
- 728.35 Coordination of benefits—third party payers.
- 728.36 Pay patients.

Subpart E—Members of Foreign Military Services and Their Dependents

- 728.41 General provisions.
- 728.42 NATO.
- 728.43 Members of other foreign military services and their dependents.
- 728.44 Members of security assistance training programs, foreign military sales, and their ITO authorized dependents.
- 728.45 Civilian components (employees of foreign military services) and their dependents.
- 728.46 Charges and collection.

Subpart F—Beneficiaries of Other Federal Agencies

- 728.51 General provisions—the “Economy Act”.
- 728.52 Veterans Administration beneficiaries (VAB).
- 728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) beneficiaries.
- 728.54 U.S. Public Health Service (USPHS), other than members of the uniformed services.
- 728.55 Department of Justice beneficiaries.
- 728.56 Treasury Department beneficiaries.
- 728.57 Department of State and associated agencies.
- 728.58 Federal Aviation Agency (FAA) beneficiaries.
- 728.59 Peace Corps beneficiaries.
- 728.60 Job Corps and Volunteers in Service to America (VISTA) beneficiaries.
- 728.61 Medicare beneficiaries.

Subpart G—Other Persons

- 728.71 Ex-service maternity care.
- 728.72 Applicants for enrollment in the Senior Reserve Officers' Training Program.
- 728.73 Applicants for enlistment or reenlistment in the Armed Forces, and applicants for enlistment in the reserve components.
- 728.74 Applicants for appointment in the regular Navy or Marine Corps and reserve components, including members of the reserve components who apply for active duty.

Department of the Navy, DoD

§ 728.2

- 728.75 Applicants for cadetship at service academies and applicants for the Uniformed Services University of Health Sciences (USUHS).
- 728.76 Naval Home residents.
- 728.77 Secretarial designees.
- 728.78 American Red Cross representatives and their dependents.
- 728.79 Employees of Federal contractors and subcontractors.
- 728.80 U.S. Government employees.
- 728.81 Other civilians.
- 728.82 Individuals whose military records are being considered for correction.
- 728.83 Persons in military custody and non-military Federal prisoners.

Subpart H—Adjuncts to Medical Care

- 728.91 General.
- 728.92 Policy.
- 728.93 Chart of Adjuncts.

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

- 728.101 General.
- 728.102 Care from other than Federal sources.

Subpart J—Initiating Collection Action on Pay Patients

- 728.111 General.
- 728.112 Responsibilities.
- 728.113 Categories of pay patients.

AUTHORITY: 5 U.S.C. 301 and 8101; 10 U.S.C. 1071-1095, 1201-1221, 2104, 2107, 2109, 2110, 5031, 5537, 6011, 6201-6203; 22 U.S.C. 1158, 2357, 2504, 2505, 2507, 2522; 24 U.S.C. 15, 34, 35; 31 U.S.C. 1535; 42 U.S.C. 249, 253; and 32 CFR 700.1202.

SOURCE: 52 FR 33718, Sept. 4, 1987, unless otherwise noted.

Subpart A—General

§ 728.1 Mission of Navy Medical Department facilities.

The primary mission of Navy Medical Department facilities is to provide medical and dental care for members of the Navy and Marine Corps and for members of the other uniformed services who may be sick, injured, or disabled. In addition, Navy Medical Department facilities may provide medical and dental care to dependents of military personnel, to members not on active duty, and to such other persons as authorized by law, U.S. Navy regulations, and Department of Defense directives. These authorizations also pro-

vide that Navy Medical Department facilities may be called upon to furnish medical and dental care, under laws of humanity or principles of international courtesy, to civilians and to other persons not otherwise entitled to medical and dental care.

§ 728.2 Definitions.

Unless otherwise qualified in this part, the following terms, when used throughout, are defined as follows:

(a) *Active duty*. Full-time duty in the active military service of the United States. This includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

(b) *Active duty for training*. A tour of active duty for reserves for training under orders that provide for automatic reversion to non-active status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service.

(c) *CHAMPUS*. Civilian Health and Medical Program of the Uniformed Services.

(d) *Catchment area*. A specified geographic area surrounding each Uniformed Services Medical Treatment Facility (USMTF) or designated Uniformed Services Treatment Facility (USTF). In the United States, catchment areas are defined by zip codes and are based on an area of approximately 40 miles in radius for inpatient care and 20 miles in radius for ambulatory care. Zip codes designating such areas in the United States are specified in Volumes I and II of the Military Health Services System (MHSS) Catchment Area Directory. Catchment areas for facilities outside the United States are defined in Volume III of the MHSS Catchment Area Directory. These directories exclude certain areas because of geographic barriers.

(e) *Chronic condition*. Any medical or surgical condition marked by long duration or frequent recurrence—or likely to be so marked—which, in light of

medical information available, will ordinarily resist efforts to eradicate it completely; a condition which needs health benefits to achieve or maintain stability that can be provided safely only by, or under the supervision of, physicians, nurses, or persons authorized by physicians.

(f) *Civilian employee.* Under 5 U.S.C. 2105, a nonmilitary individual (1) appointed in the civil service, (2) engaged in the performance of a Federal function, or (3) engaged in the performance of his or her duties while subject to the supervision of The President, a Member or Members of Congress, or the Congress, a member of a uniformed service, an individual who is an employee under 5 U.S.C. 2105, the head of a Government controlled corporation, or an adjutant general designated by the Secretary concerned under section 709c of title 32. Included are justices and judges of the United States, appointed and engaging in the performance of duties per 5 U.S.C. 2104.

(g) *Cooperative care.* Medical services and supplies for which CHAMPUS will share in the cost under circumstances specified in § 728.4(z), even though the patient remains under the primary control of a USMTF.

(h) *Cooperative care coordinator.* Designated individual in a CHAMPUS contractor's office who serves as the point of contact for health benefits advisors on all matters related to supplemental-cooperative care or services provided or ordered for CHAMPUS-eligible beneficiaries by USMTF providers.

(i) *Dental care.* Treatment which will prevent or remedy diseases, disabilities, and injuries to the teeth, jaws, and related structures and thereby contribute to maintenance or restoration of the dental health of an individual.

(j) *Dependent.* A spouse, an unremarried widow or widower, a child, or a parent who bears that legal relationship to his or her sponsor. For the purpose of rendering care under title 10, U.S.C., chapter 55, this category may also include an unremarried former spouse. However, each beneficiary must also meet the eligibility criteria in § 728.31(b) and § 728.31(c).

(k) *Designated USTFs.* The following former U.S. Public Health Service (USPHS) facilities operate as "des-

ignated USTFs" for the purpose of rendering medical and dental care to active duty members and to all CHAMPUS-eligible individuals.

(1) *Sisters of Charity of the Incarnate Word Health Care System.* 6400 Lawndale, Houston, TX 77058 (713) 928-2931 operates the following facilities:

(i) St. John Hospital, 2050 Space Park Drive, Nassau Bay, TX 77058, telephone (713) 333-5503. Inpatient and outpatient services.

(ii) St. Mary's Hospital Outpatient Clinic, 404 St. Mary's Boulevard, Galveston, TX 77550, telephone (409) 763-5301. Outpatient services only.

(iii) St. Joseph Hospital Ambulatory Care Center, 1919 La Branch, Houston, TX 77002, telephone (713) 757-1000. Outpatient services only.

(iv) St. Mary's Hospital Ambulatory Care Center, 3600 Gates Boulevard, Port Arthur, TX 77640 (409) 985-7431. Outpatient services only.

(2) *Inpatient and outpatient services.* (i) Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211, telephone (301) 338-3693.

(ii) Alston-Brighton Aid and Health Group, Inc., Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135, telephone (617) 782-3400.

(iii) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, telephone (718) 390-5547 or 6007.

(iv) Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144, telephone (206) 326-4100.

(3) *Outpatient services only.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103, telephone (207) 774-5805.

(ii) Lutheran Medical Center, Downtown Health Care Services, 1313 Superior Avenue, Cleveland, OH 44113, telephone (216) 363-2065.

(l) *Disability retirement or separation.* Temporary or permanent retirement or separation for physical disability as provided in title 10, U.S.C., 1201-1221.

(m) *Elective care.* Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of other cognizant professional authority, can be performed at another place or time without jeopardizing life, limb, health, or well-being of the patient,

e.g., surgery for cosmetic purposes and nonessential dental prosthetic appliances.

(n) *Emergency care.* Medical treatment of patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention to prevent undue suffering or loss of life or limb and dental treatment of painful or acute conditions.

(o) *Health benefits advisors (HBA).* Designated individuals at naval facilities who are responsible for advising and assisting beneficiaries covered in this part concerning medical and dental benefits in uniformed services facilities and under CHAMPUS. They also provide information regarding Veterans' Administration, Medicare, MEDICAID, and such other local health programs known to be available to beneficiaries (see § 728.4(n)).

(p) *Hospitalization.* Inpatient care in a medical treatment facility.

(q) *Inactive duty training.* Duty prescribed for Reserves by the Secretary concerned under section 206 of title 37, U.S.C. or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. It includes those duties when performed by Reserves in their status as members of the National Guard.

(r) *Legitimate care.* Those medical and dental services under the cooperative/supplemental care program of CHAMPUS that are legally performed and not contrary to governing statutes.

(s) *Maximum hospital benefit.* That point during inpatient treatment when the patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not directly contribute to any further substantial recovery. A patient who will continue to improve slowly over a long period without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefit.

(t) *Medical care.* Treatment required to maintain or restore the health of an

individual. Medical care may include, but is not limited to, the furnishing of inpatient treatment, outpatient treatment, nursing service, medical examinations, immunizations, drugs, subsistence, transportation, and other adjuncts such as prosthetic devices, spectacles, hearing aids, orthopedic footwear, and other medically indicated appliances or services.

(u) *Medically inappropriate.* A situation arising when denial of a Nonavailability Statement could result in significant risk to the health of a patient or significant limitation to the patient's reasonable access to needed health care.

(v) *Medically necessary.* The level of services and supplies (i.e., frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity care. Medically necessary, includes the concept of appropriate medical care.

(w) *Medical treatment facility (MTF).* Any duly authorized medical department center, hospital, clinic, or other facility that provides medical, surgical, or dental care.

(x) *Member or former member.* Includes:

(1) Members of the uniformed services ordered to active duty for more than 30 days.

(2) Retired members as defined in § 728.2(bb).

(3) Members of a uniformed service ordered to active duty for more than 30 days who died while on that duty.

(4) Deceased retired members.

(y) *Military patient.* A member of a United States uniformed service on active duty, active duty for training, or inactive duty training, or an active duty member of the armed forces of a foreign government who is receiving inpatient or outpatient care.

(z) *Occupational health services.* Includes medical examinations and tests related to preemployment, preplacement, periodic, and pretermination; tests required for protecting the health and safety of naval personnel; job-related immunizations and chemoprophylaxis; education and training related to occupational health; and other services provided to avoid lost time or to improve effectiveness of employees. The latter will include the furnishing of emergency

treatment of illnesses or injuries occurring at work. Furnish such health services to both active duty military personnel and naval civilian employees per current directives.

(aa) *Retired member.* A member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, as a result of service in a uniformed service. This includes a member or former member who is: (1) Retired for length of service; (2) permanently or temporarily retired for physical disability; (3) on the emergency officers' retired list and is entitled to retired pay for physical disability; or (4) otherwise in receipt of retired pay under chapter 67 of title 10.

(bb) *Routine care.* Medical and dental care necessary to maintain health or dental functions other than care of an emergency or elective nature.

(cc) *Supplemental care or services.* When medical or dental management is retained by a naval MTF and required care is not available at the facility retaining management, any additional material, professional diagnostic or consultative services, or other personal services ordered by qualified uniformed service providers, and obtained for the care of that patient are supplemental. See § 728.12 concerning the management of active duty member patients.

(dd) *Uniformed services.* The Navy, Marine Corps, Air Force, Army, Coast Guard, Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

(ee) *USMTF.* Uniformed services medical treatment facility.

(ff) *Visit, outpatient.* Appearance by an eligible beneficiary at a separate, organized clinic or specialty service for: Examination, diagnosis, treatment, evaluation, consultation, counseling, or medical advice; or treatment

of an eligible beneficiary in quarters; and a signed and dated entry is made in the patient's health record. Specifically excluded are personnel in an inpatient status at the time of such a visit.

§ 728.3 General restrictions and priorities.

(a) *Restrictions.* (1) Naval MTFs provide care to all eligible beneficiaries subject to the capabilities of the professional staff and the availability of space and facilities.

(2) Hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to accompanying dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *Provided*, such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities. Hospitalization of such individuals in a naval MTF is limited to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Routine dental care, other than dental prosthesis or orthodontia, may be rendered on a space available basis outside the continental limits of the United States and in Alaska, *Provided*, such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(b) *Priorities.* When care cannot be rendered to all eligible beneficiaries, the priorities in the following chart will prevail. Make no distinction as to the sponsoring uniformed service when providing care or deciding priorities.

PRIORITIES FOR THE VARIOUS CATEGORIES OF PERSONNEL ELIGIBLE FOR CARE IN NAVY MEDICAL DEPARTMENT FACILITIES

Priority	Category	Degree of entitlement
1	A. Members of the uniformed services on active duty (including active duty for training and inactive duty training) and comparable personnel of the NATO nations meeting the conditions prescribed in this part. B. Members of a Reserve Component of the Armed Forces and National Guard personnel under orders.	See Subpart B. See Subpart C.

Department of the Navy, DoD

§ 728.4

PRIORITIES FOR THE VARIOUS CATEGORIES OF PERSONNEL ELIGIBLE FOR CARE IN NAVY MEDICAL DEPARTMENT FACILITIES—Continued

Prior-ity	Category	Degree of entitlement
2	Dependents of active duty members of the uniformed services, dependents of persons who died while in such a status, and the dependents of active duty members of NATO nations meeting the conditions prescribed in subpart E of this part.	See Subparts D and E.
3	Members of the Senior Reserve Officers' Training Corps of the Armed Forces.	See § 728.23.
4	Retired members of the uniformed services and their dependents and dependents of deceased retired members.	See Subpart D.
5	Civilian employees of the Federal Government under the limited circumstances covered by the Federal Employees' Health Service program.	See § 728.80.
6	All others, including ex-service maternity eligibles	See Subparts F and G.

§ 728.4 Policies.

(a) *Admissions to closed psychiatric wards.* Admit patients to closed psychiatric wards only when they have a psychiatric or emotional disorder which renders them dangerous to themselves or others, or when a period of careful closed psychiatric observation is necessary to determine whether such a condition exists. When a patient is admitted to a closed psychiatric ward, the reason for admission must be clearly stated in the patient's clinical record by the physician admitting the patient to the ward. These same policies apply equally in those instances when it becomes necessary to place a patient under constant surveillance while in an open ward.

(b) *Absence from the sick list.* See § 728.4 (d), (x), and (y).

(c) *Charges and collection.* Charges for services rendered vary and are set by the Office of the Assistant Secretary of Defense (Comptroller) and published in a yearly NAVMEDCOMNOTE 6320, (Cost elements of medical, dental, subsistence rates, and hospitalization bills). Billing and collection actions also vary according to entitlement or eligibility and are governed by the provisions of NAVMED P-5020, Resource Management Handbook. See subpart J on the initiation of collection action on pay patients.

(d) *Convalescent leave.* Convalescent leave, a period of authorized absence of active duty members under medical care when such persons are not yet fit for duty, may be granted by a mem-

ber's commanding officer (CO) or the hospital's CO per the following:

(1) Unless otherwise indicated, grant such leave only when recommended by COMNAVMEDCOM through action taken upon a report by a medical board, or the recommended findings of a physical evaluation board or higher authority.

(2) Member's commanding officer (upon advice of attending physician); commanding officers of Navy, Army, or Air Force medical facilities; commanders of regional medical commands for persons hospitalized in designated USTFs or in civilian facilities within their respective areas of authority; and managers of Veterans Administration hospitals within the 50 United States or in Puerto Rico may grant convalescent leave to active duty naval patients, with or without reference to a medical board, physical evaluation board, or higher authority provided the:

(i) Convalescent leave is being granted subsequent to a period of hospitalization.

(ii) Member is not awaiting disciplinary action or separation from the service for medical or administrative reasons.

(iii) Medical officer in charge:

(A) Considers the convalescent leave beneficial to the patient's health.

(B) Certifies that the patient is not fit for duty, will not need hospital treatment during the contemplated convalescent leave period, and that such leave will not delay final disposition of the patient.

(3) When considered necessary by the attending physician and approved on an individual basis by the commander of the respective geographic regional medical command, convalescent leave in excess of 30 days may be granted. The authority to grant convalescent leave in excess of 30 days may not be redelegated to hospital commanding officers. Member's permanent command must be notified of such extensions (see MILPERSMAN 3020360).

(4) Exercise care in granting convalescent leave to limit the duration of such leave to that which is essential in relation to diagnosis, prognosis, estimated duration of treatment, and patient's probable final disposition.

(5) Upon return from convalescent leave;

(i) Forward one copy of original orders of officers, bearing all endorsements, to the Commander, Naval Military Personnel Command (COMNAVMILPERSCOM) (NMPC-4) or the Commandant of the Marine Corps (CMC), as appropriate.

(ii) Make an entry on the administrative remarks page (page 13 for Navy personnel) of the service records of enlisted personnel indicating that convalescent leave was granted and the dates of departure and return.

(6) If considered beneficial to the patient's health, commanding officers of hospitals may grant convalescent leave as a delay in reporting back to the parent command.

(e) *Cosmetic surgery.* (1) Defined as that surgery which is done to revise or change the texture, configuration, or relationship of contiguous structures of any feature of the human body which would be considered by the average prudent observer to be within the broad range of "normal" and acceptable variation for age or ethnic origin, and in addition, is performed for a condition which is judged by competent medical opinion to be without potential for jeopardy to physical or mental health of an individual.

(2) Commanding officers will monitor, control, and assure compliance with the following cosmetic surgery policy:

(i) Certain cosmetic procedures are a necessary part of training and reten-

tion of skills to meet the requirements of certification and recertification.

(ii) Insofar as they meet minimum requirements and serve to improve the skills and techniques needed for reconstructive surgery, the following cosmetic procedures may be performed as low priority surgery on active duty members only when time and space are available.

(A) Cosmetic facial rhytidectomies (face lifts) will be a part of all training programs required by certifying boards.

(B) Cosmetic augmentation mammoplasties will be done only by properly credentialed surgeons and residents within surgical training programs to meet requirements of certifying boards.

(f) *Cross-utilization of uniformed services facilities.* To provide effective cross-utilization of medical and dental facilities of the uniformed services, eligible persons, regardless of service affiliation, will be given equal opportunity for health benefits. Catchment areas have been established by the Department of Defense for each USMTF (see § 728.2(d)). Eligible beneficiaries residing within such a catchment area are expected to use that inpatient facility for care. Make provisions to assure that:

(1) Eligible beneficiaries residing in a catchment area served by a USMTF not of the sponsor's own service may obtain care at that facility or at a facility of the sponsor's service located in another catchment area.

(2) If the facility to which an eligible beneficiary applies cannot furnish needed care, the other facility or facilities in overlapping catchment areas are contacted to determine whether care can be provided thereat.

(g) *Disengagement.* Discontinuance of medical management by a naval MTF for only a specific episode of care.

(1) *General.* Disengagement is accomplished only after alternative sources of care (i.e., transfer to another USMTF, a USTF, or other Federal source via the aeromedical evacuation system, if appropriate) and attendant costs, if applicable, have been fully explained to patient or responsible family member. Counselors may arrange for counseling by other appropriate

sources when the patient is or may be eligible for VA, Medicare, MEDICAID, etc. benefits. With the individual's permission, counselors may also contact State programs, local health organizations, or health foundations to determine if care is available for the condition upon which disengagement is based. After the disengagement decision is made, the patient to be disengaged or the responsible family member should be advised to return to the naval MTF for any care required subsequent to receiving the care that necessitated disengagement.

(2) *CHAMPUS-eligible individuals.* (i) Issue a Nonavailability Statement (DD 1251) per § 728.33, when appropriate, to patients released to civilian sources for total care (disengaged) under CHAMPUS. CHAMPUS-eligible patients disengaged for total care, who do not otherwise require a DD 1251 (released for outpatient care or those released whose residence is outside the inpatient catchment area of all USMTFs and USTFs) will be given the original of a properly completed DD 2161, Referral For Civilian Medical Care, which clearly indicates that the patient is released for total care under CHAMPUS. CHAMPUS-eligible beneficiaries will be disengaged for services under CHAMPUS when:

(A) Required services are beyond your capability and these services cannot be appropriately provided through one of the alternatives listed in § 728.4(z), or

(B) You cannot effectively provide required services or manage the overall course of care even if augmented by services procured from other Government or civilian sources using naval MTF operation and maintenance funds as authorized in subpart § 728.4(z).

(ii) When a decision is made to disengage a CHAMPUS-eligible individual, commanding officers (CO) or officers-in-charge (OIC) are responsible for assuring that counseling and documentation of counseling are appropriately accomplished. Complete a NAVMED 6320/30. Disengagement for Civilian Medical Care, to document that all appropriate disengagement procedures have been accomplished.

(iii) After obtaining the signature of the patient or responsible family mem-

ber, the counselor will file a copy of the DD 2161 and the original of the NAVMED 6320/30 in the patient's Health Record.

(3) *Patients other than active duty or CHAMPUS-eligible individuals—(i) Categories of patients.* The following are categories of individuals who also may be disengaged:

(A) Medicare-eligible individuals.

(B) MEDICAID-eligible individuals.

(C) Civilians (U.S. and foreign) admitted or treated as civilian humanitarians.

(D) Secretarial designees.

(E) All other individuals, with or without private insurance, who are not eligible for care at the expense of the Government.

(ii) *Disengagement decision.* Disengage such individuals when:

(A) Required services are beyond the capability of the MTF, and services necessary for continued treatment in the MTF cannot be appropriately provided by another USMTF, a USTF, or another Federal source. (Explore alternative sources, for individuals eligible for care from these sources, before making the disengagement decision.)

(B) The MTF cannot, within the facility's capability, effectively provide required care or manage the overall course of treatment even if augmented by services procured from other Government sources or through procurement from civilian sources using supplemental care funding.

(iii) *Counseling.* The initial step in the disengagement process is appropriate counseling and documentation. In an emergency, or when the individual cannot be appropriately counseled prior to leaving the MTF, establish procedures to ensure counseling and documentation are accomplished during the next working day. Such "follow-up" counseling may be in person or via a witnessed telephone conversation. In either instance, the counselor will document counseling on a NAVMED 6320/30, Disengagement for Civilian Medical Care. The disengagement decision making authority must assure the accomplishment of counseling by personally initiating this service or by referring the patient or responsible family member to the HBA for counseling.

As a minimum, counseling will consist of:

(A) Explaining that the patient is being disengaged from treatment at the facility and the reason therefor. Assure that the individual understands the meaning of "disengagement" by explaining that the MTF is unable to provide for the patient's present needs and must therefore relinquish medical management of the patient to a health care provider of the individual's choice.

(B) Assuring the individual that the disengagement action is taken to provide for the patient's immediate medical needs. Also assure that the individual understands that the disengagement is not indicative of whether care is or will be available in the MTF for other aspects of past, current, or future medical conditions.

(C) Explaining Medicare, MEDICAID, or other known programs as they relate to the particular circumstance of the patient, including cost-sharing, deductibles, allowable charges, participating and authorized providers, physicians accepting assignment, claim filing procedures, etc. Explain that once disengagement is accomplished, the Navy, is not responsible for any costs for care received from a health care provider of the patient's or responsible family member's choice.

(iv) *Documentation.* Commanding officers are responsible for ensuring that proper documentation procedures are started and that providers and counselors under their commands are apprised of their individual responsibilities for counseling and documenting each disengagement. Failure to properly counsel and document counseling may result in the naval MTF having to absorb the cost of the entire episode of care. Document counseling on a NAVMED 6320/30. Disengagement for Civilian Medical Care. Completion of all items on the form assures documentation and written acknowledgement of appropriate disengagement and counseling. If the patient or responsible family member refuses to acknowledge receipt of counseling by signing the form, state this fact on the bottom of the form and have it witnessed by an officer. Give the patient or responsible family member a copy

and immediately file the original in the patient's Health Record.

(4) *Active duty members.* When an active duty member seeks care at a USMTF, that USMTF retains some responsibility (e.g., notification, medical cognizance, supplemental care, etc.) for that member even when the member must be transferred to another facility for care. Therefore, relinquishment of total management of an active duty member (disengagement) cannot be accomplished.

(h) *Domiciliary/custodial care.* The type of care designed essentially to assist an individual in meeting the normal activities of daily living, i.e., services which constitute personal care such as help in walking and getting in or out of bed, help in bathing, dressing, feeding, preparation of special diets, and supervision over medications which can usually be self-administered and which does not entail or require the continuing attention of trained medical or paramedical personnel. The essential characteristics to be considered are the level of care and medical supervision that the patient requires, rather than such factors as diagnosis, type of condition, or the degree of functional limitation. Such care will not be provided in naval MTFs except when required for active duty members of the uniformed services.

(i) *Emergency care.* Treat patients authorized only emergency care and those admitted as civilian emergencies only during the period of the emergency. Initiate action to effect appropriate disposition of such patients as soon as the emergency period ends.

(j) *Evaluation after admission.* Evaluate each patient as soon as possible after admission and continue reevaluation until disposition is made. Anticipate each patient's probable type and date of disposition. Necessary processing by the various medical and administrative entities will take place concurrently with treatment of the patient. Make the medical disposition decision as early as possible for U.S. military patients inasmuch as immediate transfer to a specialized VA center or to a VA spinal cord injury center may be in their best interest (see

NAVMEDCOMINST 6320.1.2). Make disposition decisions for military personnel of NATO nations in conformance with § 728.42(d).

(k) *Extent of care.* Subject to the restrictions and priorities in § 728.3, eligible persons will be provided medical and dental care to the extent authorized, required, and available. When an individual is accepted for care, all care and adjuncts thereto, such as non-standard supplies, as determined by the CO to be necessary, will be provided from resources available to the CO unless specifically prohibited elsewhere in this part. When a patient has been accepted and required care is beyond the capability of the accepting MTF, the CO thereof will arrange for the required care by one of the means shown below. The method of choice will be based upon professional considerations and travel economy.

(1) Transfer the patient per § 728.4(bb).

(2) Procure from civilian sources the necessary material or professional personal services required for the patient's proper care and treatment.

(3) Care authorized in § 728.4(k)(2) will normally be accomplished in the naval MTF. However, when such action is not feasible, supplementation may be obtained outside the facility. Patients may be sent to other Federal or civilian facilities for specific treatment or services under § 728.4(k)(3) *provided* they remain under medical management of the CO of the sending facility during the entire period of care.

(l) *Family planning services.* Provide family planning services following the provisions of SECNAVINST 6300.2A.

(m) *Grouping of patients.* Group hospitalized patients according to their requirements for housing, medical, or dental care. Provide gender identified quarters, facilities, and professional supervision on that basis when appropriate. Individuals who must be retained under limited medical supervision (medical hold) solely for administrative reasons or for medical conditions which can be treated on a clinic basis will be provided quarters and messing facilities, where practicable, separately from those hospitalized. Provide medical care for such patients on a periodic clinic appointment basis

(see § 728.4(p) for handling enlisted convalescent patients). Make maximum use of administrative versus medical personnel in the supervision of such patients.

(n) *Health benefits advising—(1) General.* A Health Benefits Advising program must be started at all shore commands having one or more medical officers. While health benefits advisors are not required aboard every ship with a medical officer, the medical department representative can usually provide services to personnel requiring help. The number of health benefits advisors (HBAs) of a command will be commensurate with counseling and assistance requirements. The program provides health benefits information and counseling to beneficiaries of the Uniformed Services Health Benefits Program (USHBP) and to others who may or may not qualify for care in USMTFs. Office location of HBAs, their names, and telephone numbers will be widely publicized locally. If additional help is required, contact MEDCOM-333 on AUTOVON 294-1127 or commercial (202) 653-1127. In addition to the duties described in § 728.4(n)(2), HBAs will:

(i) Maintain a depository of up-to-date officially supplied health benefits information for availability to all beneficiaries.

(ii) Provide information and guidance to beneficiaries and generally support the medical and dental staff by providing help to eligible beneficiaries seeking or obtaining services from USMTFs, civilian facilities, VA facilities, Medicare, MEDICAID, and other health programs.

(iii) Assure that when a referral or disengagement is required, patients or responsible family members are:

(A) Fully informed that such action is taken to provide for their immediate medical or dental requirements and that the disengagement or referral has no bearing on whether care may be available in the naval MTF for other aspects of current or other future medical conditions.

(B) Provided the services and counseling outlined in § 728.4(n)(2) or § 728.3(g)(3)(ii), as appropriate, *prior* to their departure from the facility when

such beneficiaries are referred or disengaged because care required is beyond the naval MTF's capability. In an emergency, or when the patient or sponsor cannot be seen by the HBA prior to leaving, provide these benefits as soon thereafter as possible.

(2) *Counseling and assisting CHAMPUS-eligible individuals.* HBAs, as a minimum, will:

(i) Explain alternatives available to the patient.

(ii) If appropriate, explain CHAMPUS as it relates to the particular circumstance, including the cost-sharing provisions applicable to the patient, allowable charges, provider participation, and claim filing procedures. Fully inform the patient or responsible family member that when a patient is disengaged for care under CHAMPUS or when cooperative care is to be considered for payment under the provisions of § 728.4(z) (5) and (6), the naval MTF is not responsible for monetary amounts above the CHAMPUS-determined allowable charge or for charges CHAMPUS does not allow.

(iii) Explain why the naval MTF is paying for the supplemental care, if appropriate (see § 728.4(z) (3) and (4)), and how the bill will be handled. Then:

(A) Complete a DD 2161, Referral For Civilian Medical Care, marking the appropriate source of payment with the concurrence of the naval MTF commanding officer or CO's designee.

(B) If referred for a specified procedure with a consultation report to be returned to the naval MTF retaining medical management, annotate the DD 2161 in the consultation report section to state this requirement. Advise patient or responsible family member to arrange for a completed copy of the DD 2161 to be returned to the naval MTF for payment, if appropriate, and inclusion in patient's medical record.

(iv) Brief patient or responsible family member on the use of the DD 2161 in USMTF payment procedures and CHAMPUS claims processing, as appropriate. Provide sufficient copies of DD 2161 and explain that CHAMPUS contractors will return claims submitted without a required DD 2161. Obtain signature of patient or responsible family member on the form.

(v) Arrange for counseling from appropriate sources when the patient is eligible for VA, Medicare, or MEDICAID benefits.

(vi) Serve as liaison between civilian providers and naval MTF on administrative matters related to the referral and disengagement process.

(vii) Serve as liaison between naval MTF and cooperative care coordinators on matters relating to care provided or recommended by naval MTF providers, as appropriate.

(viii) Explain why the patient is being disengaged and, per § 728.4(g)(2), provide a DD 1251, Nonavailability Statement, or DD 2161, Referral For Civilian Medical Care, as appropriate.

(o) *Immunizations.* Administer immunizations per BUMED INST 6230.1H.

(p) *Medical holding companies.* Medical holding companies (MHC) have been established at certain activities to facilitate handling of enlisted convalescent patients whose medical conditions are such that, although they cannot be returned to full duty, they can perform light duty ashore commensurate with their condition while completing their medical care on an outpatient basis. Where feasible, process such patients for transfer.

(q) *Notifications.* The interests of the Navy, Marine Corps, and DOD have been adversely affected by past procedures which emphasized making notifications only when an active duty member's condition was classed as either seriously ill or injured or classed as very seriously ill or injured. However, even temporary disabilities which preclude communication with the next of kin have generated understandable concern and criticism, especially when emergency hospitalization has resulted. Accordingly, naval MTFs will effect procedures to make notifications required in § 728.4(q) (2), (3), and (4) upon admission or diagnosis of individuals specified. The provisions of § 728.4(q) supplement articles 1810520 and 4210100 of the Naval Military Personnel Manual and chapter 1 of Marine Corps Order P3040.4B, Marine Corps Casualty Procedures Manual; they do not supersede them.

(1) *Privacy Act.* The right to privacy of individuals for whom hospitalization reports and other notifications are

made will be safeguarded as required by the Privacy Act, implemented in the Department of the Navy by SECNAVINST 5211.5C, U.S. Navy Regulations, the Manual of the Judge Advocate General, the Marine Corps Casualty Procedures Manual, and the Manual of the Medical Department.

(2) *Active duty flag or general officers and retired Marine Corps general officers.* Upon admission of subject officers, make telephonic contact with MEDCOM-33 on AUTOVON 294-1179 or commercial (202) 653-1179 (after duty hours, contact the command duty officer on AUTOVON 294-1327 or commercial (202) 653-1327) to provide the following information:

(i) *Initial.* Include in the initial report:

(A) Officer's name, grade, social security number, and designator.

(B) Duty assignment in ship or station, or other status.

(C) Date of admission.

(D) Present condition, stating if serious or very serious.

(E) Diagnosis, prognosis, and estimated period of hospitalization. To prevent possible invasion of privacy, report the diagnosis only in International Classification of Diseases—9th Edition (ICD-9-CM) code designator.

(ii) *Progress reports.* Call frequency and content will be at the discretion of the commanding officer. However, promptly report changes in condition or status.

(iii) *Termination report.* Make a termination of hospitalization report to provide appropriate details for informational purposes.

(iv) *Additional commands to apprise.* The geographic naval medical region serving the hospital and, if different, the one serving the officer's command will also be apprised of such admissions.

(3) *Active duty members—(i) Notification of member's command.* The commanding officer of naval medical treatment facilities has responsibility for notifying each member's commanding officer under the conditions listed below. Make COMNAVMILPERS COM or CMC, as appropriate, information addressees on their respective personnel:

(A) *Direct admissions.* Upon direct admission of an active duty member, with or without orders regardless of expected length of stay. The patient administration department (administrative watch officer after hours) is responsible for preparation, per §728.4(q)(4), and release of these messages. If the patient is attached to a local command (CO's determination), initial notification may be made telephonically. Record the name, grade or rate, and position of the person receiving the call at the member's command on the back of the NAVMED 6300/5, Inpatient Admission/Disposition Record and include the name and telephone number of the MTF's point of contact as given to the patient's command.

(B) *Change in medical condition.* Upon becoming aware of any medical condition, including pregnancy, which will now or in the foreseeable future result in the loss of a member's full duty services in excess of 72 hours. Transmit this information in a message, prepared per §728.4(q)(4), marked "Commanding Officer's Eyes Only."

(ii) *Notification of next of kin (NOK)—*

(A) *Admitted members.* As part of the admission procedure, encourage all patients to communicate expeditiously and regularly with their NOK. When an active duty member's incapacity makes timely personal communication impractical, i.e., fractures, burns, eye pathology, psychiatric or emotional disorders, etc., MTF personnel will initiate the notification process. Do not start the process if the patient specifically declines such notification or it is clear that the NOK already has knowledge of the admission (commands should develop a local form for such patients to sign attesting their desire or refusal to have their NOK notified). Once notification has been made, the facility will make progress reports, at least weekly, until the patient is again able to communicate with the NOK.

(1) *Navy personnel.* Upon admission of Navy personnel, effect the following notification procedures.

(i) *In the contiguous 48 states.* Patient administration department personnel will notify the NOK in person, by telephone, telegraph, or by other expeditious means. Included are notifications

of the NOK upon arrival of all Navy patients received in the medical air-evacuation system.

(i) *Outside the contiguous 48 states.* If the next of kin has accompanied the patient on the tour of duty and is in the immediate area, hospital personnel will notify the next of kin in person, by telephone, telegraph, or by other expeditious means. If the next of kin is located in the 48 contiguous United States, use telegraphic means to notify COMNAVMILPERSCOM who will provide notification to the NOK.

(2) *Marine Corps personnel.* When Marine Corps personnel are admitted, effect the following notification procedures.

(i) *In the contiguous 48 states.* The commander of the unit or activity to which the casualty member is assigned is responsible for initiating notification procedures to the NOK of seriously or very seriously ill or injured Marine Corps personnel. Patient administration department personnel will assure that liaison is established with the appropriate command or activity when such personnel are admitted. Patient administration personnel will notify the Marine's command by telephone and request that cognizance be assumed for in-person initial notification of the NOK of Marine Corps patients admitted with an incapacity that makes personal and timely communication impractical and for those arriving via the medical air-evacuation system. If a member's command is unknown or cannot be contacted, inform CMC (MHP-10) on AUTOVON 224-1787 or commercial (202) 694-1787.

(ii) *Outside the contiguous 48 states.* Make casualty notification for Marine Corps personnel hospitalized in naval MTFs outside the contiguous 48 States to the individual's command. If the command is unknown or not located in close proximity to the MTF, notify CMC (MHP-10). When initial notification to the individual's command is made via message, make CMC (MHP-10) an information addressee.

(iii) *In and outside the United States.* In life-threatening situations, the Commandant of the Marine Corps desires and encourages medical officers to communicate with the next of kin. In other circumstances, request that the

Marine Corps member communicate with the NOK if able. If unable, the medical officer should communicate with the NOK after personal notification has been effected.

(B) *Terminally ill patients.* As soon as a diagnosis is made and confirmed (on inpatients or outpatients) that a Navy member is terminally ill, MILPERSMAN 4210100 requires notification of the primary and secondary next of kin. Accomplish notification the same as for Navy members admitted as seriously or very seriously ill or injured, i.e., by priority message to the Commander, Naval Military Personnel Command and to the Casualty Assistance Calls/Funeral Honors Support Program Coordinator, as appropriate, who has cognizance over the geographical area in which the primary and secondary NOK resides (see OPNAVINST 1770.1). Submit followup reports when appropriate. See MILPERSMAN 4210100 for further amplification and for information addressees.

(1) *In the contiguous 48 states.* Notification responsibility is assigned to the USMTF making the diagnosis and to the member's duty station if diagnosed in a civilian facility.

(2) *Outside the contiguous 48 states.* Notification responsibility is assigned to the naval medical facility making the diagnosis. When diagnosed in nonnaval facilities or aboard deployed naval vessels, notification responsibility belongs to the Commander, Naval Military Personnel Command.

(C) *Other uniformed services patients.* Establish liaison with other uniformed services to assure proper notification upon admission or diagnosis of active duty members of other services.

(D) *Nonactive duty patients.* At the discretion of individual commanding officers, the provisions of § 728.4(q)(3)(ii) on providing notification to the NOK may be extended to admissions or diagnosis of nonactive duty patients; e.g., admission of dependents of members on duty overseas.

(4) *Messages—(i) Content.* Phrase contents of messages (and telephonic notifications) in lay terms and provide sufficient details concerning the patient's condition, prognosis, and diagnosis. Messages will also contain the name and telephone number of the facility's

point of contact. When appropriate for addressal, psychiatric and other sensitive diagnoses will be related with discretion. When indicated, also include specific comment as to whether the presence of the next of kin is medically warranted. NOTE: In making notification to the NOK of patients diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV), use one of the symptoms of the disease as the diagnosis (e.g., pneumonia) rather than "HIV", "AIDS", or the diagnostic code for AIDS.

(ii) *Information addressees.* Make the commander of the geographic naval medical region servicing the member's command and the one servicing the hospital, if different, information addressees on all messages. For Marine Corps personnel, also include CMC (MHP-10) and the appropriate Marine Corps district headquarters as information addressees. COMNAVMEDCOM WASHINGTON DC requires information copies of messages *only* when a patient has been placed on the seriously ill or injured or very seriously ill or injured list or diagnosed as terminally ill.

(r) *Outpatient care.* Whenever possible, perform diagnostic procedures and provide preoperative and post operative care, surgical care, convalescence, and followup observations and treatment on an outpatient basis.

(s) *Performance of duties while in an inpatient status.* U.S. military patients may be assigned duties in and around naval MTFs when such duties will be, in the judgement of the attending physician, of a therapeutic value. Physical condition, past training, and other acquired skills must all be considered before assigning any patient a given task. Do not assign patients duties which are not within their capabilities or which require more than a very brief period of orientation.

(t) *Prolonged definitive medical care.* Prolonged definitive medical care in naval MTFs will not be provided for U.S. military patients who are unlikely to return to duty. The time at which a patient should be processed for disability separation must be determined on an individual basis, taking into consideration the interests of the patient as

well as those of the Government. A long-term patient roster will be maintained and updated at least once monthly to enable commanding officers and other appropriate staff members to monitor the progress of all patients with 30 or more continuous days of hospitalization. Include on the roster basic patient identification data (name, grade or rate, register number, ward or absent status, clinic service, and whether assigned to a medical holding company), projected disposition (date, type, and profile), diagnosis, and cumulative hospital days (present facility and total).

(u) *Remediable physical defects of active duty members—(1) General.* When a medical evaluation reveals that a Navy or Marine Corps patient on active duty has developed a remediable defect while on active duty, the patient will be offered the opportunity of operative repair or other appropriate remediable treatment, if medically indicated.

(2) *Refusal of treatment.* Per MANMED art. 18-15, when a member refuses to submit to recommended therapeutic measures for a remediable defect or condition which has interfered with the member's performance of duty and following prescribed therapy, the member is expected to be fit for full duty, the following procedures will apply:

(i) Transfer the member to a naval MTF for further evaluation and appearance before a medical board. After counseling per MANMED art. 18-15, any member of the naval service who refuses to submit to recommended medical, surgical, dental, or diagnostic measures, other than routine treatment for minor or temporary disabilities, will be asked to sign a completed NAVMED 6100/4, Medical Board Certificate Relative to Counseling on Refusal of Surgery and/or Treatment, attesting to the counseling.

(ii) The board will study all pertinent information, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(iii) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Refusal of major surgical operations may be reasonable or unreasonable, according to

the circumstances, The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks should all be taken into consideration.

(iv) Where surgical procedures are involved, the board's report will contain answers to the following questions:

(A) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(B) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(C) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and the member's reason for refusing treatment, is the refusal reasonable or unreasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for whatever weight may appear appropriate.)

(v) If a member needing surgery is mentally competent, do not perform surgery over the member's protestation.

(vi) In medical, dental, or diagnostic situations, the board should show the need and risk of the recommended procedure(s).

(vii) If a medical board decides that a diagnostic, medical, dental, or surgical procedure is indicated, these findings must be made known to the patient. The board's report will show that the patient was afforded an opportunity to submit a written statement explaining the grounds for refusal. Forward any statement with the board's report. Advise the patient that even if the disability originally arose in line of duty, its continuance may be attributable to the member's unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(viii) Also advise the patient that:

(A) Title 10 U.S.C. 1207 precludes disposition under chapter 61 of 10 U.S.C. if such a member's disability is due to intentional misconduct, willful neglect, or if it was incurred during a period of unauthorized absence. A member's refusal to complete a recommended ther-

apy regimen or diagnostic procedure may be interpreted as willful neglect.

(B) Benefits from the Veterans Administration will be dependent upon a finding that the disability was incurred in line of duty and is not due to the member's willful misconduct.

(ix) The Social Security Act contains special provisions relating to benefits for "disabled" persons and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and to have incurred the condition "not in the line of duty."

(x) Forward the board's report directly to the Central Physical Evaluation Board with a copy to MEDCOM-25 except in those instances when the convening authority desires referral of the medical board report for Departmental review.

(xi) Per MANMED art. 18-15, a member who refuses medical, dental, or surgical treatment for a condition that existed prior to entry into the service (EPTE defect), not aggravated by a period of active service but which interferes with the performance of duties, should be processed for reason of physical disability, convenience to the Government, or enlisted in error rather than under the refusal of treatment provisions. Procedures are delineated in BUMEDINST 1910.2G and SECNAVINST 1910.4A.

(3) *Other uniformed services patients.* When a patient of another service is found to have a remediable physical defect developed in the military service, refer the matter to the nearest headquarters of the service concerned.

(v) *Responsibilities of the commanding officer.* In connection with the provisions of this part, commanding officers of naval MTFs will:

(1) Determine which persons within the various categories authorized care in a facility will receive treatment in, be admitted to, and be discharged from that specific facility.

(2) Supervise care and treatment, including the employment of recognized professional procedures.

(3) Provide each patient with the best possible care in keeping with accepted professional standards and the assigned primary mission of the facility.

(4) Provide for counseling patients and naval MTF providers when care required is beyond the naval MTF's capability. This includes:

(i) Establishing training programs to acquaint naval MTF providers and HBAs with the uniformed services' referral for supplemental/cooperative care or services policy outlined in § 728.4(z).

(ii) Implementing control measures to ensure that:

(A) Providers requesting care under the provisions § 728.4(z) are qualified to maintain physician case management when required.

(B) Care requested under the supplemental/cooperative care criteria is medically necessary, legitimate, and otherwise permissible under the terms of that part of the USHBP under which it will be considered for payment.

(C) Providers explain to patients the reason for a referral and the type of referral being made.

(D) Attending physicians properly refer beneficiaries to the HBA for counseling and services per § 728.4(n).

(E) Uniform criteria are applied in determining cooperative care situations without consideration of rate, grade, or uniformed service affiliation.

(F) All DD 2161's are properly completed and approved by the commanding officer or designee.

(G) A copy of the completed DD 2161 is returned to the naval MTF for inclusion in the medical record of the patient.

(w) *Sick call.* A regularly scheduled assembly of sick and injured military personnel established to provide routine medical care. Subsequent to examination, personnel medically unfit for duty will be admitted to an MTF or placed sick in quarters; personnel not admitted or placed sick in quarters will be given such treatment as is deemed necessary. When excused from duty for medical reasons which do not require hospitalization, military per-

sonnel may be authorized to remain in quarters, not to exceed 72 hours.

(x) *Sicklist—authorized absence from.* Commanding officers of naval MTFs may authorize absences of up to 72 hours for dependents and retired personnel without formal discharge from the sicklist. When absences are authorized in excess of 24 hours, subsistence charges or dependent's rate, as applicable, for that period will not be collected and the number of reportable occupied bed days will be appropriately reduced. Prior to authorizing such absences, the attending physician will advise patients of their physical limitations and of any necessary safety precautions, and will annotate the clinical record that patients have been so advised. For treatment under the Medical Care Recovery Act, make reporting consistent with § 728.4(aa).

(y) *Subsisting out.* A category in which officer and enlisted patients on the sicklist of a naval MTF may be placed when their daily presence is not required for treatment nor examination, but who are not yet ready for return to duty. As a general rule, patients placed in this category should reside in the area of the facility and should be examined by the attending physician at least weekly. Enlisted personnel in a subsisting out status should be granted commuted rations.

(1) Granting of subsisting out privileges is one of many disposition alternatives; however, recommend that other avenues (medical holding company, convalescent leave, limited duty, etc.) be considered before granting this privilege.

(2) Naval MTF patients in a subsisting out status should not be confused with those enlisted personnel in a rehabilitation program who are granted liberty and are drawing commuted rations, but are required to be present at the treating facility during normal working hours. These personnel are not subsisting out and must have a bed assigned at the naval MTF.

(3) Naval MTF patients who are required to report for examinations or treatment more often than every 48 hours should not be placed in a subsisting out status.

(z) *Supplemental/cooperative care or services*—(1) *General*. When such services as defined in § 728.2(cc) are rendered to other than CHAMPUS-eligible individuals, the cost thereof is chargeable to operation and maintenance funds available for operation of the facility requesting care or services. Cooperative care applies to CHAMPUS-eligible patients receiving inpatient or outpatient care in a USMTF who require care or services beyond the capability of that USMTF. The following general principles apply to such CHAMPUS-eligible patients:

(i) *Cooperation of uniformed services physicians*. USMTF physicians are required to cooperate in providing CHAMPUS contractors and OCHAMPUS additional medical information. SECNAVINST 5211.5C delineates policies, conditions, and procedures that govern safeguarding, using, accessing, and disseminating personal information kept in a system of records. Providing information to CHAMPUS contractors and OCHAMPUS will be governed thereby.

(ii) *Physician case management*. Where required by NAVMEDCOMINST 6320.18 (CHAMPUS Regulation; implementation of), uniformed services physicians are required to provide case management (oversight) as would an attending or supervising civilian physician.

(iii) *CHAMPUS-authorized providers*. CHAMPUS contractors are responsible for determining whether a civilian provider is CHAMPUS-authorized and for providing such information, upon request, to USMTFs.

(iv) *Psychiatric or psychotherapeutic services*. If psychiatric care is being rendered by a psychiatric or clinical social worker, a psychiatric nurse, or a marriage and family counselor, and the uniformed services facility has made a determination that it does not have the professional staff competent to provide required physician case management, the patient may be (partially) disengaged for the psychiatric or psychotherapeutic service, yet have the remainder of required medical care provided by the naval MTF.

(v) *Forms and documentation*. A DD 2161, Referral For Civilian Medical Care, will be provided to each patient who is to receive supplemental or coop-

erative care or services. When supplemental care is required under the provisions of § 728.4(z) (3) and (4), the provisions of § 728.4(z)(3)(iii) apply. When cooperative care or services are required under the provisions of § 728.4(z) (5) and (6), the provisions of § 728.4(z)(5)(iv) apply.

(vi) *Clarification of unusual circumstances*. Commanding officers of naval MTFs will submit requests for clarification of unusual circumstances to OCHAMPUS or CHAMPUS contractors via the Commander, Naval Medical Command (MEDCOM-33) for consideration.

(2) *Care beyond a naval MTF's capability*. When, either during initial evaluation or during the course of treatment of CHAMPUS-eligible beneficiaries, required services are beyond the capability of the naval MTF, the commanding officer will arrange for the services from an alternate source in the following order, subject to restrictions specified. The provisions of § 728.4(z)(2)(i) through (iii) must be followed before either supplemental care, authorized in § 728.4(z)(4), is considered for payment from Navy Operations and Maintenance funds, or cooperative care, authorized in § 728.4(z)(6), is to be considered for payment under the terms of CHAMPUS.

(i) Obtain from another USMTF or other Federal MTF the authorized care necessary for continued treatment of the patient within the naval MTF, when such action is medically feasible and economically advantageous to the Government.

(ii) When the patient is a retired member or dependent, transfer per § 728.4(bb)(3) (i), (ii), (iii), or (iv), in that order. When the patient is a dependent of a member of a NATO nation, transfer per § 728.4(bb)(4) (i), (ii), or (iii), in that order.

(iii) With the patient's permission, the naval MTF may contact State programs, local health agencies, or health foundations to determine if benefits are available.

(iv) Obtain such supplemental care or services as delineated in § 728.4(z)(4) from a civilian source using local operation and maintenance funds, or

(v) Obtain such cooperative care or services as delineated in § 728.4(z)(6)

from a civilian source under the terms of CHAMPUS.

(3) *Operation and maintenance funds.* When local operation and maintenance funds are to be used to obtain supplemental care or services, the following guidelines are applicable:

(i) Care or services must be legitimate, medically necessary, and ordered by a qualified USMTF provider.

(ii) The naval MTF must make the necessary arrangements for obtaining required care or services from a specific source of care.

(iii) Upon approval of the naval MTF commanding officer or designee, provide the patient or sponsor with a properly completed DD 2161, Referral For Civilian Medical Care. The DD 2161 will be marked by the health benefits advisor or other designated individual to show the naval MTF as the source of payment. Forward a copy to the MTF's contracting or supply officer who is the point of contact for coordinating obligations with the comptroller and thus is responsible for assuring proper processing for payment.

(iv) Authorize care on an inpatient or outpatient basis for the minimum period necessary for the civilian provider to perform the specific test, procedure, treatment, or consultation requested. Patients receiving inpatient services in civilian medical facilities will not be counted as an occupied bed in the naval MTF, but will be continued on the naval MTF's inpatient census. Continue to charge pay patients the USMTF inpatient rate appropriate for their patient category.

(v) Naval MTF physicians will maintain professional contact with civilian providers.

(4) *Care and services authorized.* Use local operation and maintenance funds to defray the cost of the following when CHAMPUS-eligible patients are referred to civilian sources for the following types of care or services;

(i) All specialty consultations for the purpose of establishing or confirming diagnoses or recommending a course of treatment.

(ii) All diagnostic tests, diagnostic examinations, and diagnostic procedures (including genetic tests and CAT scans), ordered by qualified USMTF providers.

(iii) Prescription drugs and medical supplies.

(iv) Civilian ambulance service ordered by USMTF personnel.

(5) *CHAMPUS funds.* When payment is to be considered under the terms of CHAMPUS for cooperative care, even though the beneficiary remains under naval MTF control, the following guidelines are applicable:

(i) Process charges for care under the terms of CHAMPUS.

(A) If the charge for a covered service or supply is above the CHAMPUS-determined reasonable charge, the direct care system will not assume any liability on behalf of the patient where a civilian provider is concerned, although a USMTF physician recommended or prescribed the service or supply.

(B) Payment consideration for all care or services meeting cooperative care criteria will be under the terms of CHAMPUS and payment for such care or services will not be made from naval MTF funds. Conversely, any care or services meeting naval MTF supplemental care or services payment criteria will not be considered under the terms of CHAMPUS.

(ii) Care must be legitimate and otherwise permissible under the terms of CHAMPUS and must be ordered by a qualified USMTF provider.

(iii) Provide assistance to beneficiaries referred or disengaged under CHAMPUS. Although USMTF personnel are not authorized to refer beneficiaries to a specific civilian provider for care under CHAMPUS, health benefits advisors are authorized to contact the cooperative care coordinator of the appropriate CHAMPUS contractor for aid in determining authorized providers with the capability of rendering required services. Such information may be given to beneficiaries. Also encourage beneficiaries to obtain required services only from providers willing to participate in CHAMPUS. Subject to the availability of space, facilities, and capabilities of the staff, USMTFs may provide consultative and such other ancillary aid as required by the civilian provider selected by the beneficiary.

(iv) Provide a properly completed DD 2161, Referral For Civilian Medical Care, to patients who are referred (versus disengaged) to civilian sources

under the terms of CHAMPUS for cooperative care. (A Nonavailability Statement (DD 1251) may also be required. Provide this form when required under § 728.33.) The DD 2161 will be marked by the health benefits advisor, or other designated individual, to show CHAMPUS as the source of payment consideration. All such DD 2161's must be approved by the commanding officer or designee. Give the patient sufficient copies to ensure a copy of the DD 2161 accompanies each CHAMPUS claim. Advise patients that CHAMPUS contractors will return claims received without the DD 2161. Also advise patients to arrange for return of a completed copy of the DD 2161 to the naval MTF for inclusion in their medical record.

(v) Such patients receiving inpatient or outpatient care or services will pay the patient's share of the costs as specified under the terms of CHAMPUS for their beneficiary category. Patients receiving inpatient services will not be continued on the naval MTF's census and will not be charged the USMTF inpatient rate.

(vi) Certain ancillary services authorized under CHAMPUS require physician case management during the course of treatment. USMTF physicians will manage the provision of ancillary services by civilian providers when such services are obtained under the terms of CHAMPUS. Examples include physical therapy, private duty (special) nursing, rental or lease/purchase of durable medical equipment, and services under the CHAMPUS Program for the Handicapped. USMTF providers exercising physician case management responsibility for ancillary services under CHAMPUS are subject to the same benefit limitations and certification of need requirements applicable to civilian providers under the terms of CHAMPUS for the same types of care. USMTF physicians exercising physician case management responsibility will maintain professional contact with civilian providers of care.

(6) *Care and services authorized.* Refer CHAMPUS-eligible patients to civilian sources for the following under the terms of CHAMPUS:

(i) Authorized nondiagnostic medical services such as physical therapy,

speech therapy, radiation therapy, and private duty (special) nursing.

(ii) Preauthorized (by OCHAMPUS) adjunctive dental care, including orthodontia related to surgical correction of cleft palate.

(iii) Durable medical equipment. (CHAMPUS payment will be considered only if the equipment is not available on a loan basis from the naval MTF.)

(iv) Prosthetic devices (limited benefit), orthopedic braces and appliances.

(v) Optical devices (limited benefit).

(vi) Civilian ambulance service to a USMTF when service is ordered by other than direct care personnel.

(vii) All CHAMPUS Program for the Handicapped care.

(viii) Psychotherapeutic or psychiatric care.

(ix) Except for those types of care or services delineated in § 728.4(z)(4), all other CHAMPUS authorized medical services not available in the naval MTF (for example, neonatal intensive care).

(aa) *Third party liability case.* Per chapter 24, section 2403, JAG Manual, use the following guidelines to complete and submit a NAVJAG 5890/12, Hospital and Medical Care, 3rd Party Liability Case, when a third party may be liable for the injury or disease being treated:

(1) *Preparation.* All naval MTFs will use the front of NAVJAG 5890/12 to report the value of medical care furnished to any patient when (i) a third party may be legally liable for causing the injury or disease, or (ii) when a Government claim is possible under workmen's compensation, no-fault insurance (see responsibilities for appraising the insurance carrier in § 728.4(aa)(5)), uninsured motorist insurance, or under medical payments insurance (e.g., in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG 5890/12 will show the patient the Privacy Act statement printed at the bottom of the form and have the patient sign his or her name beneath the statement.

(2) *Submission*—(i) *Naval patients.* For naval patients, submit the completed

front side of the NAVJAG 5890/12 to the appropriate action JAG designee listed in section 2401 of the JAG Manual at the following times:

(A) *Initial*. Make an initial submission as soon as practicable after a patient is admitted for any period of inpatient care, or if it appears that more than 7 outpatient treatments will be furnished. This submission should not be delayed pending the accumulation of all potential charges from the treating facility. This submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available), should be appended to the form.

(B) *Interim*. Make an interim submission every 4 months after the initial submission until the patient is transferred or released from the facility, or changed from an inpatient status to an outpatient status.

(C) *Final*. Make a final submission upon completion of treatment or upon transfer of the patient to another facility. The facility to which the patient is transferred should be noted on the form. Report control symbol NAVJAG 5890-1 is assigned to this report.

(ii) *Nonnaval patients*. When care is provided to personnel of another Federal agency or department, that agency or department generally will assert any claim in behalf of the United States. In such instances, submit the NAVJAG 5890/12's (initial, interim, and final) directly to the appropriate of the following:

(A) *U.S. Army*. Commanding general of the Army or comparable area commander in which the incident occurred.

(B) *U.S. Air Force*. Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided.

(C) *U.S. Coast Guard*. Commandant (G-K-2). U.S. Coast Guard, Washington, DC 20593-0001.

(D) *Department of Labor*. The appropriate Office of Workers' Compensation Programs (OWCP).

(E) *Veterans Administration*. Director of the Veterans Administration hospital responsible for medical care of the patient being provided treatment.

(F) *Department of Health and Human Services (DHHS)*. Regional attorney's office in the area where the incident occurred.

(3) *Supplementary documents*. An SF 502 should accompany the final submission in all cases involving inpatient care. Additionally, when Government care exceeds \$1,000, inpatient facilities should complete and submit the back side of NAVJAG 5890/12 to the action JAG designee. On this side of the form, the determination of "patient status" may be used on local hospital usage.

(4) *Health record entries*. Retain copies of all NAVJAG 5890/12's in the Health Record of the patient. Immediately notify action JAG designees when a patient receives additional treatment subsequent to the issuance of a final NAVJAG 5890/12 if the subsequent treatment is related to the condition which gave rise to the claim.

(5) *No-fault insurance*. When no-fault insurance is or may be involved, the naval legal service office at which the JAG designee is located is responsible for apprising the insurance carrier that the Federal payment for the benefits of this part is secondary to any no-fault insurance coverage available to the injured individual.

(6) *Additional guidance*. Chapter 24 of the JAG Manual and BUMEDINST 5890.1A contain supplemental information.

(bb) *Transfer of patients*—(1) *General*. Treat all patients at the lowest echelon equipped and staffed to provide necessary care; however, when transfer to another MTF is considered necessary, use Government transportation when available. Accomplish medical regulating per the provisions of OPNAVINST 4630.25B and BUMEDINST 6320.1D.

(2) *U.S. military patients*. Do not retain U.S. military patients in acute care MTFs longer than the minimum time necessary to attain the mental or physical state required for return to duty or separation from the service. When required care is not available at the facility providing area inpatient care, transfer patients to the most readily accessible USMTF or designated USTF possessing the required capability. Transportation of the patient and a medical attendant or attendants, if required, is authorized at

Government expense. Since the VA is staffed and equipped to provide care in the most expeditious manner, follow the administrative procedures outlined in NAVMEDCOMINST 6320.12 when:

(i) A patient has received the maximum benefit of hospitalization in a naval MTF but requires a protracted period of nursing home type care. The VA can provide this type care or arrange for it from a civilian source for individuals so entitled.

(ii) Determined that there is or may be spinal cord injury necessitating immediate medical and psychological attention.

(iii) A patient has sustained an apparently severe head injury or has been blinded necessitating immediate intervention beyond the capabilities of naval MTFs.

(iv) A determination has been made by the Secretary concerned that a member on active duty has an alcohol or drug dependency or drug abuse disability.

(3) *Retired members and dependents.* When a retired member of a dependent requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF located in an overlapping inpatient catchment area of the transferring facility if either has the required capability.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF with required capability, regardless of its location.

(iii) Arrange for transfer of retired members to the Veterans Administration MTF nearest the patient's residence.

(iv) Provide aid in releasing the patient to a civilian provider of the patient's choice under the terms of Medicare, if the patient is entitled. Beneficiaries entitled to Medicare, Part A, because they are 65 years of age or older or because of a disability or chronic renal disease, lose CHAMPUS eligibility but remain eligible for care in USMTFs and designated USTFs.

(v) If the patient is authorized beneficiary under CHAMPUS, disengage from medical management and issue a Non-

availability Statement (DD 1251) per the provisions of § 728.33, for care under CHAMPUS. This step should only be taken after due consideration is made of the supplemental/cooperative care policy addressed in § 728.4(z).

(4) *Dependents of members of NATO nations.* When a dependent, as defined in § 728.41, of a member of a NATO nation requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF with required capability if either is located in an overlapping inpatient catchment area of the transferring facility.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF with required capability, regardless of its location.

(iii) Effect disposition per § 728.42(d).

(5) *Others—(i) Medical care.* Section 34 of title 24, United States Code, provides that hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *Provided*, such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities. Hospitalization of such persons in a naval MTF is further limited by 24 U.S.C. 35 to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care.

(ii) *Dental care.* Section 35 of title 24 provides for space available routine dental care, other than dental prosthesis and orthodontia, for the categories of individuals enumerated in § 728.4(bb)(5)(i): *Provided*, that such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(iii) *Transfer.* Accomplish transfer and subsequent treatment of individuals in § 728.4(bb)(5)(i) per the provisions of law enumerated in § 728.4(bb)(5)(i) and (ii).

(cc) *Verification of patient eligibility—*
(1) *DEERS.* (i) The Defense Enrollment Eligibility Reporting System (DEERS) was implemented by OPNAVINST 1750.2. Where DEERS has been started at naval medical and dental treatment facilities, commanding officers will appoint, in writing, a DEERS project officer to perform at the base level. The project officer's responsibilities and functions include coordinating, executing, and maintaining base-level DEERS policies and procedures; providing liaison with line activities, base-level personnel project officers, and base-level public affairs project officers; meeting and helping the contractor field representative on site visits to each facility under the project officer's cognizance; and compiling and submitting reports required within the command and by higher authority.

(ii) Commanding officers of afloat and deployable units are encouraged to appoint a unit DEERS medical project officer as a liaison with the hospital project officer providing services to local medical and dental treatment facilities. Distribute notice of such appointments to all concerned facilities.

(iii) When a DEERS project officer has been appointed by a naval MTF or DTF, submit a message (report control symbol MED 6320-42) to COMNAVMEDCOM, with information copies to appropriate chain of command activities, no later than 10 October annually, and situationally when changes occur. As a minimum, the report will provide:

(A) Name of reporting facility. If the project officer is responsible for more than one facility, list all such facilities.

(B) Mailing address including complete zip code (zip + 4) and unit identification code (UIC). Include this information for all facilities listed in § 728.4(cc)(1)(iii)(A).

(C) Name, grade, and corps of the DEERS project officer designated.

(D) Position title within parent facility.

(E) AUTOVON and commercial telephone numbers.

(2) *DEERS and the identification card.* This subpart includes DEERS procedures for eligibility verification checks to be used in conjunction with the identification card system as a basis for verifying eligibility for medical and dental care in USMTFs and uniformed services dental treatment facilities (USDTFs). For other than emergency care, certain patients are required to have a valid ID card in their possession and, under the circumstances described in § 728.4(cc)(3), are also required to meet DEERS criteria before treatment or services are rendered. Although DEERS and the ID card system are interrelated, there will be instances where a beneficiary is in possession of an apparently valid ID card and the DEERS verification check shows that eligibility has terminated or vice versa. Eligibility verification via an ID card does not override an indication of ineligibility in DEERS without some other collateral documentation. Dependents (in possession of or without ID cards) who undergo DEERS checking will be considered ineligible for the reasons stated in § 728.4(cc)(4)(v) (A) through (G). For problem resolution, refer dependents of active duty members to the personnel support detachment (PSD) servicing the sponsor's command; refer retirees, their dependents, and survivors to the local PSD.

(3) *Identification cards and procedures.* All individuals, including members of uniformed services in uniform, must provide valid identification when requesting health benefits. Although the most widely recognized and acceptable forms of identification are DD 1173, DD 2, Form PHS-1866-1, and Form PHS-1866-3 (Ret), individuals presenting for care without such identification may be rendered care upon presentation of other identification as outlined in this part. Under the circumstances indicated, the following procedures will be followed when individuals present without the required ID card.

(i) *Children under 10.* Although a DD 1173 (Uniformed Services Identification and Privilege Card) may be issued to children under 10 years of age, under normal circumstances they are not.

Accordingly, certification and identification of children under 10 years of age are the responsibility of the member, retired member, accompanying parent, legal guardian, or acting guardian. Either the DD 1173 issued the spouse of a member or former member or the identification card of the member or former member (DD 2, DD 2 (Ret), Form PHS-1866-1, or Form PHS-1866-3 (Ret)) is acceptable for the purpose of verifying eligibility of a child under 10 years of age.

(ii) *Indefinite expiration.* The fact that the word "indefinite" may appear in the space for the expiration date on a member's card does not lessen its acceptability for identification of a child. See § 728.4(cc)(3)(iii) for dependent's cards with an indefinite expiration date.

(iii) *Expiration date.* To be valid, a dependent's DD 1173 must have an expiration date. Do not honor a dependent's DD 1173 with an expiration date of "indefinite". Furthermore, such a card should be confiscated, per NAVMILPERSCOMINST 1750.1A, and forwarded to the local PSD. The PSD may then forward it to the Commander, Naval Military Personnel Command, (NMPC (641D)/Pers 7312), Department of the Navy, Washington, DC 20370-5000 for investigation and final disposition. Render necessary emergency treatment to such a person. The patient administration department must determine such a patient's beneficiary status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing action for treatment will then proceed following NAVMED P-5020.

(iv) *Without cards or with expired cards.* (A) When parents or parents-in-law (including step-parents and step-parents-in-law) request care in naval MTFs or DTFs without a DD 1173 in their possession or with expired DD 1173's, render care if they or their sponsor sign a statement that the individual requiring care has a valid ID card or that an application has been submitted for a renewal DD 1173. In the latter instance, include in the statement the allegation that: (1) The beneficiary is dependent upon the service member for over one-half of his or her support, and (2) that there has been no material

change in the beneficiary's circumstances since the previous determination of dependency and issuance of the expired card. Place the statement in the beneficiary's medical record. Inform the patient or sponsor that if eligibility is not verified by presentation of a valid ID card to the patient administration department within 30 calendar days, the facility will initiate action to recoup the cost of care. If indicated, billing action for the cost of treatment will then proceed following NAVMED P-5020.

(B) When recent accessions, National Guard, reservists, or Reserve units are called to active duty for a period greater than 30 days and neither the members nor their dependents are at yet in receipt of their identification cards, satisfactory collateral identification may be accepted in lieu thereof, i.e., official documents such as orders, along with a marriage license, or birth certificate which establish the individual's status as a dependent of a member called to duty for a period which is not specified as 30 days or less. For a child, the collateral documentation must include satisfactory evidence that the child is within the age limiting criteria outlined in § 728.31(b)(4). An eligible dependent's entitlement, under the provisions of this subpart, starts on the first day of the sponsor's active service and ends as of midnight on the last day of active service.

(4) *DEERS checking.* Unless otherwise indicated, all DEERS verification procedures will be accomplished in conjunction with possession of a valid ID card.

(i) *Prospective DEERS processing—(A) Appointments.* To minimize difficulties for MTFs, DTFs, and patients, DEERS checks are necessary for prospective patients with future appointments made through a central or clinic appointment desk. Without advance DEERS checking, patients could arrive at a facility with valid ID cards but may fail the DEERS check, or may arrive without ID cards but be identified by the DEERS check as eligible. Records, including full social security numbers, of central and clinic appointment systems will be passed daily to the DEERS representative for a prospective DEERS check. This enables

appointment clerks to notify individuals with appointments of any apparent problem with the DEERS or ID card system and refer those with problems to appropriate authorities prior to the appointment.

(B) *Prescriptions.* Minimum checking requirements of the program require prospective DEERS checks on all individuals presenting prescriptions of civilian providers (see § 728.4(cc)(4)(iv)(D)).

(ii) *Retrospective DEERS processing.* Pass daily logs (for walk-in patients, patients presenting in emergencies, or patients replacing last minute appointment cancellations) to the DEERS representative for retrospective batch processing if necessary for the facility to meet the minimum checking requirements in § 728.4(cc)(4)(iv). For DEERS processing, the last four digits of a social security number are insufficient. Accordingly, when retrospective processing is necessary, the full social security number of each patient must be included on daily logs.

(iii) *Priorities.* With the following initial priorities, conduct DEERS eligibility checks using a CRT terminal, single-number dialer telephone, or 800 number access provided for the specific purpose of DEERS checking to:

(A) Determine whether a beneficiary is enrolled.

(B) Verify beneficiary eligibility. Establishment of eligibility is under the cognizance of personnel support activities and detachments.

(C) Identify any errors on the data base.

(iv) *Minimum checking requirements.* Process patients presenting at USMTFs and DTFs in the 50 States for DEERS eligibility verification per the following minimum checking requirements.

(A) Twenty five percent of all outpatient visits.

(B) One hundred percent of all admissions.

(C) One hundred percent of all dental visits at all DTFs for other than active duty members, retired members, and dependent.

(D) Active duty members are exempt from DEERS eligibility verification checking at DTFs.

(2) Retired members will receive a DEERS verification check at the initial visit to any DTF and annually thereafter at time of treatment at the same facility. To qualify for care as a result of the annually performed verification check, the individual performing the eligibility check will make a notation to this effect on an SF 603, Health Record—Dental. Include in the notation the date and result of the check.

(3) Dependents will have a DEERS eligibility verification check upon initial presentation for evaluation or treatment. This check will be valid for up to 30 days if, when the check is conducted, the period of eligibility requested is 30 days. A 30-day eligibility check may be accomplished online or via telephone by filling in or requesting the operator to fill in a 30 day period in the requested treatment dates on the DEERS eligibility inquiry screen. Each service or clinic is expected to establish auditable procedures to trace the date of the last eligibility verification on a particular dependent.

(D) One hundred percent of pharmacy outpatients presenting new prescriptions written by a civilian provider. Prospective DEERS checks are required for all patients presenting prescriptions of civilian providers. A DEERS check is not required upon presentation of a request for refill of a prescription of a civilian provider if the original prescription was filled by a USMTF within the past 120 days.

(E) One hundred percent of all individuals requesting treatment without a valid ID card if they represent themselves as individuals who are eligible to be included in the DEERS data base.

(v) *Ineligibility determinations.* When a DEERS verification check is performed and eligibility cannot be verified for any of the following reasons, deny routine nonemergency care unless the beneficiary meets the criteria for a DEERS eligibility override as noted in § 728.4(cc)(4)(viii).

(A) Sponsor not enrolled in DEERS.

(B) Dependent not enrolled in DEERS.

(C) "End eligibility date" has passed. Each individual in the DEERS data

base has a date assigned on which eligibility is scheduled to end.

(D) Sponsor has separated from active duty and is no longer entitled to benefits.

(E) Spouse has a final divorce decree from sponsor and is not entitled to continued eligibility as a former spouse.

(F) Dependent child is married.

(G) Dependent becomes an active duty member of a uniformed service. (Applies only to CHAMPUS benefits since the former dependent becomes entitled to direct care benefits in his or her own right as an active duty member and must enroll in DEERS.)

(vi) *Emergency situations.* When a physician determines that emergency care is necessary, initiate treatment. If admitted after emergency treatment has been provided, a retrospective DEERS check is required. If an emergency admission or emergency outpatient treatment is accomplished for an individual whose proof of eligibility is in question, the patient administration department must determine the individual's beneficiary status within 30 calendar days of treatment and forward such determination to the fiscal department. Eligibility verifications will normally consist of presentation of a valid ID card along with either a positive DEERS check or a DEERS override as noted in § 728.4(cc)(4)(viii). If indicated, billing action for treatment will then proceed per NAVMED P-5020.

(vii) *Eligibility verification for non-emergency care.* When a prospective patient presents without a valid ID card and:

(A) DEERS does not verify eligibility, deny nonemergency care. Care denial will only be accomplished by supervisory personnel designated by the commanding officer.

(B) The individual is on the DEERS data base, do not provide non-emergency care until a NAVMED 6320/9, Dependent's Eligibility for Medical Care, is signed by the member, patient, patient's parent, or patient's legal or acting guardian. This form attests the fact that eligibility has been established per appropriate directives and includes the reason a valid ID card is not in the prospective patient's possession. Apprise the aforementioned responsible individual of the provisions

on the form NAVMED 6320/9 now requiring presentation of a valid ID card within 30 calendar days. Deny treatment or admission in physician determined nonemergency situations of persons refusing to sign the certification on the NAVMED 6320/9. For persons rendered treatment, patient administration department personnel must determine their eligibility status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing action for treatment will then proceed following NAVMED P-5020.

(viii) *DEERS overrides.* Possession of an ID card alone does not constitute sufficient proof of eligibility when the DEERS check does not verify eligibility. What constitutes sufficient proof will be determined by the reason the patient failed the DEERS check. For example, groups most expected to fail DEERS eligibility checks are recent accession members and their dependents, Guard or Reserve members recently activated for training periods of greater than 30 days and their dependents, and parents and parents-in-law with expired ID cards. Upon presentation of a valid ID card, the following are reasons to "override" a DEERS check either showing the individual as ineligible or when an individual does not appear in the DEERS data base.

(A) *DD 1172.* Patient presents an original of a copy of a DD 1172, Application for Uniformed Services Identification and Privilege Card, which is also used to enroll beneficiaries in DEERS. If the original is used, the personnel support detachment (PSD) furnishing the original will list the telephone number of the verifying officer to aid in verification. Any copy presented must have an original signature in section III; printed name of verifying officer, his or her grade, title, and telephone number; and the date the copy was issued. For treatment purposes, this override expires 120 days from the date issued.

(B) *Recently issued identification cards—(1) DD 1173.* Patient presents a recently issued DD 1173, Uniformed Services Identification and Privilege Card. Examples are spouses recently married to sponsor, newly eligible stepchildren, family members of sponsors

recently entering on active duty for a period greater than 30 days, parents or parents-in-law, and unremarried spouses recently determined eligible. For treatment purposes, this override expires 120 days from the date issued.

(2) *Other ID cards.* Patient presents any of the following ID cards with a date of issue within the previous 120 days: DD 2, DD 2 (Ret), Form PHS 1866-1, or Form PHs 1866-3 (Ret). When these ID cards are used for the purpose of verifying eligibility for a child, collateral documentation is necessary to ensure the child is actually the alleged sponsor's dependent and in determining whether the child is within the age limiting criteria outlined in § 728.31(b)(4).

(C) *Active duty orders.* Patient or sponsor presents recently issued orders to active duty for a period greater than 30 days. Copies of such orders may be accepted up to 120 days of their issue date.

(D) *Newborn infants.* Newborn infants for a period of 1 year after birth provided the sponsor presents a valid ID card.

(E) *Recently expired ID cards.* If the DEERS data base shows an individual as ineligible due to an ID card that has expired within the previous 120 days (shown on the screen as "Elig with valid ID card"), care may be rendered when the patient has a new ID card issued within the previous 120 days.

(F) *Sponsor's duty station has an FPO or APO number or sponsor is stationed outside the 50 United States.* Do not deny care to bona fide dependents of sponsors assigned to a duty station outside the 50 United States or assigned to a duty station with an FPO or APO address as long as the sponsor appears on the DEERS data base. Before initiating nonemergency care, request collateral documentation showing relationship to sponsor when the relationship is or may be in doubt.

(G) *Survivors.* Dependents of deceased sponsors when the deceased sponsor failed to enroll in or have his or her dependents enrolled in DEERS. This situation will be evidenced when an eligibility check on the surviving widow or widower (or other dependent) finds that the sponsor does not appear (screen shows "Sponsor SSN Not Found") or

the survivor's name appears as the sponsor but the survivor is not listed separately as a dependent. In any of these situations, if the survivor has a valid ID card, treat the individual on the first visit and refer him or her to the local personnel support detachment for correction of the DEERS data base. For second and subsequent visits prior to appearance on the DEERS data base, require survivors to present a DD 1172 issued per § 728.4(cc)(4)(viii)(A).

(H) *Patients not eligible for DEERS enrollment.* (1) Secretarial designees are not eligible for enrollment in DEERS. Their eligibility determination is verified by the letter, on one of the service Secretaries' letterhead, of authorization issued.

(2) When it becomes necessary to make a determination of eligibility on other individuals not eligible for entry on the DEERS data base, patient administration department personnel will obtain a determination from the purported sponsoring agency, if appropriate. When necessary to treat or admit a person who cannot otherwise present proof of eligibility for care at the expense of the Government, do not deny care based only on the fact that the individual is not on the DEERS data base. In such instances, follow the procedures in NAVMED P-5020 to minimize, to the fullest extent possible, the write-off of uncollectible accounts.

Subpart B—Members of the Uniformed Services on Active Duty

§ 728.11 Eligible beneficiaries.

(a) A member of a uniformed service, as defined in subpart A, who is on active duty is entitled to and will be provided medical and dental care and adjuncts thereto. For the purpose of this part, the following are also considered on active duty:

(1) Members of the National Guard in active Federal service pursuant to a "call" under 10 U.S.C. 3500 or 8500.

(2) Midshipmen of the U.S. Naval Academy.

(3) Cadets of the U.S. Military Academy.

(4) Cadets of the Air Force Academy.

(5) Cadets of the Coast Guard Academy.

(b) The following categories of personnel who are on active duty are entitled to and will be provided medical and dental care and adjuncts thereto to the same extent as is provided for active duty members of the Regular service (except reservists when on active duty for training as delineated in § 728.21).

(1) Members of the Reserve components.

(2) Members of the Fleet Reserve.

(3) Members of the Fleet Marine Corps Reserve.

(4) Members of the Reserve Officers' Training Corps.

(5) Members of all officer candidate programs.

(6) Retired members of the uniformed services.

§ 728.12 Extent of care.

Members who are away from their duty stations or are on duty where there is no MTF of their own service may receive care at the nearest available Federal MTF (including designated USTFs) with the capability to provide required care. Care will be provided without regard to whether the condition for which treatment is required was incurred or contracted in line of duty.

(a) *All uniformed services active duty members.* (1) All eligible beneficiaries covered in this subpart are entitled to and will be rendered the following treatment and services upon application to a naval MTF whose mission includes the rendering of the care required. This entitlement provides that when required care and services are beyond the capabilities of the facility to which the member applies, the commanding officer of that facility will arrange for care from another USMTF, designated USTF, or other Federal source or will authorize and arrange for direct use of supplemental services and supplies from civilian non-Federal sources out of operation and maintenance funds.

(i) Necessary hospitalization and other medical care.

(ii) Occupational health services as defined in § 728.2(z).

(iii) Necessary prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear,

and other orthopedic appliances (see subpart H). When these items need repair or replacement and the items were not damaged or lost through negligence, repair or replacement is authorized at Government expense.

(iv) Routine dental care.

(2) When a USMTF, with a mission of providing the care required, releases the medical management of an active duty member of the Navy, Marine Corps, Army, Air Force, or a commissioned corps member of USPHS or NOAA, the resulting civilian health care costs will be paid by the referring facility.

(3) The member's uniformed service will be billed for care provided by the civilian facility only when the referring MTF is not organized nor authorized to provide needed health care (see part 732 of this chapter for naval members). Saturation of service or facilities does not fall within this exception. When a naval MTF retains medical management, the costs of supplemental care obtained from civilian sources is paid from funds available to operate the MTF which manages care of the patient. When it becomes necessary to refer a USPHS or NOAA commissioned corps member to a non-Federal source of care, place a call to the Department of Health and Human Services (DHHS), Chief, Patient Care Services on (301) 443-1943 or FTS 443-1943 if DHHS is to assume financial responsibility. Patient Care Services is the sole source for providing authorization for non-Federal care at DHHS expense.

(b) *Maternity episode for active duty female members.* A pregnant active duty member who lives outside the MHSS inpatient catchment area of all USMTFs is permitted to choose whether she wishes to deliver in a closer civilian hospital or travel to the USMTF for delivery. If such a member chooses to deliver in a naval MTF, makes application, and presents at that facility at the time for delivery, the provisions of paragraph (a) of this section apply with respect to the furnishing of needed care, including routine newborn care (i.e., nursery, newborn examination, PKU test, etc.); arrangements for care beyond the facility's capabilities; or the expenditure of funds for supplemental care or services. Pay expenses

incurred for the infant in USMTFs or civilian facilities (once the mother has been admitted to the USMTF) from funds available for care of active duty members, *unless* the infant becomes a patient in his or her own right either through an extension of the birthing hospital stay because of complications, subsequent transfer to another facility, or subsequent admission. If the Government is to assume financial responsibility for:

(1) Care of pregnant members residing within the MHSS inpatient catchment area of a uniformed services hospital or in the inpatient catchment area of a designated USTF, such members are required to:

(i) Make application to that facility for care, or

(ii) Obtain authorization, per part 732 of this chapter, for delivery in a civilian facility.

(2) Non-Federal care of pregnant members residing outside inpatient catchment areas of USMTFs and USTFs, the member must request and receive authorization per part 732 of this chapter. Part 732 of this chapter also provides for cases of precipitous labor necessitating emergency care. OPNAVINST 6000.1, Management of Pregnant Servicewomen, contains medical-administrative guidelines on management prior to admission and after discharge from admission for delivery.

(c) *Reserve and National Guard personnel.* In addition to those services covered in paragraphs (a) and (b) of this section, Reserve and National Guard personnel are authorized the following under conditions set forth. (See § 728.25 for additional benefits for National Guard personnel.)

(1) Personnel whose units have an active Army mission of manning missile sites are authorized spectacle inserts for protective field masks.

(2) Personnel assigned to units designated for control of civil disturbances are authorized spectacle inserts for protective field masks M17.

§ 728.13 Application for care.

Possession of an ID card (a green colored DD 2 (with letter suffix denoting branch of service), Armed Forces Identification Card; a green colored PHS 1866-1, Identification Card; or a red col-

ored DD 2 Res (Reservists on active duty for training)) alone does not constitute sufficient proof of eligibility. Accordingly, make a DEERS check, per § 728.4(cc), before other than emergency care is rendered to the extent that may be authorized.

§ 728.14 Pay patients.

Care is provided on a reimbursable basis to: Coast Guard active duty officers, enlisted personnel, and academy cadets; Public Health Service Commissioned Corps active duty officers; and Commissioned Corps active duty officers of the National Oceanic and Atmospheric Administration. Accordingly, patient administration personnel will initiate the collection action process in subpart J in each instance of inpatient or outpatient care provided to these categories of patients.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Programs, and National Guard Personnel

§ 728.21 Navy and Marine Corps reservists.

(a) *Scope.* This section applies to reservists, as those terms are defined in § 728.2, ordered to active duty for training or inactive duty training for 30 days or less. Reservists serving under orders specifying duty in excess of 30 days, such as Sea and Air Mariners (SAMS) while on initial active duty for training, will be provided care as members of the Regular service per subpart B.

(b) *Entitlement.* Per 10 U.S.C. 1074a(a), reservists who incur or aggravate an injury, illness, or disease in line of duty while on active duty for training or inactive duty training for a period of 30 days or less, including travel to and from that duty, are entitled to medical and dental care appropriate for the treatment of that injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment. Care is authorized for such an injury, illness, or disease beyond the period of training to the same extent as care is

authorized for members of the Regular service (see subpart B) subject to the provisions of § 728.21(e).

(c) *Questionable circumstances.* If the circumstances are questionable, referral to the OMA or ODA is appropriate. If necessary, make referral to the Naval Medical Command (MEDCOM-33 for medical and MEDCOM-06 for dental) on determinations of entitlements.

(d) *Line of duty.* For the purpose of providing treatment under laws entitling reservists to care, an injury, illness, or disease which is incurred, aggravated, or becomes manifest while a reservist is employed in the performance of active duty for training or inactive duty training (including authorized leave, liberty and travel to and from either duty) will be considered to have been incurred in line of duty (LOD) unless the condition was incurred as a result of the reservist's own misconduct or under other circumstances enumerated in JAG Manual, chapter VIII. While the LOD investigation is being conducted, such reservists remain entitled to care. If the investigation determines that the injury or illness was not incurred in line of duty, the civilian humanitarian non-indigent rate is applicable if further care is required in naval MTFs. (See DOD Military Pay and Allowances Entitlement Manual for allowable constructive travel times.)

(e) *Treatment and services authorized.* In addition to those services delineated above, the following may be rendered under circumstances outlined:

(1) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that are lost or have become damaged during training duty, not through negligence of the individual, may be repaired or replaced at Government expense.

(2) Reservists covered by this subpart may be provided the following only if approved by the appropriate OMA or ODA, or by the Commander, Naval Medical Command (MEDCOM-33 for medical and MEDCOM-06 for dental) prior to initiation of services.

(i) Treatment for acute exacerbations of conditions that existed prior to a reservist's period of training duty. Limit care to that necessary for the prevention of pain or undue suffering until

the patient can reasonably return to control of the member's private physician or dentist.

(A) Remediable physical defects and remediable treatment for other conditions.

(B) Elective surgery.

(ii) All dental care other than emergency treatment and that necessary to correct an injury incurred in the line of duty.

(f) *Authorization for care.* (1) Reservists covered by this subpart may be provided inpatient or outpatient care during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see subpart G) pending final determination of eligibility.

§ 728.22 Members of other reserve components of the uniformed services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40-3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168-6,

Department of the Navy, DoD

§ 728.24

Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, obtain such authorization from the reservist's unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers upon presentation of a written request from the Commissioned Personnel Operations Division, OPM/OAM, 5600 Fishers Lane, Rockville, MD 20852.

§ 728.23 Reserve Officers' Training Corps (ROTC).

(a) *Eligible beneficiaries.* (1) Members of the Senior Reserve Officers' Training Corps of the Armed Forces including students enrolled in the 4-year Senior ROTC Program or the 2-year Advanced Training Senior ROTC Program.

(2) Designated applicants for membership in the Navy, Army, and Air Force Senior ROTC Programs during their initial 6-weeks training period (practice cruises or field training).

(3) Medical, dental, pharmacy, veterinary or science allied to medicine students who are commissioned officers of a reserve component of an Armed Force who have been admitted to and training in a unit of a Senior Reserve Officers' Training Corps.

(b) *Extent of care.* (1) While attending or en route to or from field training or practice cruises:

(i) Medical care for a condition incurred without reference to line of duty.

(ii) Routine dental care.

(iii) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that have become damaged or lost during training duty, not through negligence of the individual, may be repaired or replaced as necessary at government expense.

(iv) Care of remediable physical defects, elective surgery or other remediable treatment for conditions that existed prior to a period of training duty

are not authorized without approval from the appropriate OMA or ODA, or from the Commander, Naval Medical Command (MEDCOM-33 for medical and MEDCOM-06 for dental).

(v) Medical examinations and immunizations.

(vi) ROTC members are authorized continued medical care, including hospitalization, upon expiration of their field training or practice cruise period, the same as reservists in § 728.21(b) and § 728.22.

(2) While attending a civilian educational institution:

(i) Medical care in naval MTFs, including hospitalization, for a condition incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for purposes of making visits of observation, including participation in service-sponsored sports, recreational, and training activities.

(ii) Medical examinations, including hospitalization necessary for the proper conduct thereof.

(iii) Required immunizations, including hospitalization for severe reactions therefrom.

(c) *Authorization.* The individual's commanding officer will prepare a letter of authorization addressed to the commanding officer of the MTF concerned.

(d) *ROTC members as beneficiaries of the Office of Workers' Compensation Programs (OWCP).* Under circumstances described therein, render care as outlined in § 728.53 to members of the ROTC as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Officer Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of § 728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs are authorized access to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command

to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual's commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is necessary for the proper conduct of the special physical examinations. Hospitalization should be kept to a minimum and treatment other than for humanitarian reasons, except as provided in this part, is not authorized.

§ 728.25 Army and Air Force National Guard personnel.

(a) *Medical and dental care.* Upon presentation of a letter of authorization, render care as set forth in AR 40-3 (Medical, Dental, and Veterinary Care) and AFR 168-6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who contract a disease or become ill in line of duty while on full-time National Guard duty, (including leave and liberty therefrom) or while traveling to or from that duty. The authorizing letter will include name, social security number, grade, and organization of the member; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will indicate that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical or dental care. Limit care to that appropriate for the injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment.

(b) *Physical examinations.* AR 40-3 and AFR 168-6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit's commanding officer, naval MTFs may perform the requested physical examination per the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible beneficiaries and health benefits authorized.

(a) *Retired members of the uniformed services.* Retired members, as defined in § 728.2(aa), are authorized the same medical and dental benefits as active duty members subject to the availability of space and facilities, capabilities of the professional staff, and the priorities in § 728.3, except that:

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as care to active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles, are authorized when required to satisfy patient needs. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Military ophthalmic laboratories will not furnish occupational type spectacles, such as aviation, industrial safety, double segment, and mask insert, to retired military personnel (NAVMEDCOMINST 6810.1 refers).

(b) *Dependents of members of former members.* Include:

(1) The spouse.

(2) The unremarried widow.

(3) The unremarried widower.

(4) An unmarried legitimate child, including an adopted child or a stepchild, who either—

(i) Has not passed his or her 21st birthday;

(ii) Is incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support; or

(iii) Has not passed the 23rd birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support. (If such

a child suffers a disabling illness or injury and is unable to return to school, the child remains eligible for benefits until 6 months after the disability is removed, or until the 23rd birthday is reached, whichever comes first.)

(5) An unmarried illegitimate child or illegitimate step-child who is, or was at the time of sponsor's death, dependent on the sponsor for more than one-half of his or her support; residing with or in a home provided by the sponsor or the sponsor's spouse, as applicable, and is—

(i) Under 21 years of age; or

(ii) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individual's 21st birthday; or

(iii) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved per § 728.31(b)(4)(iii).

(6) A parent or parent-in-law, who is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of such parent's support and residing in the sponsor's household.

(7) An unremarried former spouse of a member or former member who does not have medical coverage under an employer-sponsored health plan, and who:

(i) On the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member at least 20 years during which period the member or former member performed at least 20 years of service creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay.

(ii) Had been married to the member or former member at least 20 years, at least 15 of which were during the period the member or former member performed service creditable in determining the member's eligibility for retired or retainer pay, or equivalent pay. The former spouse's sponsor must have performed at least 20 years of service creditable in determining the sponsor's eligibility for retired or retainer pay, or equivalent pay.

(A) Eligibility for such former spouses continue until remarriage if

the final decree of divorce, dissolution, or annulment occurred before 1 April 1985.

(B) Eligibility terminates the later of: Either 2 years from the date of the final decree of divorce, dissolution, or annulment; or 1 April 1988 for such former spouses whose final decree occurred on or after 1 April 1985.

(iii) An unremarried former spouse of a deceased member of former member who meets the requirements of § 728.31(b)(7)(i) or (ii) may be provided medical and dental care as a dependent when the sponsor:

(A) Died before attaining age 60.

(B) At the time of death would have been eligible for retired pay under 10 U.S.C. 1331-1337 except that the sponsor was under 60 years of age; but the former spouse is not eligible for care until the date the sponsor would have attained age 60;

(C) Whether or not the sponsor elected participation in the Survivor Benefit Plan of 10 U.S.C. 1447-1455.

(c) *Eligibility factors.* Care that may be rendered to all dependents in this subpart D is subject to the availability of space and facilities, capabilities of the professional staff, and priorities in § 728.3. Additionally:

(1) Members of the uniformed services must be serving under orders specifying active duty for more than 30 days before their dependents are authorized benefits delineated in § 728.31(d).

(2) A dependent's eligibility begins on the date the member enters on active duty and ends as of midnight of the date the sponsor's period of active duty ends for any reason other than retirement or death. Dependents lose eligibility as of midnight of the date a member is officially placed in a deserter status. Eligibility is restored on the date a deserter is returned to military control.

(3) A dependent (other than a former spouse) of a member or former member who died before attaining age 60 and at the time of death—

(i) Would have been eligible for retired pay under chapter 67 of title 10 U.S.C. but for the fact that the member or former member was under 60 years of age, and

(ii) Had elected to participate in the Survivor Benefit Plan, may not be rendered medical or dental care under the sponsor's entitlement until the date on which such member of former member would have attained age 60.

(4) A spouse, not qualifying as a former spouse, who is divorced from a member loses eligibility for benefits as of midnight of the date the divorce becomes final. This includes loss of maternity care benefits for wives who are pregnant at the time a divorce becomes final. A spouse does not lose eligibility through issuance of an interlocutory decree of divorce even when a property settlement has been approved which releases the member from responsibility for the spouse's support. A spouse's eligibility depends upon the relationship of the spouse to the member; so long as the relationship of husband and wife is not terminated by a final divorce or annulment decree, eligibility continues.

(5) Eligibility of children is not affected by the divorce of parents except that a stepchild relationship ceases upon divorce or annulment of natural parent and step-parent. A child's eligibility for health benefits is not affected by the remarriage of the divorced spouse maintaining custody unless the marriage is to an eligible service member.

(6) A stepchild relationship does not cease upon death of the member step-parent but does cease if the natural parent subsequently remarries.

(7) A child of an active duty or retired member, adopted after that member's death, retains eligibility for health benefits. However, the adoption of a child of a living member (other than by a person whose dependents are eligible for health benefits at USMTFs) terminates the child's eligibility.

(8) If a member's child is married before reaching age 21 to a person whose dependents are not eligible for health benefits in USMTFs, eligibility ceases as of midnight on the date of marriage. Should the marriage be terminated, the child again becomes eligible for benefits as a dependent child if otherwise eligible.

(d) *Health benefits authorized.* (1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen, and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or CO's designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

(i) Medical and surgical conditions.

(ii) Contagious diseases.

(iii) Nervous, mental, and chronic conditions.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant, and well-baby care for mothers and *infants* meeting the eligibility requirements of § 728.31(b). If a newborn infant of an unmarried dependent minor daughter becomes a patient in his or her own right after discharge of the mother, classify the infant as civilian humanitarian non-indigent inasmuch as § 728.31(b) does not define the infant as a dependent of the active duty or retired service member. Therefore, the minor daughter's sponsor (parent) should be counseled

concerning the possibility of Secretarial designee status for the infant (see § 728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations. Physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requested by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. Rendering of such services is subordinate to and will not unduly interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. Ensure that the release of any information to non-Navy employed physicians is in consonance with applicable provisions of SECNAVINST 5211.5C.

(9) Family planning services as delineated in SECNAVINST 6300.2A. Abortions, at the expense of the Government, may not be performed except where the life of the mother would be endangered if the fetus were carried to term.

(10) Dental care worldwide on a space available basis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government at facilities outside the United States and at specific installations within the United States

where adequate civilian facilities are unavailable.

(17) Special lenses (including intra-ocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) One wig if the individual has alopecia resulting from treatment of a malignant disease: *Provided* the individual has not previously received a wig at the expense of the United States.

(e) *Dependents of reserves.* (1) A dependent, as defined in § 728.31(b), of a deceased member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve, who—

(i) Was ordered to active duty or to perform inactive-duty training for any period of time.

(ii) Was disabled in the line of duty from an injury while so employed, and

(iii) Dies from such a specific injury, illness, or disease is entitled to the same care as provided for dependents in § 728.31(c).

(2) The provisions of this subpart D are not intended to authorize medical and dental care precluded for dependents of members of Reserve components who receive involuntary orders to active duty under 10 U.S.C. 270b.

(f) *Unauthorized care.* In addition to the devices listed in § 728.31(d)(16) as unauthorized, dependents are not authorized care for elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

§ 728.32 Application for care.

Possession of an ID card alone (DD 2 (Retired), PHS-1866-3 (Retired), or DD 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check will be instituted per § 728.4 (cc) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of § 728.34 apply. When required inpatient care cannot be rendered and a decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of § 728.33 apply.

§ 728.33 Nonavailability statement (DD 1251).

(a) *General.* Per DODINST 6015.19 of 26 Nov. 1984, the following guidelines are effective as of 1 Jan. 1985. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) *Applicability.* The following provisions are applicable to nonemergency inpatient care only. A DD 1251 is not required:

(1) For emergency care (see paragraph (d)(1) of this section).

(2) When the beneficiary has other insurance (including Medicare) that provides primary coverage for a covered service.

(3) For medical services that CHAMPUS clearly does not cover.

(c) *Reasons for issuance.* DD 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.

(2) Professional capability is not available.

(3) It would be medically inappropriate (as defined in § 728.2(u)) to require the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(C) A beneficiary is in a travel status. The commanding officer of the first facility contacted, in either the bene-

fiary's home catchment area or the catchment area where hospital care was obtained, has this discretionary authority. Travel in this instance means the beneficiary is temporarily on a trip away from his or her permanent residence. The reason the patient is traveling, the distance involved in the travel, and the time away from the permanent residence is not critical to the principle inherent in the policy. The issuing officer to whom the request for a Nonavailability Statement is made should reasonably determine that the trip was not made, and the civilian care is not (was not) obtained, with the primary intent of avoiding use of a USMTF or USTF serving the beneficiary's home area.

(d) *Guidelines for issuing—(1) Emergency care.* Emergency care claims do not require an NAS; however, the nature of the service or care must be certified as an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, a DD 1251 is required by CHAMPUS-eligible beneficiaries who are subject to the provisions of this section.

(2) *Emergency maternity care.* Unless substantiated by medical documentation and review, a maternity admission would not be deemed as an emergency since the fact of the pregnancy would have been established well in advance of the admission. In such an instance, the beneficiary would have had sufficient opportunity to obtain a DD 1251 if required in her residence catchment area.

(3) *Newborn infant(s) remaining in hospital after discharge of mother.* A newborn infant remaining in the hospital continuously after discharge of the mother does not require a separate DD 1251 for the first 15 days after the mother is discharged. Claims for care beyond this 15-day limitation must be accompanied by a valid DD 1251 issued in the infant's name. This is due to the fact that the infant becomes a patient in his or her own right (the episode of care for the infant after discharge of the mother is not considered part of the initial reason for admission of the mother (delivery), and is therefore considered a separate admission under a different diagnosis).

(4) *Cooperative care program.* When a DD 2161, Referral for Civilian Medical Care, is issued for inpatient care in connection with the Cooperative Care Program (§728.4(z)(5)(iv)) for care under CHAMPUS, a DD 1251 must also be issued.

(5) *Beneficiary responsibilities.* Beneficiaries are responsible for determining whether an NAS is necessary in the area of their residence and for obtaining one, if required, by first seeking nonemergency inpatient care in the USMTF or USTF serving the catchment area. Beneficiaries cannot avoid this requirement by arranging to be away from their residence when nonemergency inpatient care is obtained, e.g., staying with a relative or traveling. Individuals requiring an NAS because they reside in the inpatient catchment area of a USMTF or USTF also require an NAS for non-emergency care received while away from their inpatient catchment area.

(e) *Issuing authority.* Under the direction of the Commander, Naval Medical Command, exercised through commanders of naval geographic medical commands, naval MTFs will issue Non-availability Statements only when care required is not available from the naval MTF and the beneficiary's place of residence is within the catchment area (as defined in §728.2(d)) of the issuing facility or as otherwise directed by the Secretary of Defense. When the facility's inpatient catchment area overlaps the inpatient catchment area of one or more other USMTFs or USTFs with inpatient capability and the residence of the beneficiary is within the same catchment area of one or more other USMTFs or USTFs with inpatient capability, the issuing authority will:

(1) Determine whether required care is available at any other USMTFs or USTFs whose inpatient catchment area overlaps the beneficiary's residence. If care is available, refer the beneficiary to that facility and do not issue a DD 1251.

(2) Implement measures ensuring that an audit trail related to each check and referral is maintained, including the check required before retroactive issuance of a DD 1251 as delineated in paragraph (g) of this section.

When other than written communication is made to ascertain capability, make a record in the log required in paragraph (h) of this section that "Telephonic (or other) determination was made on (date) that required care was not available at (name of other USMTF(s) or USTF(s) contacted)". The individual ascertaining this information will sign this notation.

(3) Once established that a DD 1251 is authorized and will be issued, the following will apply:

(i) Do not refer patients to a specific source of care.

(ii) Nonavailability Statements issued at commands outside the United States are not valid for care received in facilities located within the United States. Statements issued within the United States are not valid for care received outside the United States.

(iii) The issuing authority will:

(A) If capability permits, prepare a DD 1251 via the automated application of DEERS. Where this system is operational, it provides for transmitting quarterly reports to the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)) by electronic means. System users should refer to their DEERS/NAS Users Manual for specific guidance on the use of the automated system. At activities where the DEER/NAS automated system is not operational, prepare each DD 1251 per instructions on the reverse of the form. After completion, if authorized by the facility CO, the issuing authority will sign the DD 1251. Give a copy to the patient for presentation to a participating civilian provider, or for submission with the claim of a non-participating provider. Retain a copy for the issuing activity's records. Retain the original for subsequent transmittal to the Naval Medical Data Services Center per paragraph (j) of this section.

(B) Explain to the patient or other responsible family member the validity period of the DD 1251 (see paragraph (f) of this section).

(C) Ensure that beneficiaries are clearly advised of the cost-sharing provisions of CHAMPUS and of the fact that the issuance of a Nonavailability Statement does not imply that CHAMPUS will allow any and all costs

incurred through the use of the DD 1251. The issuance of a DD 1251 indicates only that care requested is not available at a USMTF or USTF serving the beneficiary's residence inpatient catchment area.

(D) Review, with the patient or responsible family member, instructions 1 through 6 on the face of the DD 1251 and have the patient or responsible family member sign acknowledgement that such review has been made and is understood.

(E) Advise recipients that CHAMPUS fiscal intermediaries may deny claims of individuals who are not enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

(f) *Validity period.* DD 1251's issued for:

(1) Other than maternity care are valid for a hospital admission occurring within 30 days of issuance and remain valid from the date of admission until 15 days after discharge from the facility rendering inpatient care. This allows for any follow-on treatment related directly to the original admission.

(2) Maternity episodes are valid if outpatient of inpatient treatment related to the pregnancy is initiated within 30 days of its issuance. They remain valid for care of the mother through termination of the pregnancy and for 42 days thereafter to allow for postnatal care to be included in the maternity episode. (See paragraph (d)(3) of this section for the validity period of DD 1251's for infants remaining after discharge of the mother.)

(g) *Retroactive issuance.* Issue Non-availability Statements retroactively only if required care could not have been rendered in a USMTF or USTF as specified in paragraph (e) of this section at the time services were rendered in the civilian sector. At the time a retroactive issuance is requested, the facility receiving the request will determine whether capability existed at the USMTF or USTF serving the inpatient catchment area wherein the beneficiary resides (resided) or at any of the facilities in the overlapping area described in paragraph (e) of this section. While the date of service will be recorded on the DD 1251, send the retained original to the Naval Medical

Data Services Center along with others issued during the week of issuance (paragraph (j) of this section refers).

(h) *Annotating DD 1251's.* Before issuance, annotate each DD 1251 per the instructions for completion on the reverse of the form. DD 1251's issued under the CO's discretionary authority for the "medically inappropriate reason (paragraph (c)(3)(ii) of this section) will be annotated in the remarks section documenting the special circumstances necessitating issuance, the name and location of the source of care selected by the beneficiary, and approximate distance from the source selected to the nearest USMTF or USTF with capability (see instruction number 2 on the reverse of the DD 1251). Establish and maintain a consecutively numbered log to include for each individual to whom a DD 1251 is issued:

(1) Patient's name and identifying data.

(2) The facility unique NAS number (block number 1 on the DD 1251).

(i) *Appeal procedures.* Beneficiaries may appeal the denial of their request for a DD 1251. This procedure consists of four levels within Navy, any one of which may terminate action and order issuance of a Nonavailability Statement if deemed warranted:

(1) The first level is the chief of service, or director of clinical services if the chief of service is the cognizant authority denying the beneficiary's original request.

(2) The second level is the commanding officer of the naval MTF denying the issuance. Where the appeal is denied and denial is upheld at the commanding officer's level, inform beneficiaries that their appeal may be forwarded to the geographic commander having jurisdictional authority.

(3) The third level is the appropriate geographic commander, if the appeal is denied at this level, inform beneficiaries that their appeal may be forwarded to the Commander, Naval Medical Command, Washington, DC 20372-5120.

(4) The Commander, Naval Medical Command, the fourth level of appeal, will evaluate all documentation submitted and arrive at a decision. The beneficiary will be notified in writing

of this decision and the reasons therefor.

(j) *Data collection and reporting.* Do not issue the original of each DD 1251 prepared at activities where the DEER/NAS automated system is not operational. Send the retained originals to the Commanding Officer, Naval Medical Data Services Center (Code-03), Bethesda, MD 20814-5066 for reporting under report control symbol DD-HA (Q) 1463(6320).

§ 728.34 Care beyond the capabilities of a naval MTF.

When either during initial evaluation or during the course of treatment of an individual authorized care in this subpart, a determination is made that required care or services are beyond the capability of the naval MTF, the provisions of § 728.4(z)(2) apply.

§ 728.35 Coordination of benefits—third party payers.

Title 10 U.S.C. 1095 directs the services to collect from third-party payers the reasonable costs of inpatient hospital care incurred by the United States on behalf of retirees and dependents. Naval hospital collection agents have been provided instructions relative to this issue and are responsible for initiating claims to third-party payers for the cost of such care. Admission office personnel must obtain insurance, medical service, or health plan (third-party payer) information from retirees and dependents upon admission and forward this information to the collection agent.

§ 728.36 Pay patients.

Care is provided on a reimbursable basis to retired Coast Guard officers and enlisted personnel, retired Public Health Service Commissioned Corps officers, retired Commissioned Corps officers of the National Oceanic and Atmospheric Administration, and to the dependents of such personnel. Accordingly, patient administration personnel will follow the provisions of subpart J to initiate the collection action process when inpatient or outpatient care is provided to these categories of beneficiaries.

Subpart E—Members of Foreign Military Services and Their Dependents

§ 728.41 General provisions.

(a) *Dependent.* As used in this subpart, the term “dependent” denotes a person who bears one of the following relationships to his or her sponsor:

- (1) A wife.
- (2) A husband if dependent on his sponsor for more than one-half of his support.
- (3) An unmarried legitimate child, including an adopted or stepchild who is dependent on the sponsor for over one-half of his or her support and who either:
 - (i) Has not passed the 21st birthday; or
 - (ii) Is incapable of self-support due to a physical or mental incapacity that existed prior to reaching the age of 21; or
 - (iii) Has not passed the 23rd birthday and is enrolled in a full-time course of study in an accredited institution of higher learning.

(b) *Transfer to naval MTFs in the United States.* Do not transfer personnel covered in this subpart to the United States solely for the purpose of obtaining medical care at naval MTFs. Consideration may be given however, in special circumstances following laws of humanity or principles of international courtesy. Transfer to naval MTFs in the United States of such persons located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, should not commit the Navy by a promise of treatment in the United States. Approval generally will not be granted for treatment of those who suffer from incurable afflictions, who require excessive nursing or custodial care, or those who have adequate facilities in their own country. When a request is received concerning transfer for treatment at a naval MTF in the United States, the following procedures apply:

- (1) Forward the request to the Chief of Naval Operations (OP-61), with a copy to the Commander, Naval Medical Command, Washington, DC 20372-5120 for administrative processing. Include:

(i) Patient's full name and grade or rate (if dependent, the sponsor's name and grade or rate also).

(ii) Country of which a citizen.

(iii) Results of coordination with the chief of the diplomatic mission of the country involved.

(iv) Medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures, and all other pertinent medical information.

(v) Availability or lack thereof of professional skills and adequacy of facilities for treatment in the member's own country.

(vi) Who will assume financial responsibility for costs of hospitalization and travel.

(2) The Chief of Naval Operations (OP-61) will, if appropriate, obtain State Department clearance and guidance and advise the Secretary of the Navy accordingly. The Commander, Naval Medical Command will furnish the Chief of Naval Operations information and recommendations relative to the medical aspects and the name of the naval MTF with the capability to provide required care. If approved, the Chief of Naval Operations will furnish, through the chain of command, the commanding officer of the designated naval MTF authorization for admission of the beneficiary for treatment.

§ 728.42 NATO.

(a) *NATO SOFA nations.* Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(b) *Beneficiaries.* The following personnel are beneficiaries under the conditions set forth.

(1) *Members of NATO military services and their dependents.* Military personnel of NATO nations, who, in connection with their official duties, are stationed in or passing through the United States, and their dependents residing in the United States with the sponsor may be provided care in naval MTFs to the same extent and under the same conditions as comparable U.S. uniformed services personnel and their dependents. Accordingly, the provisions

of § 728.12 are applicable to military personnel and § 728.31(d) through § 728.34 to accompanying dependents.

(2) *Military ships and aircraft personnel.* Crew and passengers of visiting military aircraft and crews of ships of NATO nations which land or come into port at NATO or U.S. military airfields or ports within NATO countries.

(3) *NATO liaison officers.* In overseas areas, liaison officers from NATO Army Forces or members of a liaison detachment from such a Force.

(c) *Application for care.* Military personnel of NATO nations stationed in the United States and their dependents will present valid Uniformed Services Identification and Privilege Cards (DD 1173) when applying for care. For other eligible persons passing through the United States on official business and those enumerated in paragraph (b) (2) and (3) of this section, orders or other official identification may be accepted in lieu of the DD 1173.

(d) *Disposition.* When it becomes necessary to return individuals to their home country for medical reasons, make immediate notification to the NATO unit sponsoring the member or dependent's sponsor. Include all pertinent information regarding the physical and mental condition of the individual concerned. Following are details of agreements among the Armed Forces of NATO, CENTO, and SEATO Nations on procedures for disposition of allied country patients by DOD medical installations.

(1) *Transfer of patients.* (i) The patient's medical welfare must be the paramount consideration. When deciding upon transfer of a patient, give due consideration to any increased medical hazard which the transfer might involve.

(ii) Arrangements for disposition of patients should be capable of being implemented by existing organizations. Consequently, no new establishment should be required specially for dealing with the transferring of allied casualties.

(iii) Transfer patients to their own national organization at the earliest practicable opportunity consistent with the observance of principles established in paragraph (d)(1) (i) and (ii) of

this section and under any of the following conditions:

(A) When a medical facility of their own nation is within reasonable proximity of the facility of the holding nation.

(B) When the patient is determined to require hospitalization in excess of 30 days.

(C) Where there is any question as to the ability of the patient to perform duty upon release from the MTF.

(iv) The decision as to whether a patient, other than one requiring transfer under paragraph (d)(1)(iii) of this section, is fit for release from the MTF is the responsibility of the facility's commanding officer.

(v) All clinical documents, to include x-rays, relating to the patient will accompany such patients on transfer to their own national organization.

(vi) The decision of suitability for transfer and the arrangements for transfer will be the responsibility of the holding nation.

(vii) Final transfer channels should be arranged by local liaison before actual movement.

(viii) Patients not suitable for transfer to their own national organization must be dealt with for treatment and disposition purposes as patients of the holding nation until they are transferred, i.e., they will be dealt with in military hospitals, military medical installations, or in civilian hospitals that are part of the military medical evacuation system of the holding nation.

(2) *Classification of patients.* Different channels for disposition will be required for the following two types of patients:

(i) *Patients not requiring admission.* Patients not requiring admission to an MTF will be returned to their nearest national unit under arrangements to be made locally.

(ii) *Patients admitted to medical installations.* All such patients will be dealt with per paragraph (d)(1) of this section.

(e) *Care authorized outside the 48 contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency

situations only, *Provided*, the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Administer dental treatment only as an adjunct to authorized inpatient care. Do not include dental prostheses or orthodontia.

§ 728.43 Members of other foreign military services and their dependents.

(a) *Foreign military service members.* For the purpose of § 728.43, members of foreign military services include only:

(1) Military personnel carried on the current Diplomatic List (Blue) or on the List of Employees of Diplomatic Missions (White) published by the Department of State.

(2) Military personnel assigned or attached to United States military units for duty; military personnel on foreign military supply missions accredited to and recognized by one of the military departments; and military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. For the purpose of § 728.43, members of Foreign Security Assistance Training Programs (SATP) and Foreign Military Sales (FMS) are not included (see § 728.44).

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the Secretary of State, Secretary of Defense, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments exclusive of NATO nations.

(b) *Care authorized in the United States.* Military personnel of foreign nations not covered in § 728.42 and their dependents residing in the United States with the sponsor may be routinely provided only outpatient medical care in naval MTFs on a reimbursable basis. *Provided*, the sponsor is in the United States in a status officially

recognized by an agency of the Department of Defense. Dental care and hospitalization for such members and their dependents are limited to emergencies. All outpatient care and hospitalization in emergencies are subject to reimbursement as outlined in § 728.46.

(c) *Application for care.* All personnel covered by § 728.43 will present orders or other official U.S. identification verifying their status when applying for care.

(d) *Disposition.* When it becomes necessary to return individuals covered by § 728.43 to their home country for medical reasons, make immediate notification to the sponsoring unit of the patient or patient's sponsor with a copy to the Chief of Naval Operations (OP-61). Include all pertinent information regarding the physical and mental condition of the individual concerned and full identification, diagnosis, prognosis, estimated period of hospitalization, and recommended disposition. Additionally, the provisions of § 728.42(d) (1) and (2) apply.

(e) *Care authorized outside the 48 contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only. *Provided*, the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Administer dental treatment only as an adjunct to authorized inpatient care. Do not include dental prostheses or orthodontia.

§ 728.44 Members of security assistance training programs, foreign military sales, and their ITO authorized dependents.

(a) *Policies—(1) Invitational travel orders screening.* Prior to determining the levels of care authorized or the government or person responsible for payment for care rendered, carefully screen ITOs to detect variations applicable to certain foreign countries. For

example, unless orders state differently, Kuwait has a civilian health plan to cover medical expenses of their trainees; trainees from the Federal Republic of Germany are personally responsible for reimbursing for inpatient care provided to their dependents; and all inpatient medical services for trainees from France and their dependents are to be borne by the individual trainee.

(2) *Elective and definitive surgery.* The overall policy with respect to elective and definitive surgery for Security Assistance Training Program (SATP), Foreign Military Sales (FMS) personnel and their dependents is that conservatism will at all times prevail, except bona fide emergency situations which might threaten the life or health of an individual. Generally, elective care is not authorized nor should be started. However, when a commanding officer of a naval MTF considers such care necessary to the early resumption and completion of training, submit the complete facts to the Chief of Naval Operations (OP-63) for approval. Include the patient's name (sponsor's also if patient is an ITO authorized dependent), grade or rate, country of origin, diagnosis, type of elective care being sought, and prognosis.

(3) *Prior to entering training.* Upon arrival of an SATP or FMS trainee in the United States or at an overseas training site, it is discovered that the trainee cannot qualify for training by reason of a physical or mental condition which will require a significant amount of treatment before entering or completing training, return such trainees to their home country immediately or as soon thereafter as travel permits.

(4) *After entering training.* When trainees require hospitalization or are disabled after entering a course of training, return them to their home country as soon as practicable when, in the opinion of the commanding officer of the medical facility, hospitalization or disability will prevent training for a period in excess of 30 days. Forward a copy of the patient's clinical records with the patient. When a trainee is accepted for treatment that is not expected to exceed 30 days, notify the commanding officer of the training activity. Further, when a trainee is

scheduled for consecutive training sessions convening prior to the expected data of release from a naval MTF, make the next scheduled training activity an information addressee. Upon release from the MTF, direct such trainees to resume training.

(b) *Care authorized.* Generally, all SATP and FMS personnel and their ITO authorized dependents are entitled to care to the same extent. However, certain agreements require that they be charged differently and that certain exclusions apply.

(1) *NATO members and their ITO authorized dependents—(i) Foreign military sales (FMS).* Subject to reimbursement per § 728.46, FMS personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and their accompanying ITO authorized dependents will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International military education and training (IMET).* Subject to reimbursement for inpatient care at the appropriate IMET rate for members or at the full reimbursement rate for dependents, IMET personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and accompanying dependents will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(2) *Other foreign members and ITO authorized dependents—(i) Foreign military sales.* Subject to reimbursement by the trainee or the trainee's government for both inpatient and outpatient care at the full reimbursement rate, FMS personnel of non-NATO nations and ITO authorized accompanying dependents may be provided medical and dental

care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *Provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for the military member and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International military education and training.* Subject to reimbursement for both inpatient and outpatient care at the appropriate rates for members and dependents, IMET personnel of non-NATO nations may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) spectacles may be furnished when required to enable trainees to perform their assigned duties, *Provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for military members and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(c) *Application for care.* Trainees and accompanying dependents will present official U.S. identification or orders verifying their status when applying for care. If any doubt exists as to the extent of care authorized, ITOs should be screened (see paragraph (a)(1) of this section).

(d) *Notification.* When trainees require hospitalization as a result of illness or injury prior to or after entering training, the training activity (the hospital if patient has been admitted) will make a message report through the normal chain of command to the Chief of Naval Operations (OP-63) with information copies to MAAG, COMNAV MEDCOM, Navy International Logistics Control Office (NAVIL CO), Unified Commander, the affected office, and the

foreign naval attache concerned. Include details of the incident, estimated period of hospitalization, physical or mental condition of the patient, and diagnosis. For further amplification, see OPNAVINST 4950.1H and NAVCOMPTMAN 032103.

§ 728.45 Civilian components (employees of foreign military services) and their dependents.

(a) *Care authorized.* Beneficiaries covered in this section are only authorized care in naval MTFs in the United States and then only civilian humanitarian emergency care on a reimbursable basis (subpart J) rendered at installations which have been designated as remote by the Secretary of the Navy. Make arrangements to transfer such beneficiaries to a civilian facility as soon as their condition permits.

(b) *Potential beneficiaries—(1) NATO.* Civilian employee personnel (and their dependents residing with them) accompanying military personnel in § 728.42(b)(1), *Provided*, the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(2) *Others.* Civilian personnel not covered in § 728.45(b)(1) (and their dependents residing with them) accompanying personnel of foreign nations on duty in the United States at the invitation of the Department of Defense or one of the military departments.

(c) *Application for care.* Personnel covered by the provisions of § 728.45 will present orders or other official U.S. identification verifying their status when applying for care.

§ 728.46 Charges and collection.

(a) *Policy.* Pub. L. 99-591, section 9029, contains provisions prohibiting the expenditure of appropriated funds “. . . to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided*, That reimbursements . . . shall be credited to the appropriations against which charges have been made for providing such care, except

that inpatient medical care may be provided in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel in that foreign country.”

(b) *Canadian agreement.* On 3 November 1986, the Department of National Defence of Canada and DOD concluded a comparable care agreement that covers certain military personnel. The agreement stipulates that:

(1) DOD will, upon request, provide Canadian Forces members the same range of medical and dental services under the same conditions and to the same extent as such services are provided comparable United States military personnel. Inasmuch as the agreement covers only certain military personnel, the reimbursement provisions of Pub. L. 99-591 remain in effect for inpatient care provided to Canadian diplomatic personnel, Canadian dependents, and Canadian foreign military sales trainees who receive care in the United States. Further:

(2) Permanently stationed Canadian units with established strengths of more than 150 personnel are expected to have integral health care capability. Any health care services which members of such units receive from the host nation will be provided on a full reimbursement basis. Groups of larger than 150 personnel, which conduct collective training in the United States, are expected to deploy with an organic unit medical capability. Naval MTFs may be requested to provide services, beyond the capability of the organic unit, at full reimbursement rates.

(c) *Procedures.* (1) Until otherwise directed, naval MTFs in the 50 United States will collect the full reimbursement rate (FRR) for inpatient care provided to all foreign military personnel (except Canadians covered by the comparable care agreement in § 728.46(b), and military personnel connected with a Foreign Military Sales (FMS) case number), foreign diplomatic personnel, and to the dependents of both whether they are in the United States on official duty or for other reasons.

(2) Subpart J contains procedures for the initiation of collection action when

inpatient care is rendered to beneficiaries from NATO nations and when either inpatient or outpatient care is rendered to all others enumerated in this part. Chapter II, part 4 of NAVMED P-5020 is applicable to the collection of and accounting for such charges.

Subpart F—Beneficiaries of Other Federal Agencies

§ 728.51 General provisions—the “Economy Act.”

The Economy Act, 31 U.S.C. 1535, generally permits agency heads, or heads of major organizational units of agencies, to procure goods and services from other agencies or within their own agency so long as funds for procurement are available, the order is in the best interest of the Government, the source from which the goods or services are ordered can produce them or obtain them by contract, and the internal or inter-agency procurement is more convenient, or less expensive, than commercial procurement. Provisions of the Economy Act apply to requests from other Federal agencies for medical and dental care for beneficiaries for whom they are responsible. Consult specific provisions of the Act respecting financial and accounting limitations and requirements.

§ 728.52 Veterans Administration beneficiaries (VAB).

(a) *Eligible beneficiaries*—Those who have served in the Armed Forces, have been separated under conditions other than dishonorable, and have been determined by the Veterans Administration (VA) to be eligible for care at VA expense. Prior to 7 September 1980, veterans status could be obtained by virtue of 1 day’s honorable service. The following restrictions do not apply to individuals who are discharged from active duty because of a disability or who were discharged for reasons of “early out” or hardship program under 10 U.S.C. 1171 and 1173.

(1) For individuals with an original enlistment in the military service after 7 September 1980, the law generally denies benefits, including medical care.

(2) For individuals entering service after 16 October 1981, the law generally

denies medical benefits when such individuals do not complete the shorter of:

(i) Twenty-four months of continuous active duty, or

(ii) The full period for which that person was called or ordered to active duty.

(b) *Inpatient control*—Each VAB admitted will be required to conform to regulations governing the internal administration of the naval facility. Restrictive or punitive measures, including disciplinary action or denial of privileges, will conform as nearly as possible to VA instructions.

(c) *Resolution of problems*—All problems pertaining to VABs, including admission, medical or other records, and all correspondence will be matters of resolution between the commanding officer of the naval facility and the VA office of jurisdiction authorizing admission. Questions of policy and administration which cannot be so resolved will be forwarded, through the normal chain of command, to the Administrator of Veterans Affairs via COMNAVMEDCOM for resolution.

(d) *Care in the United States*—(1) *Inpatient care*. An eligible VAB may be admitted to a naval MTF on presentation of a written authorization for admission signed by an official of the VA office of jurisdiction. Neurological and certain neuropsychiatric patients without obvious evidence of psychosis and not requiring restraints, and instances of suspected tuberculosis, may be admitted for diagnosis. When diagnosed, promptly report instances of psychosis, psychoneurosis, and tuberculosis of present clinical significance to the VA office of jurisdiction with a request for transfer to a VA facility.

(i) *Extent of care*. Provide eligible VABs medical and surgical care, including prostheses such as eyes and limbs and appliances such as hearing aids, spectacles, or orthopedic appliances when required for the proper treatment of the condition upon which eligibility is based.

(ii) *Disposition of emergency admission*. Notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the

date and hour of an emergency admission of a potential VAB. Include a request for an authorization for admission and emergency treatment. If VA denies VAB status to such a person admitted in an emergency, the provisions of § 728.81(a) are applicable. Once admitted in an emergency situation, discharge a VAB promptly upon termination of the emergency unless arrangements have been made with the VA office of jurisdiction:

(A) For transfer to a VA treatment facility if further treatment is required.

(B) To retain the patient as a VAB in the naval MTF.

(2) *Outpatient care.* Outpatient care, including post hospitalization outpatient care, may be provided upon authorization by the VA office of jurisdiction. When outpatient followup care is requested, commanding officers are responsible for determining whether capabilities and workload permit providing such care. In an emergency, provide necessary care.

(3) *Physical examinations.* Upon a determination by a naval MTF commanding officer that space, facilities, and capabilities exist, naval MTFs may provide physical examinations when requested by the VA for the purpose of adjudicating claims for VA physical disability compensation. If authorized by the VA, patients may be admitted when the examination requires more than 1 day.

(4) *Dental care.* Limit dental treatment to inpatients who require services adjunctive to medical or surgical conditions for which hospitalized.

(e) *Care outside the United States—(1) Eligible beneficiaries.* Beneficiaries described in paragraph (a) of this section who are citizens of the United States and residing or sojourning abroad may, within the capabilities of the facility as determined by the commanding officer, be provided inpatient and outpatient care upon presentation of an authorization from the appropriate VA office of jurisdiction listed in paragraph (e)(3) of this section.

(2) *Emergency care.* Overseas naval MTFs furnishing emergency care to potential VABs will promptly notify the appropriate VA office of jurisdiction and request authorization for treat-

ment and instructions for disposition of the patient.

(3) *Offices of jurisdiction.* The following activities are vested with responsibility for issuing authorizations for care and furnishing disposition instructions for VABs in overseas naval MTFs:

(i) In the Trust Territory of the Pacific (Micronesia), VA Office, Honolulu, Hawaii.

(ii) In the Philippines, VA Regional Office, Manila, Philippines.

(iii) In Canada, Canadian Department of Veterans Affairs, Ottawa, Canada.

(iv) In all other foreign countries, consular offices of U.S. embassies.

(f) *Forms required.* (1) Complete a VA 10-10 (Application for Medical Benefits) when potential VABs are admitted for emergency care without prior authorization.

(2) Prepare a VA 10-10m (Medical Certificate and History) when care is rendered. All information required in the medical certificate thereon will be furnished whether the admission is subsequently approved or disapproved by the VA office of jurisdiction.

(3) Since the completion of VA 10-10m requires an examination of patients, admissions which are disapproved will be reported as medical examinations on DD 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (part B) (See subpart J).

(4) Prepare and submit a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished (part A)) on all VABs and potential VABs admitted (see subpart J).

(5) Complete an SF 502 (Narrative Summary) or SF 539 (Abbreviated Clinical Record), as appropriate, when a VAB or potential VAB is discharged or otherwise released. When an interim report of hospitalization is requested by the VA office of jurisdiction, it may be prepared on an SF 502.

§ 728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) beneficiaries.

(a) *Potential beneficiaries.* The following may be beneficiaries of one of the programs sponsored by the Office of Workers' Compensation Programs (OWC) under the conditions set forth. They are not beneficiaries of OWCP

until authorized as such by the appropriate district officer of OWCP. However, they may be carried as potential beneficiaries pending OWCP determination of eligibility. DOD civilian employees provided medical services under a Defense or service health program are not included under this authority (see subpart G).

(1) Members and applicants for membership in the Reserve Officers' Training Corps of the Navy, Army, and Air Force, provided the condition necessitating treatment was incurred in line of duty during an off-campus training regimen. Such care is authorized for injury (a disease or illness which is the proximate result of performance of training is considered an injury) incurred while engaged in:

- (i) Training.
- (ii) Flight instructions.
- (iii) Travel to or from training or flight instructions.

(2) The following employees of the Government of the United States, regardless of nationality or place of work, are entitled to receive care as outlined in paragraph (e) of this section for work incurred traumatic injuries at the expense of OWCP. (In addition to injury by accident, a disease or illness which is the proximate result of performance of employment duties is considered an injury.) This category includes but is not limited to:

- (i) Civilian student employees in training at Navy and Marine Corps facilities.
- (ii) Civilian seamen in the service of vessels operated by the Department of the Army (see paragraph (a)(7) of this section and §728.80(c)(2) for civilian Military Sealift Command (MSC) personnel).

(iii) All civilian employees of the Government except nonappropriated-fund-activity employees. Nonappropriate fund employees may be covered under the Longshore and Harbor Workers' Compensation Act (contact cognizant district office of OWCP).

(3) Civilian members of the Civil Air Patrol (except Civil Air Patrol Cadets) for injury or disease which is the proximate result of active service or travel to and from such service, rendered in performance or support of operational missions of the Civil Air Patrol under

the direction and written authority of the Air Force.

(4) Former Peace Corps enrollees for injury or disease which is the proximate result of their former employment with the Peace Corps or which was sustained or contracted while located with the Peace Corps outside the United States and its territories.

(5) Former Job Corps enrollees for injury or disease which is the proximate result of employment with the Job Corps.

(6) Former VISTA (Volunteers in Service to America) enrollees for injury or disease which is the proximate result of employment with VISTA.

(7) Military Sealift Command (MSC) civilian marine personnel (CIVMARPERs or CIVMARS) (including temporary employees, intermittent employees, and employees with less than 1 year's service) are entitled to occupationally related care at the expense of OWCP. CIVMARS are in a crew status only after reporting to their assigned ship. They are in a travel status from crewing point to ship and return. While in a travel status, they are entitled to the same health care benefits as other Federal civil service employees in a travel status (5 U.S.C. 8101). CIVMARS presenting for treatment with a properly completed CA-16, Request for Examination and/or Treatment, will:

(i) Enter the naval MTF's system through the occupational medicine service.

(ii) Be treated for any injury or disease proximately caused by their employment. Although the actual determination of whether an illness or injury is occupationally related is a function of OWCP, determinations are based on the required injury report along with the treatment record from the attending physician. Therefore, when doubt exists as to the relationship of the condition to the potential patient's employment, the physician should report an unbiased medical conclusion and the medical rationale therefor, indicating the conditions which are responsible for the claimant's disability. As a general rule, the following may be initially considered as occupationally related, however, it

should be emphasized that OWCP is the final approval authority:

(A) Any injury or illness occurring as a direct result of employment. May occur on a ship, at a Government installation ashore, or in an aircraft while performing a requirement of employment.

(B) Any injury or illness which becomes manifest while away from work (on leave or liberty) while in a crew status or travel status as long as the condition may be directly related to job activities or to exposures incident to travel to ship assignment.

(C) Required immunizations.

(D) Required physical examinations.

(E) Periodic medical surveillance screening examinations for DOD occupational and industrial health programs, i.e., asbestos medical surveillance, hearing conservation, etc.

(iii) Be referred to a non-Federal source of care where back-to-work care may be provided at the CIVMAR's expense after, if necessary, the immediate emergency is alleviated when a reasonable determination can be made that the injury or illness is not occupationally related.

(A) Per 5 U.S.C. 7901(c)(3), the health service program for Federal civilian employees is limited to referral of employees, upon their request, to private sources of care.

(B) Long term extended care of chronic illnesses such as hypertension, diabetes, etc., is not authorized in naval MTFs at the expense of OWCP nor at the CIVMAR's personal expense.

(C) Patients who cannot be referred, because of medical reasons or because non-Federal sources are not available or available but inadequate, may be retained in naval MTFs at the expense of the CIVMAR or of his or her private insurance until transfer becomes possible. Although the means of access to the naval MTF may have been through the occupational medicine service, retention in the naval MTF is on a civilian humanitarian basis. This is also applicable when OWCP disallows a CIVMAR's claim (see paragraph (c) of this section).

(b) *Authorization required.* Personnel in paragraph (a) (1) through (6) may be rendered inpatient and outpatient care as outlined in paragraph (e) of this sec-

tion, unless otherwise stipulated in this section, upon presentation of a properly prepared and signed authorization from CA-16 (Request for Examination and/or Treatment). District offices of OWCP will honor these authorizations for 60 days unless written notice of termination of authorization is given earlier. Whereas the CA-16 is used primarily for traumatic injuries, it may also be used to authorize examination and treatment for disease or illness provided the affected agency has obtained prior permission from the cognizant district office of OWCP. If the condition for which treatment is requested appears related to employment, treatment of beneficiaries in paragraph (a) (1) through (7) of this section may be initiated without presentation of a CA-16. Patients provided treatment without a CA-16 may be carried as OWCP beneficiaries from the time of initial treatment, provided the appropriate district office of OWCP is notified and requested to submit a CA-16 within 48 hours giving authorization as of the date of actual treatment. OWCP will not be liable for payment of bills for unauthorized treatment. Post hospitalization care following authorized inpatient care does not require an additional authorization. First aid treatment rendered civilian employees does not require an authorization form

(c) *Disallowance by OWCP.* When OWCP determines that any claim should be disallowed, OWCP will advise the naval facility rendering care that no further treatment should be rendered at OWCP expense. The patient ceases to be an OWCP beneficiary as of the date of receipt of the notice of disallowance by the naval MTF and the patient will be so notified. Any treatment subsequent to the date of receipt of the notice of disallowance will be at the personal expense of the patient (see § 728.81(a)).

(d) *Authorization for transfer.* Prior approval of OWCP is required before a transfer can be effected, except in an emergency or when immediate treatment is deemed more appropriate in another Federal facility. When transfer is effected without approval, the transferring facility will immediately request such authorization from the appropriate district office of OWCP.

When authorized by OWCP, evacuation to the United States can be effected per OPNAVINST 4630.25B. Medical records and a CA-16 will accompany such patients.

(e) *Care authorized*—(1) *Inpatient care*. Medical and surgical care necessary for the proper treatment of the condition upon which eligibility is based. Specific OWCP authorization is required before major surgical procedures can be performed unless the urgency of the situation is such that time does not permit obtaining said authorization. All necessary prostheses, hearing aids, spectacles, and orthopedic appliances will be furnished when required for proper treatment of the condition upon which eligibility is based. Upon specific authorization, damaged or destroyed medical braces, artificial limbs, and other orthopedic and prosthetic devices will be replaced or repaired, except that eyeglasses and hearing aids will not be replaced or repaired unless their damage or destruction is incidental to a personal injury requiring medical services.

(2) *Outpatient care*. Complete medical and surgical care not requiring hospitalization, and posthospitalization services following authorized inpatient care in a naval MTF for the proper treatment of the condition upon which eligibility is based.

(3) *Dental care*. Limit dental treatment to emergencies and that care necessary as an adjunct to inpatient hospital care authorized in advance. Such care will not include dental prostheses, unless specifically authorized, nor orthodontic treatment.

(f) *Reports and records*. (1) Copies of medical records will accompany OWCP patients being transferred from one medical treatment facility to another. Records accompanying OWCP patients to a debarkation hospital will be the same as for military personnel and will clearly identify the patient as an OWCP beneficiary.

(2) Forward a CA-20 (Attending Physician's Report) to the appropriate district office of OWCP on discharge of the patient unless hospitalization exceeds 1 month. In such instances, a report will be submitted every 30 days. When extensive hospitalization is required, use an SF 502 or a narrative for-

mat in lieu of CA-20. When submitted to OWCP, the physician's report will include:

- (i) History.
- (ii) Physical findings.
- (iii) Laboratory findings.
- (iv) Abstract of hospital records.
- (v) Diagnosis for conditions due to injury and not due to injury.
- (vi) Rationalized medical opinion for the physician's belief that the illness or disease treated was causally related to a specific condition or set of conditions to which the claimant was subjected.
- (vii) Condition on discharge with opinion as to degree of impairment due to injury, if any.

(3) Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered to any OWCP beneficiary.

§ 728.54 U.S. Public Health Service (USPHS), other than members of the uniformed services.

(a) *Potential beneficiaries*. The following may be beneficiaries of the USPHS for care in naval MTFs upon submission of the necessary form from appropriate officials as outlined in paragraph (b) of this section.

(1) *Within and outside the United States*. Any individuals the USPHS may determine to be eligible for care on an interagency reimbursable basis.

(2) *Within the 48 Contiguous United States and the District of Columbia*. American Indians, Alaska Natives, Eskimos, and Aleuts.

(3) *In Alaska*. American Indians, Eskimos, and Aleuts.

(b) *Authorization required*—(1) *Normal circumstances*. An American Indian or Alaska Native may be rendered inpatient care upon presentation of form HRSA 43 (Contract Health Service Purchase Order for Hospital Services Rendered) or HRSA form 64 (Purchase/Delivery Order for Contract Health Services Other Than Hospital Inpatient or Dental). Either form must be signed by an appropriate Indian Health Service or Alaska Native Health Service area/program official.

(2) *Emergencies.* In an emergency, care may be rendered upon written request of patient's commanding officer or superior officer, or the patient if neither of the above is available. When emergency care is rendered without prior authorization, the facility rendering care must notify the service unit director of the patient's home reservation within 72 hours from the time such care is rendered unless extenuating circumstances preclude prompt notification.

(c) *Care authorized.* Unless limited by the provisions stipulated in paragraph (a) of this section and subject to the provisions of § 728.3, the following care may be rendered, when requested, to all beneficiaries enumerated in paragraph (a) of this section.

(1) *Inpatient care.* Necessary medical and surgical care.

(2) *Outpatient care.* Necessary medical and surgical care.

(3) *Dental care.* (i) Limit dental care in the United States, its territories, possessions, and the Commonwealth of Puerto Rico to emergencies for the relief of pain or acute conditions and that necessary as an adjunct to inpatient hospital care. Prosthetic dental appliances and permanent restorations are not authorized.

(ii) In overseas areas, dental care is authorized to the extent necessary pending the patient's return to the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

(d) *Report.* Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or a DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.55 Department of Justice beneficiaries.

Upon presentation of a letter of authorization that includes disposition of SF 88 (Report of Medical Examination), SF 93 (Report of Medical History), and address for submission of claim, the following personnel may be furnished requested care as beneficiaries of the Department of Justice. See subpart J on completing and submitting forms

for central collection of the cost of care provided.

(a) *Federal Bureau of Investigation.* Investigative employees of the Federal Bureau of Investigation (FBI) and applicants for employment as special agents with the FBI may be provided:

(1) Immunizations.

(2) Physical examinations and hospitalization when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(b) *U.S. Marshals.* U.S. Marshals may receive physical examinations and hospitalizations when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(c) *Claimants against the United States.* Claimants whose suits or claims against the United States are being defended by the Department of Justice may be furnished physical examinations to determine the extent and nature of the injuries or disabilities being claimed. Hospitalization is authorized for proper conduct of the examination. Upon completion, forward the report of the examination promptly to the U.S. Attorney involved.

§ 728.56 Treasury Department beneficiaries.

(a) *Potential beneficiaries.* The following may be beneficiaries of the Treasury Department and may be rendered care as set forth below.

(1) Secret Service Special Agents and support personnel.

(2) Secret Service Agents providing protection to certain individuals.

(3) Persons being provided protection by the Secret Service.

(4) Agents of the U.S. Customs Service.

(5) Prisoners (detainees) of the U.S. Customs Service.

(b) *Care authorized.* (1) Secret Service Special Agents may be provided routine annual physical examinations upon request and presentation of a letter of authorization. Conduct and record examinations in the same manner as routine examinations rendered naval officers except that they may be conducted only on an outpatient basis.

If hospitalization is considered desirable in connection with an examination, patient administration department personnel will contact the United States Secret Service at (202) 535-5641 at the address in paragraph (c) of this section. Enter a statement, attesting to the fact that hospitalization is desirable, in item 73 or 75 of the SF 88, as appropriate, before forwarding to the United States Secret Service as directed by the letter of authorization.

(2) Secret Service Agents providing protection to certain individuals and those persons being provided such protection may be rendered all required medical services including hospitalization subject to the provisions of § 728.3.

(3) Agents of the U.S. Customs Service and their prisoners (detainees) may be provided emergency medical treatment and evacuation services to the nearest medical facility (military or civilian) in those remote areas of the United States where no other such services are available. Limit evacuation to the continental United States and do not cross borders. The Navy's responsibility for medical care of such prisoners terminates once the medical emergency has been resolved. Guarding of prisoners, while they or their captors are receiving treatment at naval MTFs, remains the responsibility of the U.S. Customs Service or other appropriate Federal (nonmilitary) law enforcement agencies.

(c) *Reports and records.* (1) When examinations are rendered to Secret Service Special Agents and support personnel, forward one copy of the SF 88, one copy of the SF 93, and one copy of any forms provided with the letter of authorization to United States Secret Service, Administrative Operations Division, Safety and Health Branch, 1800 G Street, NW., Room 845, Washington, DC 20223 or as otherwise directed by the letter of authorization. Provide an information copy to the Deputy Comptroller of the Navy.

(2) Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.57 Department of State and associated agencies.

Eligibility for care under the provisions of this section will be determined by the Department of State, Office of Medical Services.

(a) *Beneficiaries.* Officers and employees of the following agencies, their dependents, and applicants for appointment to such agencies are authorized inpatient and outpatient medical care as set forth below in addition to that care that may be authorized elsewhere within this part (i.e., § 728.53, § 728.55, § 728.56, and § 728.58). Limit dental care to that delineated in paragraph (b)(6) of this section.

(1) Department of State—U.S. Arms Control and Disarmament Agency and the Office of International Conferences.

(2) U.S. Agency for International Development.

(3) International Communications Agency.

(4) ACTION—Peace Corps Staff.

(5) Department of Agriculture—Foreign Agriculture Service.

(6) Department of Commerce—Bureau of Public Roads.

(7) Department of Interior—Bureau of Reclamation and the U.S. Geological Survey.

(8) Department of Transportation—Federal Aviation Administration and the Federal Highway Administration.

(9) Department of Justice—Drug Enforcement Agency.

(10) Department of Treasury—U.S. Customs, U.S. Secret Service, Office of International Affairs (OIA), U.S.—Saudi Arabian Joint Commission for Economic Cooperation (JECOR), and the Internal Revenue Service.

(11) National Aeronautics and Space Administration.

(12) Library of Congress.

(13) Beneficiaries of such other agencies as may be included in the Department of State Medical Program.

(b) *Care authorized—(1) General.* The Foreign Service Act of 1946, as amended, authorizes care delineated in this section. Subject to the restrictions and priorities of § 728.3 and the restrictions of this section, care may be rendered at the expense of the Department of State

or one of the agencies listed in paragraph (a) of this section. The law allows for payment when care is furnished for an illness or injury which results in hospitalization or equal treatment. Outpatient care is only authorized as an adjunct to hospitalization.

(2) *Overseas.* (i) When, in the opinion of the principal or administrative officer of an overseas post of the Department of State, an individual meets the conditions of eligibility, the post will furnish authorization to the naval MTF for care at the expense of the Department of State or one of the agencies listed in paragraph (a) of this section.

(ii) Should the Department of State official determine that the illness or injury does not meet the conditions of eligibility for care at the expense of one of the agencies, all care provided will be at the expense of the patient or patient's sponsor and charged at the full reimbursement rate.

(3) *In the United States.* (i) Care is not authorized for an injury or illness incurred in the United States. Authorizations and other arrangements for care in the United States for individuals incurring injury or illness outside the United States will be provided by the Deputy Assistant Secretary for Medical Services, Department of State, using appropriate authorization form(s). When personnel are admitted in an emergency without prior authorization, the commanding officer of the admitting naval MTF will immediately request authorization from the Deputy Assistant Secretary for Medical Services.

(ii) The extent of care furnished in the United States, to individuals in paragraph (a) of this section who are evacuated to the United States for medical reasons, will be comparable in all respects to that which is authorized or prescribed for these individuals outside the United States. When determined appropriate by the Deputy Assistant Secretary for Medical Services, officers and employees and their accompanying dependents who have returned to the United States for non-medical reasons may be furnished medical care at the expense of one of the above agencies for treatment of an ill-

ness or injury incurred while outside the United States.

(4) *Physical examinations.* The Secretary of State is authorized to provide for comprehensive physical examinations, including dental examinations and other specific testing, of applicants for employment and for officers and employees of the Foreign Service who are U.S. citizens and for their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. An authorization will be executed by an appropriate Department of State official and furnished in duplicate to the naval MTF, listing the type of examination required and stating that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

(5) *Immunizations.* Inoculations and vaccinations are authorized for officers, employees, and their dependents upon written authorization from an appropriate Department of State official. This authorization, in duplicate, will include the type of inoculation or vaccination required and will state that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

(6) *Dental care.* Limit dental care to emergencies for the relief of pain or acute conditions, or dental conditions as an adjunct to inpatient care. Do not provide prosthetic dental appliances.

(c) *Evacuation to the United States.* Should a beneficiary in an overseas naval MTF require prolonged hospitalization, the commanding officer of the overseas facility will report the requirement to the nearest Department of State principal or administrative officer and request authority to return the patient to the United States. Release dependents who decline evacuation to the custody of their sponsor. Aeromedical evacuation may be used per OPNAVINST 4630.25B. Travel of an attendant or attendants is authorized at Department of State expense when the patient is too ill or too young to travel unattended.

(d) *Report.* Complete and submit, per subpart J, a DD 7 (Report of Treatment

Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.58 Federal Aviation Agency (FAA) beneficiaries.

(a) *Beneficiaries.* Air Traffic Control Specialists (ATCS) of the FAA when appropriate authorization has been furnished by the FAA regional representative.

(b) *Authorization.* Written authorization from an FAA Regional Flight Surgeon is required and will include instructions for forwarding the results of services rendered.

(c) *Care authorized.* Subject to the provisions of § 728.3, authorized personnel may be rendered chest x-rays, electrocardiograms, basic blood chemistries, and audiograms, without interpretation in support of the medical surveillance program for ATCS personnel established by the FAA.

(d) *Report.* Complete and submit, per subpart J, a DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) outpatient care is rendered.

§ 728.59 Peace Corps beneficiaries.

(a) *Potential beneficiaries.* (1) Applicants for the Peace Corps.

(2) Peace Corps Volunteers.

(3) Minor children of a Peace Corps volunteer living with the volunteer.

(b) *Care authorized in the United States.* Upon written request of a Peace Corps official, stating care to be provided and disposition of reports, the following may be provided subject to the provisions of § 728.3.

(1) *Physical examinations.* Physical examinations are authorized on an outpatient basis only. Except for interpretation of x-rays, make no assessment of the physical qualifications of examinees.

(i) Preselection physical examination may be provided applicants (volunteers) for the Peace Corps.

(ii) Separation or other special physical examinations may be provided volunteers and their dependents as listed in paragraph (a)(3) of this section. Unless otherwise prescribed in written re-

quests, report such examinations of Peace Corps volunteers on SF-88 and SF-93. Include:

(A) Medical history and systemic review.

(B) Chest x-ray with interpretation.

(C) Complete urinalysis, serology, and blood type.

(D) Pelvic examination and Pap smear for all female volunteers.

(E) Hematocrit or hemoglobin for all females and for all males over 40 years of age.

(F) Electrocardiogram for all volunteers over 40 years of age.

(2) *Immunizations.* Immunizations, as requested, may be provided all beneficiaries listed in paragraph (a) of this section.

(3) *Medical care.* Both inpatient and outpatient care may be provided volunteers for illnesses or injuries occurring during their period of service which includes all periods of training. Dependents of volunteers specified in paragraph (a)(3) of this section are authorized care to the same extent as their sponsor.

(4) *Dental care.* Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. All beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(c) *Care authorized outside the United States—(1) Physical examinations.* Termination physical examinations may be provided volunteers and eligible dependents of volunteers. In most instances, Peace Corps staff physicians will provide these examinations; however, help may be required of naval MTFs for ancillary services.

(2) *Immunizations.* When requested, immunizations may be provided all beneficiaries listed in paragraph (a) of this section.

(3) *Medical care.* When requested in writing by a representative or physician of a Peace Corps foreign service post, volunteers, eligible dependents of volunteers, and trainees of the Peace Corps may be provided necessary medical care at Peace Corps expense. When emergency treatment is rendered without prior approval, forward a request to the Peace Corps foreign service post as soon as possible.

(4) *Dental care.* Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. All beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(5) *Evacuation to the United States.* When a beneficiary in an overseas naval MTF requires prolonged hospitalization, the commanding officer of the overseas facility will report the requirement to the nearest Peace Corps foreign service post and request authorization to return the patient to the United States. Releases custody of dependents to their sponsor when evacuation is declined. Aeromedical evacuation may be used per OPNAVINST 4630.25B. Travel of attendant(s) is authorized when the patient is too ill or too young to travel unattended.

(d) *Report.* Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.60 Job Corps and Volunteers in Service to America (VISTA) beneficiaries.

(a) *Beneficiaries.* Job Corps and VISTA enrollees and Job Corps applicants may be provided services as set forth. For former members, see § 728.53.

(b) *Authorization required—(1) Job Corps enrollees.* Presentation of a Job Corps Identification Card after appointment has been made by the corpsmember's Job Corps center.

(2) *Job Corps applicants.* Presentation of a letter from a screening agency (e.g., State Employment Service) after an appointment has been made by that agency.

(3) *VISTA Volunteers and VISTA Trainees.* A "Blue-Cross and Blue Shield Identification Card" is issued to such personnel as identification. Each card has a VISTA identification number which will be used on all records and correspondence.

(c) *Care authorized.* Normally, medical services are provided only when civilian of VA facilities are not available, or if available, are incapable of

providing needed services. However, upon presentation of an appropriate authorization, the following services may be rendered subject to the provisions of § 728.3.

(1) Job Corps enrollees are authorized emergency medical care upon presentation of their Job Corps Identification Card; however, the corpsmember's Job Corps center should be notified immediately.

(2) Job Corps applicants may be provided preenrollment physical examinations and immunizations on an outpatient basis only.

(3) Job Corps enrollees, VISTA trainees, and VISTA volunteers are authorized:

(i) Outpatient medical examinations, outpatient treatment, and immunizations.

(ii) Inpatient care for medical and surgical conditions which, in the opinion of the attending physician, will benefit from definitive care within a reasonable period of time. When found probable that a patient will require hospitalization in excess of 45 days, notify the Commander, Naval Medical Command (MEDCOM-33) by the most expeditious means.

(iii) Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. Beneficiaries seeking dental care will be requested to furnish, whenever possible, advanced authorization.

(d) *Report.* Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.61 Medicare beneficiaries.

(a) *Care authorized.* Emergency hospitalization and other emergency services are authorized for beneficiaries of the Social Security Health Insurance Program for the Aged and Disabled (Medicare) who reside in the 50 United States and the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Such care in naval

MTFs may be rendered when emergency services, as defined in § 728.61(b), are necessary.

(b) *Emergency services.* Services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(c) *General provisions—(1) Limitations.* Benefit payments for emergency services under Medicare can be made for only that period of time during which the emergency exists. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, discharge or transfer the patient to a facility that participates in Medicare.

(2) *Notification.* Notify the nearest office of the Social Security Administration as soon as possible when a Medicare beneficiary is rendered treatment.

(d) *Report.* Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

Subpart G—Other Persons

§ 728.71 Ex-service maternity care.

(a) *Eligible beneficiaries.* After separation from the service under honorable conditions because of pregnancy, or separated from the service under honorable conditions and found to have been pregnant at the time of separation, the following former members and their newborn infant(s) may be provided care as set forth below. The rendering of this care is subject to the provisions of § 728.3. When certified by medical authorities that the pregnancy existed prior to entry into service (EPTE), maternity benefits are not authorized.

(1) Former women members of the Army, Air Force, Navy, and Marine Corps.

(2) On or after 12 August 1985, former women members of the Commissioned Corps of the United States Public Health Service (USPHS) and the National Oceanic and Atmospheric Administration (NOAA).

(b) *Care authorized.* (1) Former women members may be rendered medical and surgical care in naval MTFs incident to that pregnancy, prenatal care, hospitalization, postnatal care, and, when requirements of SECNAVINST 6300.2A are met, abortions. Limit postnatal care to 6 weeks following delivery. Do not promise civilian sources under any circumstances for either the mother or the infant as such care is not authorized.

(2) Treatment of the newborn infant in USMTFs includes care, both inpatient and outpatient, only during the first 6 weeks (42 days) following delivery. If the newborn infant requires care beyond the 6-weeks postnatal period, the mother or other responsible family member must make arrangements for disposition to private, State, welfare, or another Federal facility.

(c) *Application for care.* In making application for care authorized by this section, former women members should apply either in person or in writing to the Armed Forces inpatient MTF nearest their home and present either their DD 214 (Armed Forces of the United States Report of Transfer or Discharge) or DD 256A (Honorable Discharge Certificate) as proof of eligibility for requested care. In areas with more than one Armed Forces MTF available and capable of providing required care, application should be made to the MTF of the service from which separated, as applicable. Disengagement in such areas to MTFs of other services may be made only when space is not available or capability does not exist in the MTF of the services from which the individual was separated.

(d) *Charges and collection.* Charges and reimbursement procedures for care rendered to beneficiaries in paragraph (a)(2) of this section are the same as prescribed by current regulations for active Coast Guard, USPHS, and NOAA members.

§ 728.72 Applicants for enrollment in the Senior Reserve Officers' Training Program.

When properly authorized, designated applicants (including applicants for enrollment in the 2-year program and Military Science II enrollees applying for Military Science III) may be furnished medical examinations at naval MTFs including hospitalization necessary for the proper conduct thereof. Medical care, including hospitalization, is authorized for diseases contracted or injuries incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for visits of observation.

§ 728.73 Applicants for enlistment or reenlistment in the Armed Forces, and applicants for enlistment in the reserve components.

(a) Upon referral by a commander of a Military Enlistment Processing Station (MEPS), applicants will be furnished necessary medical examinations, including hospitalization when qualifications for service cannot otherwise be determined. Use the hospitalization period only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.74 Applicants for appointment in the regular Navy or Marine Corps and reserve components, including members of the reserve components who apply for active duty.

(a) Necessary medical examinations may be furnished, including hospitalization when qualifications for service cannot otherwise be determined. Use such a period of hospitalization only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.75 Applicants for cadetship at service academies and applicants for the Uniformed Services University of Health Sciences (USUHS).

(a) Upon presentation of a letter of authorization from the Department of Defense Medical Examination Review Board (DODMERB), applicants for cadetship at Service Academies (Navy, Army, Air Force, Coast Guard, and Merchant Marine) and applicants for the Uniformed Services University of Health Sciences (USUHS) will be furnished medical examinations at facilities designated by the DODMERB. Hospitalization is authorized when qualifications for service cannot otherwise be determined. Use the hospitalization period for diagnostic purposes only, and not to correct disqualifying or other defects. Perform examinations and make disposition of completed forms per BUMEDINST 6120.3M.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or at MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.76 Naval Home residents.

Provide necessary medical and dental care, both inpatient and outpatient, to residents of the Naval Home when requested by the Governor of the Home. In an emergency, care may be rendered without prior approval of the Governor; however, the Governor of the Home should be contacted immediately and requested to furnish authorization.

§ 728.77 Secretarial designees.

Subject to the capabilities of the professional staff and the availability of space and facilities, naval MTFs and DTFs will provide treatment to individuals that have been granted Secretarial designee status by any of the three service Secretaries (Navy, Army, or Air Force), the Secretary of Commerce for NOAA personnel, the Secretary of Health and Human Services for USPHS personnel, or the Secretary of Transportation for Coast Guard personnel.

(a) *Potential designees.* Upon a showing of sufficient cause, the Secretary of the Navy may authorize individuals,

not otherwise authorized by law, to receive such care as is available in naval MTFs in the United States. Designation may be extended on a worldwide basis for preadoptive children and wards of active duty members, and for abused dependents delineated in paragraph (a)(6) of this section. Temporary in loco parents or foster parent status of the member with regard to a minor is insufficient for approval. Also, civilian health care under the CHAMPUS program cannot be authorized for other than abused dependents. The Secretary's discretionary authority is exercised most conservatively, however, favorable action is usually taken on requests involving the following situations:

(1) Preadoption proceedings wherein an active duty member or a retired member has taken affirmative legal action to adopt a child.

(2) Custodianships and guardianships authorized by a court order wherein the member is designated by the court as the custodian or guardian and the child is fully dependent upon the active duty or retired member sponsor.

(3) Evaluation and selection of non-beneficiaries who are donor candidates for an organ or tissue transplant procedure in behalf of a military service beneficiary.

(4) Nonbeneficiary participants in officially approved clinical research studies.

(5) Unremarried former spouses who: Require care for a condition incurred during or caused/aggravated by conditions associated with the member's or former member's creditable service; do not qualify under the former spouses act; and do not have medical coverage under an employer-sponsored health plan which will provide for the care required.

(6) Abused dependents of discharged or dismissed former uniformed services members in need of medical or dental care resulting from knowledge of the abuse or for an injury or illness resulting from abuse by the former member. Eligibility will terminate the earliest of 1 year after the date on which the member is discharged or dismissed from a uniformed service, or when care is no longer needed.

(7) In other instances wherein the circumstances clearly merit the providing of treatment in naval MTFs, and in which the best interest of the patient, the Navy, *and* the Government will be served, favorable Secretarial action may result. The mere need of medical care by a former beneficiary or other person, alone, will not support approval of such a request.

(b) *Requests for consideration.* Requests for consideration will be submitted to the Commander, Naval Medical Command (MEDCOM-33) by applicants via their command, when applicable, or by the Medical Department command concerned. Requests should include any pertinent information which will support resolution and a return address. Requests involving:

(1) Preadoption must include a legible reproducible copy of an interim court order or adoption agency placement agreement which names the sponsor and identifies the other participating parties. A petition for a court order is insufficient to support a recommendation for approval.

(2) Custodianships and guardianships must include a legible reproducible copy of the court order, identification of the parties, and also identify any amounts of income to which the ward is entitled.

(3) Participants in clinical research studies must include:

(i) Sufficient clinical information concerning the nature of the study.

(ii) Benefits which may accrue to the individual.

(iii) The extent, if any, to which access by other authorized beneficiaries will be impaired.

(iv) Benefits which will accrue to the command, e.g., enhancement of training, maximum use of specialized facilities, etc.

(v) Recommended duration of designation.

(vi) Whether the consenting individual has been informed concerning the nature of the study, its personal implications, and freely consents.

(4) Unremarried former spouses must include:

(i) A notarized copy of the marriage license.

(ii) A statement attesting to the fact that the sponsoring former spouse

achieved 20 or more years of creditable military service.

(iii) Copy of divorce decree with official date.

(5) Abused dependents must include:

(i) Full name, social security number, grade or rate, branch or service, and date and type of discharge or dismissal of the former member. Such a member must have received a dishonorable or bad-conduct discharge or dismissal from a uniformed service as a result of court-martial conviction for an offense involving abuse of a dependent of the member.

(ii) Full names, social security numbers (if assigned), and relationship to the former member of any dependent in need of medical or dental care to treat adverse health conditions resulting from such dependent's knowledge of the abuse or any injury or illness suffered by the abused person as a result of such abuse.

(c) *Blanket designation.* (1) The Secretary of Defense has granted Secretarial designee status to full-time Schedule "A" faculty members of the Uniformed Services University of Health Sciences (USUHS). They have been provided documentation substantiating their eligibility and, where necessary, an eligibility termination date. These personnel are authorized routine care at the Naval Hospital, Bethesda, MD. At other naval MTFs, only emergency treatment is authorized while they are traveling on official university business. The letter of authorization excludes routine dental care, prosthetic appliances, and spectacles.

(2) The following officials within the Government, the Department of Defense, and military departments have been granted blanket Secretarial designation for medical and emergency dental care in naval MTFs in the United States:

- (i) The President.
- (ii) The Vice President.
- (iii) Members of the Cabinet.
- (iv) Article III Federal Judges.
- (v) U.S. Court of Military Appeals Judges.
- (vi) Members of Congress.
- (vii) The Secretary, Deputy Secretary, and the Assistant Secretaries of Defense.

(viii) The Under Secretary of Defense for Policy.

(ix) The Under Secretary of Defense for Research and Engineering.

(x) The Secretaries, Under Secretaries, and the Assistant Secretaries of the Military Departments.

(d) *Authorization.* Designees will present a signed letter bearing the letterhead of the designating service. Secretarial designees are not included in the DEERS data base and may not possess Government identification cards. Therefore, the only proof of their eligibility for treatment may be the letter of authorization. When a Secretarial designee presents for treatment:

(1) Ask for identification of the individual presenting the letter of authorization to assure that the person seeking care is the individual to whom the letter was issued.

(2) Check the expiration date on the letter of authorization. Many authorizations are issued for only a specified period of time, e.g., abused dependents—no longer than 1 year.

(3) Check to assure that the individual is applying for care authorized by the letter of authorization. Designation is often granted for a specific diagnosis or specific mode of treatment.

(4) Check to assure that the individual has not been designated for care only as specific facility. Many authorizations are granted for conditions or for care that can be rendered only by a specified physician or under a specific program.

(5) Place a copy of the letter of authorization in the individual's Health Record or outpatient treatment record on the left side at the first visit or admission.

(e) *Charges and collection.* (1) Inter-agency rates are applicable for inpatient and outpatient care provided outside the National Capital Region to all individuals listed in paragraph (c)(2) of this section with the exception of Members of Congress. Charges are at full reimbursement rates for Members of Congress provided inpatient or outpatient care outside the National Capital Region.

(2) In the National Capital Region:

(i) Charges are waived for outpatient care provided to all categories listed in paragraph (c)(2) of this section.

(ii) Charge interagency rates for inpatient care of all individual in paragraph (c)(2) of this section except Members of Congress. Charge Members of Congress at full reimbursement rates.

(3) Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered to Secretarial designees whose charges for care have not been waived.

§ 728.78 American Red Cross representatives and their dependents.

(a) *Potential beneficiaries.*

(1) Volunteer workers.

(2) Full-time, paid employees.

(3) Dependents of personnel enumerated in paragraph (a) (1) and (2) of this section when accompanying their sponsor outside the continental United States, including Alaska, Hawaii, and Puerto Rico.

(b) *Care authorized.* (1) When services of the American Red Cross (ARC) have been accepted in behalf of the Federal Government under applicable DOD regulations, beneficiaries in paragraph (a)(1) of this section are considered "employees" of the Government for the purpose of this part and are authorized health care in USMTFs, both in and outside the United States for work-related conditions. See § 728.53(a)(2) regarding the specific application of this authorization.

(2) Beneficiaries enumerated in paragraph (a) (1) and (2) of this section are authorized health care in USMTFs located outside the United States for both work and nonwork-related conditions. See § 728.53(a)(2) for treatment of work-related conditions of those in paragraph (a)(1) of this section.

(3) Beneficiaries identified in paragraph (a) (1), (2), and (3) of this section are authorized emergency care in USMTFs outside the continental United States, including Alaska, Hawaii, and Puerto Rico where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring

domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible non-Federal facilities.

(c) *Records disposal.* Upon completion of treatment of accredited representatives of the American Red Cross or their dependents, forward medical records, including all clinical records and x-ray films, to the Medical Director, National Headquarters, American Red Cross, 20th and D Street NW., Washington, DC 20006.

(d) *Charges and collection.* Charge beneficiaries in paragraph (a) (1) and (2) of this section the rate applicable to officer personnel and dependents in paragraph (a)(3) of this section the dependent rate. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered to ARC personnel or to their dependents.

§ 728.79 Employees of Federal contractors and subcontractors.

(a) *Beneficiaries.* (1) U.S. citizen contractor, engineering, and technical service personnel designated as U.S. Navy Technicians.

(2) Civilian employees of contractors and subcontractors operating under U.S. Government contracts.

(3) Dependents of personnel enumerated in paragraph (a) (1) and (2) of this section when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care authorized.* (1) Beneficiaries identified in paragraph (a) (1) and (2) of this section may be provided emergency care in naval MTFs for illnesses and injuries occurring at work in or outside the United States.

(2) While serving outside the continental United States or in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities, beneficiaries identified in paragraph (a) (1), (2), and (3) of this section may receive hospitalization and necessary outpatient services in naval MTFs on a

reimbursable basis. Except for beneficiaries in paragraph (a)(1) of this section who are serving aboard naval vessels, all others enumerated may only be hospitalized for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(c) *Charges and collection.* Care is authorized on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.80 U.S. Government employees.

(a) Civil service employees of all Federal agencies, including teachers employed by Department of Defense Dependent's Schools (DODDS) and their dependents, may be provided hospitalization and necessary outpatient services, (other than occupational health services), on a reimbursable basis, outside the continental limits of the United States and in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Except for employees who are serving aboard naval vessels, hospitalization may be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(b) Such civilian employees and their dependents may be provided medical, surgical, dental treatment, hospitalization, and optometric care at installations in the United States which have been designated remote by the Secretary of the Navy for the purpose of providing medical care.

(c) The major objective of the following programs for civil service employees, regardless of location, is emergency treatment for relief of minor ailments or injuries to keep the employee on the job:

(1) The Department of Labor, Office of Workers' Compensation Programs (OWCP), governs the overall medical care program for employees of the Government who sustain injuries while in the performance of duty, including diseases proximately caused by conditions of employment (see § 728.53).

(2) Federal civil service employees and applicants for such employment are authorized services as outlined in chapter 22, section XIII, of the Manual of the Medical Department (MANMED). When appropriated fund and nonappropriated fund employees, including unpaid volunteer employees, require emergency and nonemergency occupational health services due to an illness or an injury on the job, provide this limited care through your occupational health service, emergency room, or evening primary care clinic, as appropriate. This care is rendered free of charge to the employee, the employee's command, or insurance carrier. Included with this group are Military Sealift Command (MSC) civilian marine personnel (authorized additional care and services as outlined in BUMINST 6320.52 and care under § 728.53(a)(7)) and members of the National Oceanic and Atmospheric Administration (NOAA) serving with the Navy.

(3) Under the technical control of the Surgeon General of the Army, the DOD Civilian Employees' Health Service is responsible for administering the health program for all Federal civil service employees in the District of Columbia area.

(d) Care, other than occupational health services, is provided on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.81 Other civilians.

(a) *General.* In an emergency, any person may be rendered care in naval MTFs to prevent undue suffering or loss of life or limb. Limit care to that necessary only during the period of the emergency, and if further treatment is indicated, initiate action to transfer the patient to a private physician or civilian facility as soon as possible. Further, subject to the provisions of §728.3, the following personnel are authorized care as set forth.

(b) *Beneficiaries and extent of care.* (1) Provide all occupational health services to civilian employees paid from nonappropriated funds, including Navy exchange employees and service club employees, free of charge (see §728.80(c)(2)). Provide treatment of occupational illnesses and injuries other than in emergencies per rules and regulations of the Office of Workers' Compensation Programs (see §728.53).

(2) Civilians attending the Federal Bureau of Investigation (FBI) Academy, Marine Corps Development and Education Command, Quantico, VA, may be rendered care at the Naval Medical Clinic, Quantico, VA, for emergencies. Such persons who are in need of hospitalization for injuries or disease may be hospitalized and classed as civilian humanitarian nonindigents with the approval of the cognizant hospital's commanding officer. EXCEPTION: Certain individuals, such as employees of the Federal Bureau of Investigation who are injured in the line of duty, may be entitled to care at the expense of the Office of Workers' Compensation Programs (OWCP) (see §728.53).

(3) The following civilians who are injured or become ill while participating in Navy or Marine Corps sponsored sports, recreational or training activities may be rendered care on a temporary (emergency) basis until such time as disposition can be effected to another source of care.

(i) Members of the Naval Sea Cadet Corps.

(ii) Junior ROTC/NDCC (National Defense Cadet Corps) cadets.

(iii) Civilian athletes training or competing as part of the U.S. Olympic effort.

(iv) Civilians competing in Navy or Marine Corps sponsored competitive meets.

(v) Members of Little League teams and Youth Conservation groups.

(vi) Boy Scouts and Girl Scouts of America.

(4) Other civilian personnel included below are not normally eligible for care in naval MTFs; however, under the conditions set forth, care may be rendered.

(i) *Potential beneficiaries.*

(A) Civilian representatives of religious groups.

(B) Educational institutions representatives.

(C) Athletic clinic instructors.

(D) USO representatives.

(E) Celebrities and entertainers.

(F) Social agencies representatives.

(G) Others in a similar status to those in §728.81(b)(4)(i) (A) through (F).

(H) News correspondents.

(I) Commercial airline pilots and employees.

(J) Volunteer workers. This category includes officially recognized welfare workers, other than Red Cross.

(ii) *Care authorized.* (A) Persons enumerated in paragraph (b)(4)(i) (A) through (G) of this section, who are contracted to provide direct services to the Armed Forces and who are acting under orders issued by the Department of Defense or one of the military departments to visit military commands overseas, and their accompanying dependents, may be provided medical care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate. Limit inpatient care to acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Routine dental care, other than dental prostheses and orthodontia, is authorized on a space available basis outside the United States, provided such care is not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(B) Persons enumerated in paragraph (b)(4)(i) (H) and (I) of this section are authorized emergency medical and dental care in naval MTFs outside the 48

contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate.

(C) Persons enumerated in paragraph (b)(4)(i)(J) of this section, both within and outside the 48 contiguous United States and the District of Columbia, may receive care in naval MTFs for injuries or diseases incurred in the performance of duty as beneficiaries of OWCP (see § 728.53). Additionally, if such volunteers are sponsored by an international organization (e.g., the United Nations) or by a voluntary non-profit-relief agency registered with and approved by the Advisory Committee on Voluntary Aid (e.g., CARE), they may receive other necessary non-emergency medical care and occupational health services while serving outside the 48 contiguous United States and the District of Columbia.

(c) *Charges and collection.* Care is provided on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.82 Individuals whose military records are being considered for correction.

Individuals who require medical evaluation in connection with consideration of their individual circumstances by the Navy, Army, and Air Force Board for Correction of Military Records are authorized evaluation, including hospitalization when necessary for the proper conduct thereof.

§ 728.83 Persons in military custody and nonmilitary Federal prisoners.

(a) *Potential beneficiaries.*

(1) Military prisoners.

(2) Nonmilitary Federal prisoners.

(3) Enemy prisoners of war and other detained personnel.

(b) *Care authorized*—(1) *Military prisoners.* (i) Whose punitive discharges have been executed but whose sentences have not expired are authorized all necessary medical and dental care.

(ii) Whose punitive discharges have been executed and who require hos-

pitalization beyond expiration of sentences are not eligible for care but may be hospitalized as civilian humanitarian nonindigents until final disposition can be made to some other appropriate facility.

(iii) On parole pending completion of appellate review or whose parole changes to an excess leave status following completion of sentence to confinement while on parole are members of the military service and as such are authorized care as outlined in subpart B.

(iv) On parole whose punitive discharge has been executed are not members of the military service and are therefore not entitled to care at Government expense. If the circumstances are exceptional, individuals herein who are not authorized care may request Secretarial designee status under the provisions of § 728.77.

(2) *Nonmilitary Federal prisoners.* Under the provisions of this section, nonmilitary Federal prisoners are authorized only emergency medical care. When such care is being rendered, the institution to which prisoners are sentenced must furnish necessary guards to effectively maintain custody of prisoners and assure the safety of other patients, staff members, and residents of the local area. Under no circumstances will military personnel be voluntarily used to guard or control such prisoners. Upon completion of emergency care, make arrangements for immediate transfer of the prisoners to a nonmilitary MTF or for return to the facility to which sentenced.

(3) *Enemy prisoners of war and other detained personnel.* Subject to the provisions of § 728.3, enemy prisoners of war and other detained personnel are entitled to and may be rendered all necessary medical and dental care.

(c) *Charges and collection.* Care provided individuals enumerated in § 728.83(b)(1) (ii), (iv), and (2) is on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

Subpart H—Adjuncts to Medical Care

§ 728.91 General.

Adjuncts to medical care include but are not limited to prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, wheel chairs, hospital beds, and similar medical support items or aids which are required for the proper care and management of the condition being treated. Generally, expenses incurred for procurement of such items, either from civilian sources as supplemental care or from stocks maintained by the facility, are payable from operation and maintenance funds available for support of naval MTFs. However, certain adjuncts may be cost-shared under CHAMPUS for CHAMPUS-eligible individuals under circumstances enumerated in the cooperative care or services criteria of § 728.4(z).

§ 728.92 Policy.

(a) Provide adjuncts to medical care to eligible beneficiaries receiving inpatient or outpatient care when, in the opinion of the attending physician, such adjuncts will offer substantial assistance in overcoming the handicap or condition and thereby contribute to the well-being of the beneficiary.

(b) Unless necessary for humanitarian reasons, do not furnish orthopedic and prosthetic appliances on an elective basis to members of the naval service with short periods of service remaining when the defect requiring the appliance existed prior to entry into

service and when such members will be separated from the service because of these defects.

(c) For active duty members, make the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear the same quantity as provided in the initial clothing allowance.

(d) Base the number of orthopedic and prosthetic appliances issued or replaced for other authorized recipients upon the individual's requirements as determined by the attending physician to be consistent with the highest standards of modern medicine.

(e) Former members of the uniformed service should be advised that they may obtain durable medical equipment, medical care, and adjuncts from Veterans Administration facilities.

(f) Dependents are authorized certain adjuncts per §§ 728.31 (c) and (d) and in instances where items are not normally authorized at the expense of the Government, they may be provided at cost to the United States if available from Government stocks under the following conditions:

(1) Outside the United States.

(2) At specific stations within the United States which have been authorized by the Secretary of the Navy to sell these items.

§ 728.93 Chart of adjuncts.

The following chart and footnotes provide information relative to adjuncts which may be furnished the several categories of beneficiaries eligible for medical care at naval MTFs.

Adjuncts	Active duty and retired members	Others authorized the same benefits as active duty or retired members ⁽²⁾	Dependents authorized the same benefits	Other beneficiaries ⁽²⁾
Ambulance service	Yes	Yes	Yes ⁽¹⁾	No
Artificial eyes	Yes	Yes	Yes	Maybe ⁽³⁾
Artificial limbs	Yes	Yes	Yes	Maybe ⁽³⁾
Contact or special lenses ⁽¹¹⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Maybe ⁽²⁾ (4) (6)	No
Crutches ⁽⁷⁾	Yes	Yes	Yes	Yes
Dental prostheses	Yes	Yes	Maybe ⁽⁹⁾	Maybe ⁽⁹⁾
Elastic stockings	Yes	Yes	Yes	Yes
Hearing aids ⁽¹⁰⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Maybe ⁽²⁾	Maybe ⁽³⁾
Hearing aid parts and batteries ..	Yes ⁽¹⁰⁾	Yes ⁽¹⁰⁾	Maybe ⁽²⁾ (10)	No
Hospital beds ⁽⁷⁾	Yes	Yes	Yes	Yes
Joint braces	Yes	Yes	Yes	Yes
Orthopedic footwear	Yes	Yes	Maybe ⁽²⁾	Maybe ⁽³⁾
Prosthetic devices, other ⁽⁷⁾	Yes	Yes	Maybe ⁽²⁾	No
Respirators and inhalators ⁽⁷⁾	Yes	Yes	Yes	Yes ⁽¹⁾
Resuscitators ⁽⁷⁾	Yes	Yes	Yes	Yes ⁽¹⁾
Spectacles	Yes	Yes	Maybe ⁽²⁾ (6)	No
Walking irons ⁽⁷⁾	Yes	Yes	Yes	Yes

Adjuncts	Active duty and retired members	Others authorized the same benefits as active duty or retired members ⁽²⁾	Dependents authorized the same benefits	Other beneficiaries ⁽³⁾
Wheel chairs ⁽⁷⁾	Yes	Yes	Yes	Yes

¹ When considered medically appropriate by the attending physician.
² See § 728.92(f).
³ Outside the United States and at designated remote stations when considered medically appropriate by the attending physician.
⁴ Contact or special lenses are not to be issued solely for cosmetic reasons. Further guidelines are contained in NAVMEDCOMINST 6810.1.
⁵ In addition to the hearing aid, include in initial issue one spare receiver cord, approximately 1 month's supply of batteries, and a statement indicating make, model, type of receiver, serial number, code, part numbers, "B" battery voltage, and type of "A" and "B" batteries, as appropriate. Provide replacement of hearing aids upon the same basis as initial issue and, except in unusual circumstances, will not be replaced within 2 years of the initial furnishing or the last replacement of the appliance.
⁶ Spectacles, contact lenses, or intraocular lenses may be provided dependents with eye conditions which require these items for complete medical or surgical management of a condition other than ordinary refractive error. For further information, consult NAVMEDCOMINST 6810.1.
⁷ May be loaned on a custody basis at the discretion of the attending physician.
⁸ See subpart of this part relating to specific beneficiary.
⁹ When considered by the attending physician and dentist to be an adjunct to a medical or surgical condition other than dental and when in consonance with existing legislation and directives.
¹⁰ For further guidelines, consult BUMEDINST 6320.41B.
¹¹ Includes intraocular lenses required for implantation upon removal of cataracts.

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

§ 728.101 General.

(a) *Notice of eligibility (NOE).* While the NOE is basically a document that substantiates entitlement to a disability benefit equal to pay and allowances, it may be accepted when required to substantiate eligibility for benefits other than pay and allowances, i.e., treatment in USMTFs under the provisions of title 10, United States Code.

(b) *Physical disability benefits.* The following, excerpted and paraphrased from SECNAVINST 1770.3, paragraph 10, is applicable when a reservist may be entitled to physical disability benefits.

(1) When a notice of eligibility (NOE) has been issued to a member hospitalized in a naval MTF and the attending physician is of the opinion that recovery is not anticipated or that the reservist is not expected to be fit for return to full duty within a reasonable period, a medical board will be convened and the case managed the same as that of a Regular member. Assure that a copy of the NOE accompanies the medical board report forwarded to the Central Physical Evaluation Board. Disability benefits, equal to pay and allowances, will continue in such instances until final disposition.

(2) There is no limited duty status, per se, for inactive reservists. However, if the attending physician determines that a reservist is temporarily unfit for full duty, but will be fit for full duty following a period of convalescence or following duty with physical limitations, not to exceed 6 months, the physician may return the reservist to duty with a summary of the hospitalization or treatment. The summary will set forth the limitations posed by the member's disability and the period of such limitations. Followup hospitalization, treatment, and evaluation for the same condition may be provided at USMTFs during the period of restricted duty, if required. If, during the period of the restricted duty, it appears that the reservist will be *permanently* unfit for full duty, promptly authorize the reservist to report for evaluation, treatment if required, and appearance before a medical board at the nearest naval MTF capable of accomplishing same. Admission to the sicklist is authorized, when required. Should the medical board recommend appearance before a physical evaluation board, disability benefits equal to pay and allowances should continue until final disposition is effected.

§ 728.102 Care from other than Federal sources.

The provisions of this subpart do not authorize care for reservists at other than Federal facilities nor out of funds available for operation of USMTFs

(supplemental care) after a period of active duty or a period of training duty ends, including travel to and from such training. Such care may be rendered under the provisions of part 732 of this chapter.

Subpart J—Initiating Collection Action on Pay Patients

§ 728.111 General.

The Comptroller of the Navy has approved a system of transactions that generates reports to COMNAV MEDCOM on unfunded reimbursable transactions. The purpose of the final report is to provide data on services furnished by naval health care facilities for which central collection from other Government agencies and private parties is required.

§ 728.112 Responsibilities.

(a) *Patient administration departments.* The initiation of the collection process begins with patient administration departments. Collection action cannot be accomplished unless patient administration departments take the initial step to complete:

(1) *DD 7, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (part A).* Prepare a separate substantiating DD 7, in triplicate, for each category of pay patient receiving inpatient care. At the end of each day that any pay patient is admitted, submit DD 7's to the collection agent.

(2) *DD 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (part B).* Prepare a separate substantiating DD 7A, in triplicate, for each category of pay patient receiving outpatient care. At the end of each day that any pay patient is treated on an outpatient basis, submit DD 7A's to the collection agent.

(b) *Collection agents.* Upon receipt of a completed DD 7 or DD 7A, collection agents will take the action indicated in paragraph 24304 of the Resource Management Handbook, NAVMED P-5020, to effect central collection action.

§ 728.113 Categories of pay patients.

The categories of patients for whom collection action must be initiated are:

(a) *Coast Guard.* (1) Active Officers; (2) Retired Officers; (3) Active Enlisted; (4) Retired Enlisted; (5) Dependents; (6) Cadets.

(b) *Public Health Service.* (1) Active Officers; (2) Retired Officers; (3) Dependents of Officers.

(c) *National Oceanic and Atmospheric Administration (NOAA).* (1) Active Officers; (2) Retired Officers; (3) Dependents of Officers.

(d) *Foreign.* (1) NATO Officers (Except Canadians provided care under the comparable care agreement.); (2) NATO Enlisted (Except Canadians provided care under the comparable care agreement.); (3) NATO Dependents; (4) Civilians Accompanying NATO Members; (5) Foreign Military Sales (FMS) Officers; (6) FMS Enlisted; (7) FMS Dependents; (8) FMS Civilians; (9) Military Grant Aid Officers; (10) Military Grant Aid Enlisted; (11) Military Grant Aid Dependents; (12) Military Grant Aid Civilians; (13) Military Officers From Other Than NATO Nations; (14) Military Enlisted From Other Than NATO Nations; (15) Dependents of Officers and Enlisted From Other Than NATO Nations; (16) Civilians Accompanying Military Members of Other Than NATO Nations; (17) Nationals and Their Dependents.

(e) *Secretarial designees not exempted from paying.*

(f) *Others.* (1) Merchant Marines; (2) Military Sealift Command (MSC) Personnel; (3) Public Health Service beneficiaries (Other than Commissioned Corps); (4) Veterans Administration beneficiaries; (5) Peace Corps beneficiaries; (6) Job Corps beneficiaries; (7) Volunteers In Service to America (VISTA) beneficiaries; (8) Office of Workers Compensation Program (OWCP) beneficiaries; (9) Bureau of Employees Compensation (BEC) beneficiaries; (10) Department of State and Other Federal Agencies beneficiaries (prepare a separate form for each Federal agency); (11) Civilian Humanitarian Nonindigents (CHNI); (12) Trust Territory beneficiaries; (13) Others not specified above who are not entitled to health benefits at the expense of the Government.

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

Sec.

732.1 Background.

732.2 Action.

Subpart B—Medical and Dental Care from Nonnaval Sources

732.11 Definitions.

732.12 Eligibility.

732.13 Sources of care.

732.14 Authorized care.

732.15 Unauthorized care.

732.16 Emergency care requirements.

732.17 Nonemergency care requirements.

732.18 Notification of illness or injury.

732.19 Claims.

732.20 Adjudication authorities.

732.21 Medical board.

732.22 Recovery of medical care payments.

732.23 Collection for subsistence.

732.24 Appeal procedures.

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

732.25 Accounting classifications for nonnaval medical and dental care expenses.

732.26 Standard document numbers.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1071–1088, 5031, 6148, 6201–6203, and 8140; and 32 CFR 700.1202.

SOURCE: 52 FR 32297, Aug. 27, 1987, unless otherwise noted.

Subpart A—General

§ 732.1 Background.

When a U.S. Navy or Marine Corps member or a Canadian Navy or Marine Corps member receives authorized care from other than a Navy treatment facility, care is under the cognizance of the uniformed service medical treatment facility (USMTF) providing care, the USMTF referring the member to another treatment source, or under the provisions of this part. If such a member is not receiving care at or under the auspices of a Federal source, responsibility for health and welfare, and the adjudication of claims in connection with their care, remains within the Navy Medical Department. Part 728 of this chapter and NAVMEDCOMINST

6320.18 contain guidelines concerning care for other eligible beneficiaries, not authorized care by this part.

§ 732.2 Action.

Ensure that personnel under your cognizance are made aware of the contents of this part. Failure to comply with contents may result in delayed adjudication and payment or may result in denial of Navy financial responsibility for expenses of maternity, medical, or dental care obtained.

Subpart B—Medical and Dental Care From Nonnaval Sources

§ 732.11 Definitions.

Unless otherwise qualified in this part the following terms when used throughout are defined as follows:

(a) *Active duty.* Full-time duty in the active military service of the United States. Includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active duty for training.* A specified tour of active duty for Reserves for training under orders that provides for automatic reversion to non-active duty status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service. The period of duty includes travel to and from training duty, not in excess of the allowable constructive travel time prescribed by SECNAVINST 1770.3 and paragraphs 10242 and 10243 of DOD Military Pay and Allowances Entitlements Manual.

(c) *Constructive return.* For purposes of medical and dental care, an unauthorized absentee's return to military control may be accomplished through notification of appropriate military authorities as outlined below.

(1) For members in an unauthorized absentee (UA) status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care that

Department of the Navy, DoD

§ 732.11

the Navy accepts responsibility for a naval member's care. The naval activity providing this information must also provide documentation of such notification to the appropriate adjudication authority in § 732.20.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested, while in a UA status, by civil authorities for a civil offense and a naval authority has been notified that the member can be released to military control.

(2) When a naval member has been arrested by civil authorities for a civil offense while in a UA status and the offense does not allow release to military control, constructive return is not accomplished. The individual is responsible for medical and dental care received prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(d) *Designated Uniformed Services Treatment Facilities (Designated USTFs)*. Under Pub. L. 97-99, the following facilities are "designated USTFs" for the purpose of rendering medical and dental care to all categories of individuals entitled to care under this part.

(1) *Sisters of Charity of the Incarnate Word Health Care System*, 6400 Lawndale, Houston, TX 77058 (713) 928-2931 operates the following facilities:

(i) St. John Hospital, 2050 Space Park Drive, Nassau Bay, TX 77058, telephone (713) 333-5503. Inpatient and outpatient services.

(ii) St. Mary's Hospital Outpatient Clinic, 404 St Mary's Boulevard, Galveston, TX 77550, telephone (409) 763-5301. Outpatient services only.

(iii) St. Joseph Hospital Ambulatory Care Center, 1919 La Branch, Houston, TX 77002, telephone (713) 757-1000. Outpatient services only.

(iv) St Mary's Hospital Ambulatory Care Center, 3600 Gates Boulevard, Port Arthur, TX 77640 (409) 985-7431. Outpatient services only.

(2) *Inpatient and outpatient services*. (i) Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211, telephone (301) 338-3693.

(ii) Alston-Brighton Aid and Health Group, Inc., Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135, telephone (617) 782-3400.

(iii) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, telephone (718) 390-5547 or 6007.

(iv) Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144, telephone (206) 326-4100.

(3) *Outpatient services only*. (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103 (207) 774-5805.

(ii) Lutheran Medical Center, Downtown Health Care Services, 1313 Superior Avenue, Cleveland, OH 44113, telephone (216) 363-2065.

(e) *Duty status*. The situation of the claimant when maternity, medical, or dental care is received. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, performing active duty for training or inactive duty training, are also considered in a duty status during their allowable constructive travel time to and from training.

(f) *Emergency care*. Medical treatment of severe life threatening or potentially disabling conditions which result from accident or illness of sudden onset and necessitates immediate intervention to prevent undue pain and suffering or loss of life, limb, or eyesight and dental treatment of painful or acute conditions.

(g) *Federal facilities*. Navy, Army, Air Force, Coast Guard, Veterans Administration, and USTFs (former U.S. Public Health Service facilities listed in § 732.11(d).

(h) *Inactive duty training*. Duty prescribed for Reserves by the Secretary of the Navy under Section 206 of Title 37, United States Code, or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary of the Navy and performed by Reserves on a voluntary basis in connection with the prescribed training or maintenance activities of units to which they are assigned.

(i) *Maternity emergency*. A condition commencing or exacerbating during pregnancy when delay caused by referral to a uniformed services medical

treatment facility (USMTF) or designated USTF would jeopardize the welfare of the mother or unborn child.

(j) *Member.* United States Navy and Marine Corps personnel, Department of National Defence of Canada Navy and Marine Corps personnel, and Navy and Marine Corps personnel of other NATO Nations meeting the requirements for care under this part.

(k) *Non-federal care.* Maternity, medical, or dental care furnished by civilian sources (includes State, local, and foreign MTFs).

(l) *Nonnaval care.* Maternity, medical, or dental care provided by other than Navy MTFs. Includes care in other USMTFs, designated USTFs, VA facilities, as well as from civilian sources.

(m) *Office of Medical Affairs (OMA) or Office of Dental Affairs (ODA).* Designated offices, under program management control of COMNAVMEDCOM and direct control of regional medical commands, responsible for administrative requirements delineated in this part. Responsibilities and functional tasks of OMAs and ODAs are outlined in NAVMEDCOMINST 6010.3.

(n) *Prior approval.* Permission granted for a specific episode of necessary but nonemergent maternity, medical, or dental care.

(o) *Reservist.* A member of the Naval or Marine Corps Reserve.

(p) *Supplemental care—(1) Operation and maintenance funds, Navy.* Supplemental care of all uniformed services members, at Navy expense, encompasses only inpatient or outpatient care augmenting the capability of a naval MTF treating a member. Such care is usually obtained from civilian sources through referral by the treating naval MTF. If a member, authorized care under this part, is admitted to or is being treated on an outpatient basis at any USMTF, all supplemental care is the financial responsibility of that facility regardless of whether the facility is organized or authorized to provide needed health care. The cost of such care is chargeable to operation and maintenance funds (OM&N) available for operation of the USMTF requesting the care regardless of service affiliation of the member (see part 728 of this chapter for such care under Navy Medical Department facilities).

(2) *Nonnaval medical and dental care program funds.* Adjudication authorities will pay claims, under this part, for care received as a result of a referral when:

(i) A United States Navy or Marine Corps member or a Canadian Navy or Marine Corps member requires care beyond the capability of the referring USMTF and care is obtained for such a member *not* admitted to or *not* being treated on an outpatient basis by a USMTF, and

(ii) The referring USMTF is not organized nor authorized to provide the needed health care.

(3) *Other uniformed services supplemental care programs.* In addition to services that augment other USMTF's capabilities, supplemental care programs of the other uniformed services include care and services comparable to those authorized by this part, e.g., emergency care and pre-approved non-emergency care.

(q) *Unauthorized absence.* Absence or departure without authority from a member's command or assigned place of duty.

(r) *Uniformed Services Medical Treatment Facilities (USMTF).* Health care facilities of the Navy, Army, Air Force, Coast Guard, and the former U.S. Public Health Service facilities listed in paragraph (d) of this section designated as USTFs per DOD and Department of Health and Human Services directives.

§ 732.12 Eligibility.

(a) *Regular members.* To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense, Regular active duty United States naval members and Canadian Navy and Marine Corps members must be in a duty status when care is provided.

(b) *Reservists.* (1) Reservists on active duty for training and inactive duty training, including leave and liberty therefrom, are considered to be in a duty status while participating in training. Accordingly, they are entitled to care for illnesses and injuries occurring while in that status.

(2) Reservists are entitled to care for injuries and illnesses occurring during

direct travel enroute to and from active duty training (ACDUTRA) and to and from inactive duty training.

(c) *NATO naval members.* Naval members of the NATO Status of Forces Agreement (SOFA) nations of Belgium, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom, are authorized *outpatient care only* under the provisions of this part when stationed in or passing through the United States in connection with official duties. Public Law 99-591 *prohibits inpatient care* of these foreign military members in the United States at the expense of the United States Government. The other NATO SOFA Nation, Canada, entered into a comparable care agreement with the United States requiring the United States to provide inpatient and outpatient care under the provisions of this part to members of the Department of National Defence of Canada receiving care in the United States.

(d) *Absent without authority.* Naval members absent without authority during an entire episode of treatment are not eligible for non-Federal medical, dental, or emergency maternity care at Government expense. The only exception occurs when a member's illness or injury is determined to have been the direct cause of the unauthorized absentee status. In such an instance, eligibility will be:

(1) Determined to have existed from the day and hour of such injury or illness provided the member was not in an unauthorized absentee status prior to the onset of the illness or injury and initiation of treatment.

(2) Retained when the member is returned directly to military control.

(3) Terminated should the member return to an unauthorized absentee status immediately after completion of treatment. Departmental level (MEDCOM-333 for medical and MEDCOM-06 for dental) review is required before benefits may be extended.

(e) *Constructive return.* When constructive return, defined in §732.11(c), is effected, entitlement will be determined to have existed from 0001 hours of the day of constructive return, not

necessarily the day and hour care was initiated.

§ 732.13 Sources of care.

(a) *Initial application.* If a member requires maternity, medical, or dental care and naval facilities are unavailable, make initial application to other available Federal medical or dental facilities or USTFs. When members are stationed in or passing through a NATO SOFA nation and U.S. facilities are unavailable, ensure that members make initial application for emergency and nonemergency care to military facilities of the host country, or if applicable, to civilian sources under the NATO SOFA nation's health care program. When hospitalized in Hawaii, Alaska, or in a foreign medical facility, members and responsible commands will comply with OPNAVINST 6320.6.

(b) *Secondary sources.* When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from non-Federal sources under this part.

§ 732.14 Authorized care.

(a) *Medical.* (1) Consultation and treatment provided by physicians or at medical facilities, and procedures not involving treatment when directed by COMNAVMEDCOM, are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc. See §732.17 for prior approval of these services in non-emergency situations.

(2) When transplant (including bone-marrow) is the treatment of choice, COMNAVMEDCOM approval is required. If time permits, telephone (A) 294-1102, (C) (202) 653-1102 during regular hours or (A) 294-1327, (C) 653-1327 after regular duty hours, and followup with a message. Request approval via message in nonemergency situations.

(b) *Maternity episode.* If a member authorized care under this part qualifies for care under the provisions of §732.17(c) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test,

etc.) is a part of the mother's admission expenses. Regardless of circumstances necessitating delivery in a civilian facility or how charges are separated on the bill, charges will be paid from funds available for care of the mother. If the infant becomes a patient in his or her own right—through an extension of the birthing hospital stay because of complications, transfer to another facility, or subsequent admission—the provisions of part 728 of this chapter and NAVMEDCOMINST 6320.18 are applicable, and the sponsor becomes responsible for a part of the medical expenses incurred.

(c) *Dental.* (1) With prior approval, the following may be provided:

(i) All types of treatment (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of existing dental prostheses when neglect of the repair would result in unserviceability of the appliance.

(iv) Any type of treatment adjunctive to medical or surgical care.

(v) All x-rays, drugs, etc., required for treatment or care in paragraphs (c)(1) (i) through (iv) of this section.

(2) In emergencies (no prior approval), only measures appropriate to relieve pain or abort infection are authorized.

(d) *Eye refractions and spectacles.* Includes refractions of eyes by physicians and optometrists and furnishing and repairing spectacles.

(1) *Refractions.* A refraction may be obtained from a civilian source at Government expense only when Federal facilities are not available, no suitable prescription is in the member's Health Record, and the cognizant OMA or referring USMTF has given prior approval.

(2) *Spectacles.* When a member has no suitable spectacles and the lack thereof, combined with the delay in obtaining suitable ones from a Federal source would prevent performance of duty; repair, replacement, or procurement from a civilian source may be authorized upon initiation of an after-the-fact

request per § 732.17. Otherwise, the prescription from the refractionist, with proper facial measurements, must be sent for fabrication to the appropriate dispensing activity set forth in NAVMED COMINST 6810.1. See § 732.15(g) concerning contact lenses.

§ 732.15 Unauthorized care.

The following are not authorized by this part:

- (a) Chiropractic services.
- (b) Vasectomies.
- (c) Tubal ligations.
- (d) Breast augmentations or reductions.
- (e) Psychiatric care, beyond the initial evaluation.
- (f) Court ordered care.
- (g) Contact lenses.
- (h) Other elective procedures.

§ 732.16 Emergency care requirements.

Only in a bona fide emergency will medical, maternity, or dental services be obtained under this part by or on behalf of eligible personnel without prior authority as outlined below.

(a) *Medical or dental care.* A situation where the need or apparent need for medical or dental attention does not permit obtaining approval in advance.

(b) *Maternity care.* When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a USMTF or USTF, would jeopardize the welfare of the mother or unborn child, the following constitutes indications for admission to or treatment at a non-Federal facility:

(1) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.

(2) Spontaneous abortion, with first trimester hemorrhage.

(3) Premature or term labor with delivery.

(4) Severe pre-eclampsia.

(5) Hemorrhage, second and third trimester.

(6) Ectopic pregnancy with cardiovascular instability.

(7) Premature rupture of membranes with prolapse of the umbilical cord.

(8) Obstetric sepsis.

(9) Any other obstetrical condition that, by definition, constitutes an emergency circumstance.

§ 732.17 Nonemergency care requirements.

Members are cautioned not to obtain nonemergency care from civilian sources without prior approval from the cognizant adjudication authority in § 732.20. Obtaining nonemergency care, other than as specified herein, without documented prior approval may result in denial by the Government of responsibility for claims arising from such care.

(a) *Individual prior approval.* (1) Submit requests for prior approval of non-emergency care (medical, dental, or maternity) from non-Federal sources to the adjudication authority (§ 732.20) serving the geographic area where care is to be obtained. When the requirements of § 732.14(d)(2) are met and spectacles have been obtained, request after-the-fact approval per this paragraph.

(2) Submit requests on a NAVMED 6320/10. Statement of Civilian Medical/Dental Care, with blocks 1 through 7 and 19 through 25 completed. Assistance in completing the NAVMED 6320/10 can be obtained from the health benefits advisor (HBA) at the nearest USMTF.

(3) Upon receipt, the adjudication authority will review the request and, if necessary, forward it to the appropriate chief of service with an explanation of non-Federal care regulations pertaining to the request. The chief of service will respond to the request within 24 hours. The adjudication authority will then complete blocks 26 and 27, and return the original of the approved/disapproved NAVMED 6320/10 to the member.

(b) *Blanket prior approval.* (1) Recruiting offices and other activities far removed from USMTFs, uniformed services dental treatment facilities (USDTFs), designated USTFs, and VA facilities may request blanket approval for civilian medical and dental care of assigned active duty personnel. Letter requests should be submitted to the adjudication authority (§ 732.20) assigned responsibility for the geographic area of the requestor.

(2) With full realization that such blanket approval is an authorization to obligate the Government without indi-

vidual prior approval, adjudication authorities will ensure that:

(i) Each blanket approval letter specifies a maximum dollar amount allowable in each instance of care.

(ii) The location of the activity receiving blanket approval authority is clearly delineated.

(iii) Travel distance and time required to reach the nearest USMTF, USDTF, designated USTF, or VA facility have been considered.

(iv) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(v) COMNAVMEDCOM (MEDCOM-333) is made an information addressee on each letter of authorization.

(c) *Maternity care.* (1) Pregnant active duty members residing outside Military Health Services System (MHSS) inpatient catchment areas of uniformed services facilities (including USTFs), designated in Volumes I, II, and III of MHSS Catchment Area Directories, are permitted to choose whether to deliver in a closer civilian hospital or travel to a USMTF or USTF for delivery. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member must obtain individual prior approval as outlined in paragraph (a) of this section. Adjudication authorities should not approve requests from members residing within an inpatient MHSS catchment area unless:

(i) Capability does not (did not) exist at the USMTF or other Federal MTF serving her catchment area.

(ii) An emergency situation necessitated delivery or other treatment in a non-Federal facility (§ 732.16(b)).

(2) Normal delivery at or near the expected delivery date should not be considered an emergency for members residing within an MHSS inpatient catchment area where delivery was expected to occur and, unless provided for in this part, will not be reason for delivery in a civilian facility at Government expense.

(3) When granted leave that spans the period of an imminent delivery, the pregnant member should request a copy of her complete prenatal care

records from the prenatal care physician. The physician should note in the record whether the member is clear to travel. If receiving prenatal care from a USMTF, the HBA will assist the member in obtaining a statement bearing the name of the MTF (may be an OMA) with administrative responsibility for the geographic area of her leave address, including the telephone number of the head of the patient administration department or HBA, if available. If a member is receiving prenatal care from other than a USMTF, she should avail herself of the services of the nearest HBA to effect the aforesaid services. This statement should be attached to the approved leave request. In normal deliveries, requests for after-the-fact approval should be denied when members have not attempted to adhere to the provisions of this part.

(4) Upon arrival at the designated leave address, members should contact the MTF indicated on the statement attached to their leave request. The MTF will make a determination whether the member's leave address falls within the inpatient catchment area of a USMTF or USTF with the capability of providing needed care. If no such USMTF or USTF exists, the member will be given the opportunity to choose to deliver in a civilian hospital closer to her leave address or travel to the most accessible USMTF or USTF with capability for maternity care.

(5) Upon determination that civilian sources will be used for maternity care, the MTF listed on the attachment to the leave papers will inform the member that she (or someone acting in her behalf) must notify that MTF of the member's admission for delivery or other inpatient care so that medical cognizance can be initiated.

(6) Automatically grant prior or retroactive approval, as the situation warrants, to members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders.

(d) *Nonemergency care without prior approval.* (1) If it becomes known that a member intends to seek medical or dental care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the

use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. Request that the member sign a statement on an SF 600, Chronological Record of Medical Care, or an SF 603 or 603A, Health Record, Dental as appropriate, for inclusion in the member's Health Record. The statement must specify that counseling has been accomplished, and that the member understands the significance of receiving unauthorized civilian care. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling will include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that should hospitalization become necessary, or other time is lost from the member's place of duty, such lost time may be chargeable as "ordinary leave."

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier or when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member's fitness for continued service.

(2) If it becomes known that a member has already received non-Federal medical care without prior authorization, refer the member to a uniformed services medical officer (preferably Navy) to determine fitness for continued service. At this time, counseling measures delineated in paragraph (d)(1)(iii), (iv), and (v) of this section must be taken.

§ 732.18 Notification of illness or injury.

(a) *Member's responsibility.* (1) If able, members must notify or cause their

parent command, the nearest naval activity, or per OPNAVINST 6320.6, the nearest U.S. Embassy or consulate when hospitalized in a foreign medical facility to be notified as soon as possible of the circumstances requiring medical or dental attention in a non-Federal facility. The member will also assure (request the facility to make notification if unable to do so personally) that the following information is passed to the adjudication authority serving the area of the source of care (§ 732.20). This notification is in addition to the requirements of article 4210100 of the Military Personnel Command Manual (MILPERSMAN) or Marine Corps Order 6320.3B, as appropriate. The adjudication authority will then arrange for transfer of the member and, if appropriate, newborn infant(s), to a Federal facility or for such other action as is appropriate.

(i) Name, grade or rate, and social security number of patient.

(ii) Name of non-Federal medical or dental facility rendering treatment.

(iii) Date(s) of such treatment.

(iv) Nature and extent of treatment or care already furnished.

(v) Need or apparent need for further treatment (for maternity patients, need or apparent need for further care of infant(s) also).

(vi) Earliest date on which transfer to a Federal facility can be effected.

(vii) Telephone number of attending physician and patient.

(2) Should movement be delayed due to actions of the member or the member's family, payment may be denied for all care received after provision of written notification by the adjudication authority.

(3) The denial is § 732.18(a)(2) will be for care received after the member's condition has stabilized and after the cognizant adjudication authority has made a request to the attending physician and hospital administration for the member's release from the civilian facility. This notification must specify:

(i) Date and time the Navy will terminate its responsibility for payment.

(ii) That care rendered subsequent to receipt of the written notification is at the expense of the member.

(b) *Adjudication authority.* As soon as it is ascertained that a member is

being treated in a nonnaval facility, adjudication authorities must make the notifications required in MILPERSMAN, article 4210100.11. See part 728 of this chapter on message drafting and information addressees.

(1) Article 4210100.11 of the MILPERSMAN requires submission of a personnel casualty report, by priority message, to the primary and secondary next of kin (PNOK/SNOK) of Navy members seriously or very seriously ill or injured, and on those terminally ill (diagnosed and confirmed). While submission of the personnel casualty report to the PNOK and SNOK is a responsibility of the member's command, adjudication authorities must advise the member's command when such a member is being treated or diagnosed by non-Federal sources. The message will also request forwarding of the member's service and medical records to the personnel support detachment (PSD) supporting the activity in which the OMA is located. Additionally, the notification should contain a request for appropriate orders, either temporary additional duty (TEMADD) or temporary duty (TEMPDU).

(i) Request TEMADD orders if care is expected to terminate within the time constraints imposed for these orders.

(ii) Request TEMDU Under Treatment orders for members hospitalized in a NMTF within the adjudication authority's area of responsibility.

(2) Make prompt message notification to the member's commanding officer when apprised of any medical condition, including pregnancy, which will now or in the foreseeable future result in loss of a member's full duty services in excess of 72 hours. Mark the message "Commanding Officer's Eyes Only."

§ 732.19 Claims.

(a) *Member's responsibility.* Members receiving care are responsible for preparation and submission of claims to the cognizant adjudication authority identified in § 732.20. A complete claim includes:

(1) *NAVMED 6320/10, Statement of Civilian Medical/Dental Care.* In addition to its use as an authorization document, the original and three copies of a

NAVMED 6320/10 are required to adjudicate claims in each instance of sickness, injury, or maternity care when treatment is received from a non-Federal source under the provisions of this part. The form should be prepared by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the member receiving care when on detached duty where a senior officer is not present.

(i) For nonemergency care with prior approval, submit the NAVMED 6320/10 containing the prior approval, after completing blocks 8 through 18.

(ii) For emergency care (or non-emergency care without prior approval), submit a NAVMED 6320/10 after completing blocks 1 through 18. Assure that the diagnosis is listed in block 10. If prior approval was not obtained, state in block 11 circumstances necessitating use of non-Federal facilities.

(iii) Signature by the member in block 17 implies agreement for release of information to the responsible adjudication authority receiving the claim for processing. Signature by the certifying officer in block 18 will be considered certification that documentation has been entered in the member's Health Record as directed in article 16-24 of MANMED.

(2) *Itemized bills.* The original and three copies of itemized bills to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(iv) Acknowledgment of receipt of the services or supplies on the face of the bill or by separate certificate. The acknowledgment must include the statement: "Services were received and were satisfactory."

(3) *Claims for reimbursement.* To effect reimbursement, also submit the original and three copies of paid receipts and an SF 1164. Claim for Reimbursement for Expenditures on Official Business, completed per paragraphs 046377-2 a and b of the Naval Comptroller Manual (NAVCOMPT MAN).

(4) *Notice of eligibility (NOE) and line of duty (LOD) determination.* When a reservist claims benefits for care received totally after the completion of either an active duty or active duty for training period, the claim should also include:

(i) An NOE issued per SECNAVINST 1770.3.

(ii) An LOD determination from the member's commanding officer.

(b) *Adjudicating authority's responsibility.* Reviewing and processing properly completed claims and forwarding approved claims to the appropriate disbursing office should be completed within 30 days of receipt. Advice may be requested from COMNAVMEDCOM (MEDCOM-333 (A/V 294-1127)) for medical or MEDCOM-06 (A/V 294-1250)) for dental on unusual or questionable instances of care. Advise claimants of any delay experienced in processing claims.

(1) *Review.* The receiving adjudication authority will carefully review each claim submitted for payment or reimbursement to verify whether:

(i) Claimant was entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training, was not an unauthorized absentee, etc.). As required by part 728 of this chapter, a Defense Enrollment Eligibility Reporting System (DEERS) eligibility check must be performed on claims to all claimants required to be enrolled in DEERS.

(ii) Care rendered was due to a bona fide emergency. (NOTE: When questions arise as to the emergency nature of care, forward the claim and all supporting documentation to the appropriate clinical specialist at the nearest naval hospital for review.)

(iii) Prior approval was granted if a bona fide emergency did not exist. (NOTE: If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim may be denied.) Consideration should always be given to cases that would have received prior approval but, due to lack of knowledge of the program, the member did not submit a request.

(iv) Care rendered was authorized under the provisions of this part.

(v) Care rendered was appropriate for the specific condition treated. (NOTE: When questions arise regarding appropriateness of care, forward all documentation to a clinical specialist at the nearest naval hospital for review. If care is determined to have been inappropriate, the claim may be denied to the extent the member was negligent.)

(vi) Claimed benefits did not result from a referral by a USMTF. If the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the civilian care is supplemental and may be the responsibility of the referring USMTF. See § 732.11(p) for the definition of supplemental care.

(2) *Disapproval.* If a determination is made to disapprove a claim, provide the member (and provider of care, when applicable) a prompt and courteous letter stating the reason for the disapproval and the appropriate avenues of appeal as outlined in § 732.24.

(3) *Processing.* Subpart C contains the chargeable accounting classifications and Standard Document Numbers (SDN) to be cited on the NAVCOMPT 2277, Voucher for Disbursement and/or Collection, on an SF 1164 submitted per paragraph (a)(3) of this section, and on supporting documents of approved claims before submission to disbursing offices.

(i) For payment to providers of care, a NAV COMPT 2277 will be prepared and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation per paragraph 046393-1 of the NAVCOMPTMAN.

(ii) Where reimbursement is requested, the SF 1164 submitted per § 732.19(a)(3) will be completed, per paragraph 046377 of the NAVCOMPTMAN, and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation.

(c) *Amount payable.* Amounts payable are those considered reasonable after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where services or supplies were furnished. Although rates

specially established by the Veterans Administration, CHAMPUS, or those used in Medicare are not controlling, they should be considered along with other facts.

(1) *Excessive charges.* If any charge is excessive, the adjudication authority will advise the provider of care of the conclusion reached and afford the provider an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction and the claim is that of a physician or dentist, refer the difference in opinions to the grievance committee of the provider's professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, forward all documentation to COMNAVMEDCOM (MEDCOM-333) for decision. Charges determined to be above the allowed amount or charges for unauthorized services are the responsibility of the service member.

(2) *Third party payment.* Do not withhold payment while seeking funds from health benefit plans or from insurance policies for which premiums are paid privately by service members (see § 732.22 for possible recovery of payments action).

(3) *No-fault insurance.* In States with no-fault automobile insurance requirements, adjudication authorities will notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(d) *Duplicate payments.* Adjudication authorities and disbursing activities should take precautions against duplicate payments per paragraph 046073 of the NAVCOMPTMAN.

§ 732.20 Adjudication authorities.

(a) *General.* Controlling activities for medical care in the United States are designated as "offices of medical affairs" (OMA) and for dental care, "offices of dental affairs" (ODA). NAVMEDCOMINST 6010.3 delineates responsibilities and functional tasks of OMAs and ODAs, including monthly reporting of receipt of claims and claims payment. Commanders of geographic

naval medical commands must communicate with all activities in their regions to ensure that messages and medical cognizance reports are properly furnished per higher authority directives.

(b) *Within the United States (less Hawaii).* For the 48 contiguous United States, the District of Columbia, and Alaska, the following six regions are responsible for care rendered or to be rendered within their areas of responsibility.

(1) *Northeast Region.* The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA and 1 OMA:

(i) Responsibility for dental matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Great Lakes, IL 60088, Tele: (A/V) 792-3940 or (C) (312) 688-3940.

(ii) Responsibility for medical matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Great Lakes, IL 60088, Tele: (A/V) 792-3950 or (C) (312) 688-3950.

(2) *National Capital Region.* For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A/V) 295-5322 or (C) (301) 295-5322.

(3) *Mid-Atlantic Region.* For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A/V) 565-1074/1075 or (C) (804) 445-1074 or 1075.

(4) *Southeast Region.* For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer, Naval Medical Clinic, Code O1A, New Orleans, LA 70146, Tele: (A/V) 485-2406/7/8 or (C) (504) 361-2406 2407 or 2408.

(5) *Southwest Region.* For the States of Arizona and New Mexico; the counties of Kern, San Bernadino, San Luis Obispo, Santa Barbara, and all other California counties south thereof; the community of Bridgeport, California (Marine Corps cold-weather training site); and Nevada, except for NAS Fallon and its immediate area; medical and dental responsibilities are vested in: Commander, Naval Medical Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134-7000, Tele: (A/V) 987-2611 or (C) 233-2611.

(6) *Northwest Region.* The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; the counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area are served by 2 OMAs and 1 ODA:

(i) Responsibility for dental matters for the area of responsibility of the Northwest Region is vested in: Commander, Naval Medical Command, Northwest Region, Office of Dental Affairs, Oakland, CA 94267-5025, Tele: (A/V) 855-6200 or (C) (415) 633-6200.

(ii) Responsibility for medical matters for the States of Colorado, Kansas, and Utah; the California counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area is vested in: Commander, Naval Medical Command, Northwest Region, Oakland, CA 94627-5025, Attn: Office of Medical Affairs, Tele: (A/V) 855-5705 or (C) (415) 633-5705.

(iii) Responsibility for medical matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA 98115, Attn: Office of Medical Affairs, Tele: (A/V) 941-3823 or (C) (206) 526-3823.

(c) *Outside the United States (plus Hawaii).* For all areas outside the United States plus Hawaii, the following activities are vested with responsibility for approval or disapproval of requests and claims for maternity, medical, and dental care:

(1) Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

(2) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652-1600 (U.S. Naval Hospital, Subic Bay, Luzon, Republic of the Philippines), for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal, Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

(3) Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765-1600 (U.S. Naval Hospital, Yokosuka, Japan), for care rendered in Japan, Korea, and Okinawa.

(4) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96630-1600 (U.S. Naval Hospital, Guam, Mariana Islands), for care rendered in New Zealand and Guam.

(5) Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96680-1800 (U.S. Naval Communications Station, Harold E. Holt, Exmouth, Western Australia), for care rendered in Australia.

(6) Commanding Officer, U.S. Naval Air Station, FPO New York 09560 (U.S. Naval Air Station, Bermuda), for care rendered in Bermuda.

(7) Commanding Officer, U.S. Naval Hospital, FPO Miami 34051 (U.S. Naval Hospital, Roosevelt Roads, Puerto Rico), for maternity and medical care, and Commanding Officer, U.S. Naval Dental Clinic, FPO Miami 34051 (U.S. Naval Dental Clinic, Roosevelt Roads, PR), for dental care rendered in Puerto Rico, the Virgin Islands, and other Caribbean Islands.

(8) Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for maternity and medical care, and Commanding Officer, Naval Dental Clinic, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

(9) The OMA for either the Southeast Region or the Southwest Region for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372-5120 (MEDCOM-333).

(10) Commander, Naval Medical Command, Washington, DC 20372-5120 (MEDCOM-333) for inpatient and outpatient emergency and nonemergency care of active duty Navy and Marine Corps members in Canada and under the circumstances outlined in paragraph (d) of this section.

(11) Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command in paragraphs (b)(1) through (c)(9) of this section. This is a local policy decision to enhance the maintenance of good public relations.

(12) The appropriate command in paragraphs (b)(1) through (c)(9) of this section for care rendered aboard commercial vessels en route to a location within the geographic areas listed.

(13) The commanding officer authorizing care in geographical areas not specifically delineated elsewhere in this section.

(d) *The Commander, Naval Medical Command (MEDCOM-333), Navy Department, Washington, DC 20372-5120.* Under the following circumstances, responsibility is vested in COMNAVMEDCOM for adjudication of claims:

(1) For reservists who receive treatment after completion of their active duty or inactive duty training as prescribed in § 732.12(b).

(2) For care rendered in Mexico to personnel stationed outside the areas of responsibility of the Southeast and Southwest Regions.

(3) For care rendered to members stationed in or passing through countries in Central and South America.

(4) For outpatient care rendered NATO active duty members.

(5) When Departmental level review is required prior to approval, adjudication, or payment. These claims:

(i) Will be considered on appeal.

(ii) Must be forwarded by the member through the adjudication authority chain of command (In instances of unusual or controversial denial of claims, the adjudication authority may forward claims to COMNAVMEDCOM on appeal, via the chain of command, with notification to the member.).

(6) For all inpatient and outpatient care of active duty Navy and Marine Corps members stationed in the United States who receive care in Canada.

§ 732.21 Medical board.

When adjudication authorities uncover conditions which may be chronic or otherwise potentially disabling, they should make a determination (with help from appropriate clinical specialists) as to the need for a medical board. Chapter 18 of MANMED and Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM-25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to):

- (1) Arthritis,
- (2) Asthma,
- (3) Diabetes,
- (4) Gout,
- (5) Heart disease,
- (6) Hypertension,
- (7) Peptic ulcer disease,
- (8) Psychiatric conditions, and
- (9) Allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the adjudication authority with the concurrence of an appropriate naval clinical specialist and the commander of the regional medical command.

§ 732.22 Recovery of medical care payments.

Adjudication authorities must submit evidence of payment to the action JAG designee per chapter 24 of the Manual of the Judge Advocate General (JAGMAN), in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workers compensation, no-fault insurance, or under

medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 must be completed whenever benefits are received in connection with a vehicle accident. Adjudication authorities should return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) must be completed and submitted by adjudication authorities with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care must show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member should be asked to sign his or her name beneath the statement.

(c) For care rendered in States with no-fault insurance laws, comply with procedures outlined in § 732.19(c)(3).

§ 732.23 Collection for subsistence.

The Navy Pay and Personnel Procedures Manual provides guidance regarding pay account checkage procedures to liquidate subsistence charges incurred by members entitled to care under the provisions of this part. Such members must also be entitled to basic allowance for subsistence (BAS) while hospitalized at Government expense. The responsible activity (the adjudication authority or the naval MTF to which such a member is transferred) should follow procedures outlined in the Navy Pay and Personnel Procedures Manual when an eligible officer or enlisted member of the naval service is subsisted at Department of the Navy expense while hospitalized in a nonnaval treatment facility. Subpart C contains the creditable accounting classification for inpatient subsistence collections.

§ 732.24 Appeal procedures.

When a claim for care or a request for prior approval for nonemergency

Department of the Navy, DoD

§ 732.26

care is initially denied by an adjudication authority, the member may appeal the denial as outlined below. Any level in the appeal process may over-rule the previous decision and order payment of the claim in whole or in part or grant the request for prior approval of care.

(a) Level I—Reconsideration by the adjudication authority making the initial denial. The member should submit any additional information that may mitigate the initial denial.

(b) Level II—Consideration by the commander of the regional medical command having cognizance over the adjudication authority which upheld the initial denial on reconsideration.

(c) Level III—Consideration by COMNAVMEDCOM (MEDCOM-333).

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

§732.25 Accounting classifications for nonnaval medical and dental care expenses.

Approp.	Sub-Head	OBJ.** Class	BCN	SA	AAA	TT	PAA	Cost Code	Purpose
17*1804	188M	000	00018	M	000179	2D	MDQ000	990010000MDQ	Outpatient Care Service Expenses. ^{1,2}
17*1804	188M	000	00018	M	000179	2D	MDT000	990010000MDT	Outpatient Care Supply Expenses. ^{1,3}
17*1804	188M	000	00018	M	000179	2D	MDE000	990010000MDE	Ambulance Expenses. ¹
17*1804	188M	000	00018	M	000179	2D	MDQ100	990020000MDQ	Inpatient Care Service Expense. ^{1,2}
17*1804	188M	000	00018	M	000179	2D	MDT100	990020000MDT	Inpatient Care Supply Expenses. ^{1,3}
17*1804	188M	006	00018	M	000179	3C	MDZ100	990020000MDZ	Inpatient Subsistence Collections. ¹

Notes:

*For the third digit of the appropriation, enter the last digit of the fiscal year current at the time claim is approved for payment.

**Refer to NAVCOMPT Manual par. 027003 for appropriate Expenditure Category Codes when disbursement or collection involves a foreign or U.S. Contractor abroad.

¹ Not applicable when care is procured from non-DOD sources for a patient receiving either inpatient or outpatient care at a naval medical facility. In such instances, the expenses incurred are payable from operations and maintenance funds available for support of the naval medical facility.

² Service expenses include: hospital, emergency room clinic, office fees; physician and dentist professional fees; laboratory, radiology, operating room, anesthesia, physical therapy, and other services provided.

³ Supply expenses include: medications and pharmacy charges; IV solutions; whole blood and blood products; bandages; crutches; prosthetic devices; needles and syringes; and other supplies provided.

§ 732.26 Standard document numbers.

Adjudication authorities will assign to each claim approved for payment, a unique 15 position alpha/numeric standard document number (SDN). Prominently display this number on the NAVMED 6320/10, the NAVCOMPT 2277 (Voucher for Disbursement and/or

Collection), NAVCOMPT 1164 (Claim for Reimbursement for Expenditures on Official Business) and on all other documentation accompanying claims. Compose SNDs per the following example: N0016887MD00001 or N0016887RV00001.

	1	2 thru 6	7 & 8	9 & 10	11 thru 15
Position Entry	N	00168	87	MD or RV	00001

Position	Data entry
1	"N" identifies Navy.
2 thru 6	Unit Identification Code of document issuing activity.
7 and 8	Last two digits of the fiscal year in which the claim is approved for payment.
9 and 10,	For NAVCOMPT 2277s, "MD" identifies the document as Miscellaneous Financial Document.
or,	
9 and 10	For SF 1164s, "RV" identifies the document as a Reimbursement Voucher.
11 thru 15	Consecutively assigned five digit serial number beginning with "00001" each fiscal year. Each subsequent claim will then be serially numbered "00002", "00003", etc.

PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS

Sec.

- 733.1 Rates of basic allowance for quarters.
- 733.2 Delegations.
- 733.3 Information and policy on support of dependents.
- 733.4 Complaints of nonsupport and insufficient support of dependents.
- 733.5 Determination of paternity and support of illegitimate children.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 37 U.S.C. 101, 401, 403; 50 U.S.C. App. 2210; E.O. 11157, 29 FR 7973, 3 CFR 1964 Supp. p. 139, as amended.

SOURCE: 44 FR 42190, July 19, 1979, unless otherwise noted.

§ 733.1 Rates of basic allowance for quarters.

(a) Except as otherwise provided by law, a member of the naval service entitled to basic pay is entitled to a basic allowance for quarters at the monthly rates according to the pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term "dependent" with respect to a member of the naval service, as used in this part, means:

- (1) His or her spouse;
- (2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent

of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member) who either:

- (i) Is under 21 years of age; or
- (ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

- (i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or
- (ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of is or her support.

The relationship between a stepparent and his or her stepchild is terminated by the stepparent's divorce from the parent by blood.

§ 733.2 Delegations.

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, DC 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for basic allowance for quarters, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.

§ 733.3 Information and policy on support of dependents.

(a) *Policy*—(1) *General*. The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) *Adequacy of support*. Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and

other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth below are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(i) Number of dependents and amount of support to be provided in the absence of a mutual agreement or court order:

(A) Navy members:

Relationship and number of dependents	Support to be provided (gross pay)
Spouse only	1/3
Spouse and one minor child	1/2
Spouse and two or more children	3/5
One minor child	1/6
Two minor children	1/4
Three minor children	1/3

For purposes of this support guide, gross pay will include basic pay and basic allowance for quarters, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(B) *Marine Corps members*. If the question of support is in dispute, the following will be used as a guide for support:

- For spouse only—BAQ plus 20% of basic pay.
- For spouse and one minor child—BAQ plus 25% of basic pay.
- For spouse and two or more minor children—BAQ plus 30% of basic pay.
- For one child—1/6 of basic pay.
- For two minor children—1/4 of basic pay.
- For three or more minor children—1/3 of basic pay.

(1) The amount of support to a dependent for whom basic allowance for quarters is claimed should not be less than the applicable rate of basic allowance for quarters to which the member is entitled.

(2) A Marine's obligation to provide for the support of children by a former marriage has as high a priority as an obligation to provide for a present wife and family. In those cases of a legitimate financial inability to provide support for all dependents, commanders shall attempt to assist the Marine in the equitable distribution of income for the assistance of all dependents, utilizing the guidelines set forth above.

(3) It is to be emphasized that the guidelines set forth are to be used only as an interim measure, and that the commander's decision as to the quantum of support to be provided will be, prima facie, the appropriate conclusion of the Marine Corps, pending civil court or extrajudicial resolution among the involved parties.

(3) *Support of a lawful wife.* The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps, as appropriate.

(4) *Payments of alimony.* Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) *Support of children.* The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through di-

vorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) *Adopted children.* The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) *Entitlement to basic allowance for quarters.* Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the

application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Allowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) *Application of the rule based on Robey v. United States 71 Ct. Cl. 561.* Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

- (i) The full amount of his/her basic allowance for quarters, or
- (ii) An amount specified in a court order or legal separation agreement, or
- (iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

§733.4 Complaints of nonsupport and insufficient support of dependents.

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in §733.3 will apply. The member will be informed that his/her Navy or Marine Corps career may be in jeopardy if he/she does not take satisfactory action. The member may become ineligible to reenlist or extend enlistment (in the case of enlisted members), and may be subject to administrative or disciplinary action that may result in separation from the Navy or Marine Corps.

(1) *Waiver of support of spouse.* If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity, acting under the policy guidance of the Chief of Naval Personnel or the Commandant of the Marine Corps (Code MSPA), may grant such a waiver for support of a

spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(ii) Written admissions by the spouse contained in letters written by that spouse to the service member or other persons.

The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps (Code MSPA) with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) *Action.* After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

§733.5 Determination of paternity and support of illegitimate children.

(a) *Illegitimate children.* If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) *Judicial order or decree of paternity or support.* Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. However, no basic allowance for quarters will be included in using the guide unless basic allowance for quarters is payable in behalf of illegitimate children. If the member refuses to comply with the terms of the court order, administrative action will be taken as indicated in § 733.4.

(1) *Court of competent jurisdiction.* A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the

court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or personal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.

(2) [Reserved]

(c) *Nonjudicial determination.* In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) *Members not on active duty.* Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) *Former members.* (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or the Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.

PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

Sec.

734.1 Purpose.

734.2 Scope.

734.3 Service of process.

734.4 Responsibilities.

734.5 Administrative procedures.

AUTHORITY: 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

SOURCE: 44 FR 42193, July 19, 1979, unless otherwise noted.

§ 734.1 Purpose.

This part prescribes responsibilities and procedures applicable in the Department of the Navy when processing and honoring legal process brought for the enforcement of legal obligations to provide child support or make alimony payments under 42 U.S.C. 659 (Social

Security Act, section 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

§ 734.2 Scope.

The provisions of this part shall apply to legal process affecting any Federal pay administered by the Department of the Navy and due and payable to all categories of naval military or civilian personnel including personnel of Navy or Marine Corps nonappropriated-fund activities. This part is not applicable to legal process affecting entitlements administered by other agencies, such as civilian employees' retirement benefits administered by the Office of Personnel Management or compensation administered by the Veterans Administration.

[44 FR 42193, July 19, 1979, as amended at 47 FR 28371, June 30, 1982]

§ 734.3 Service of process.

(a) It is the policy of the Department of the Navy to respond promptly to legal process addressed to naval officials. Service of legal process affecting the pay of Department of the Navy personnel shall be made on the following designated officials in the manner and in the circumstances specified below:

(1) *Navy members.* Process affecting the military pay of active duty, Reserve, Fleet Reserve, or retired Navy members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

(2) *Marine Corps members.* Process affecting the military pay of active-duty, Reserve, Fleet Marine Corps Reserve, or retired Marine Corps members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Commanding Officer, Marine Corps Finance Center (AA), Kansas City, Missouri 64197.

(3) *Civilian Employees.* Process affecting the pay of active civilian employees of the Department of the Navy:

(i) If currently employed at Navy or Marine Corps activities (including non-appropriated-fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served personally, or by registered or certified mail, return receipt requested, on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be served personally or by registered or certified mail, return receipt requested, in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on the Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, DC 20390.

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated-fund instrumentalities administered by the Navy Resale System Office, such process may be served on the Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn, New York 11232.

(C) If pertaining to non-civil service civilian personnel of Navy clubs, messes, or recreational facilities (non-appropriated funds), such process may be served on the Chief of Naval Personnel, Director, Recreational Services Division (Pers/NMPC-72), Washington, DC 20370.

(D) If pertaining to non-civil service civilian personnel of other nonappropriated-fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(E) If pertaining to non-civil service civilian personnel of any Marine Corps nonappropriated-fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

(b) The Department of the Navy officials designated above are authorized to accept service of process within the purview of 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157). Where service of process is offered to an official not authorized to accept it under paragraph (a) of this section, the person offering such service shall be referred to the appropriate official designated in paragraph (a) of this section.

§ 734.4 Responsibilities.

(a) *Designated officials.* Within their respective areas of cognizance as set forth in § 734.3, the designated officials are responsible for the following functions with regard to legal process:

(1) Sending such notifications and directions to the member concerned and his or her commanding officer as may be required.

(2) Obtaining or providing an appropriate review by qualified legal counsel.

(3) Taking or directing actions, temporary and final, as are necessary to comply with 42 U.S.C. 659, as amended (see § 734.3(b)), the Marine Corps Manual, Navy Comptroller Manual, and the court's order in the case, and

(4) Apprising the cognizant United States Attorney of the Department of the Navy's disposition, as required, and, in coordination with the Judge Advocate General, effecting liaison with the Department of Justice or United States Attorneys in instances of noncompliance with process or other circumstances requiring such action.

(b) *Command responsibility.* (1) The Commanding officer of the member or employee concerned shall, upon receipt of notification from the appropriate designated official, ensure that the member or employee has received written notification of the pendency of the action and that the member or employee is afforded counseling concerning his or her obligations in the matter, and legal assistance if applicable, in dealing with the legal action to affect his or her Federal pay. The commanding officer shall comply with the

directions of the designated official in responding to the legal process.

(2) For the purposes of this part, the Director, Navy Family Allowance Activity, Cleveland, Ohio, will function as the commanding officer with regard to retired Navy military personnel and members of the Fleet Reserve.

(c) *Legal services.* The Judge Advocate General is responsible for the following functions pertaining to legal process within the purview of this part:

(1) Providing overall technical direction and guidance, as required, for all Department of the Navy military and civilian attorneys engaged in reviewing such process or advising on its disposition.

(2) Ensuring, as Director, Naval Legal Service, the availability of attorneys who are qualified to advise and assist the designated officials concerning the disposition of legal process, and

(3) Where required, ensuring effective liaison with the Department of Justice or United States Attorneys.

§ 734.5 Administrative procedures.

The designated officials specified in § 734.3, shall, in consultation with the Judge Advocate General and Commander, Navy Accounting and Finance Center or the Commandant of the Marine Corps (FD), as appropriate, establish procedures for effectively executing their assigned responsibilities. Implementing procedures shall conform with 42 U.S.C., 659, as amended, the Marine Corps manual, the Navy Comptroller Manual, and the Federal Personnel Manual.

PART 735—REPORTING BIRTHS AND DEATHS IN COOPERATION WITH OTHER AGENCIES

Sec.

735.1 Purpose.

735.2 Background.

735.3 Action.

AUTHORITY: 70A Stat. 278; 80 Stat. 379, 383; 5 U.S.C. 301, 552; and 10 U.S.C. 5031.

SOURCE: 51 FR 15321, Apr. 23, 1986, unless otherwise noted.

§ 735.1 Purpose.

To promulgate latest guidance on reporting births and deaths, including

births to which part 138 of this title is applicable.

§ 735.2 Background.

For Armed Forces members and their dependents on duty overseas, registration of vital statistics with an appropriate foreign government may be a distinct advantage should documentary evidence, acceptable in all courts, be required at any future time. Department of Defense (DOD) policy is that military services will require their members to make official record of births, deaths, marriages, etc., with local civil authorities in whose jurisdiction such events occur.

§ 735.3 Action.

When a medical officer has knowledge of a birth or death occurring under the following conditions, he or she shall refer the matter to the commanding officer for assurance of compliance with DOD policy.

(a) *Births.* (1) In accordance with local health laws and regulations, the commanding officer of a naval hospital in the United States (U.S.) shall report to proper civil authorities all births, including stillbirths, occurring at the hospital. Medical officers on ships and aircraft operating within U.S. political boundaries, or at stations other than naval hospitals in the U.S., shall report all births occurring within their professional cognizance. It shall be the duty of the medical officer to determine the requirements of local civil authorities for these reports.

(2) When births occur on aircraft or ships operating beyond U.S. political boundaries, the medical officer responsible for delivery shall make a report to the commanding officer, master of the ship, or to the officer in command of any aircraft, in every case to be recorded in the ship or aircraft log. A report shall also be made to local civil authorities in the first port of entry if required by law and regulation of such authorities when births occur on a course inbound to the U.S. Additionally, the medical officer shall:

(i) Furnish the parents with appropriate certificates and shall, if the report is not accepted by the local registrar of vital statistics or other civil authority, or in any case in which local

§ 735.3

32 CFR Ch. VI (7-1-97 Edition)

authority has indicated in writing that such a report will not be accepted.

(ii) Advise the parents to seek the advice of the nearest office of the U.S. Immigration and Naturalization Service (USINS), at the earliest practicable time. USINS offices are located in ports of entry and in major cities of the United States.

(iii) For births occurring on courses out-bound and beyond the continental limits of the U.S., report to the U.S. consular representative at the next appropriate foreign port. When the aircraft or ship does not enter a foreign port, procedures described in § 735.3(a)(2)(ii) shall be followed.

(3) Attention is invited to the fact that reports of birth may be forwarded to the Bureau of Health Statistics, Department of Health, Honolulu, Hawaii for any births occurring on courses destined for islands in the Pacific Ocean over which the United States has juris-

diction as well as for those births which are otherwise accepted by civil authorities for Hawaii.

(4) Part 138 of this title prescribes policy, responsibilities, and procedures on birth registration of infants born to U.S. citizens, in military medical facilities outside the United States and its possessions.

(b) *Deaths.* When a death occurs at a naval activity in any State, Territory, or insular possession of the United States, the commanding officer or designated representative shall report the death promptly to proper civil authorities in accordance with Naval Medical Command directives. If requested by these civil authorities, the civil death certificate may be prepared and signed by the cognizant naval medical officer. Local agreements concerning reporting and preparation of death certificates should be made between the naval facility and local civil authorities.

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

CROSS REFERENCE: For joint procurement regulations of the Armed Forces, see chapter I of this title.

PART 736—DISPOSITION OF PROPERTY

Sec.

736.1 General.

736.2 Dispositions under contracts.

736.3 Sale of personal property.

736.4 Disposition of real property.

736.5 Disposition of real and personal property under special statutory authority.

736.6 Certification prior to disposition.

736.7 Approval by the Attorney General.

AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, as amended; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 3618, 3678, 3709, 38 Stat. 1084, 44 Stat. 605, 49 Stat. 885, 53 Stat. 811, 54 Stat. 396, 57 Stat. 380, 59 Stat. 260, sec. 27, 60 Stat. 856, sec. 5, 60 Stat. 998, sec. 4, 62 Stat. 286, secs. 7(c), 8(a-b), 62 Stat. 452, 63 Stat. 377, 64 Stat. 1109, 65 Stat. 645, 68 Stat. 832, sec. 501(c)(3), 68A Stat. 163, secs. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 70A Stat. 141, sec. 5003, 72 Stat. 1252, 72 Stat. 1793, sec. 616, 73 Stat. 381, as amended; 31 U.S.C. 487, 628, 41 U.S.C. 5, 31 U.S.C. 686, 686a, 40 U.S.C. 304a, 50 U.S.C. 98-98h, 22 U.S.C. 521, 44 U.S.C. 366-380, 42 U.S.C. 1572, 24 U.S.C. 37, 20 U.S.C. 77d, 15 U.S.C. 328, 49 U.S.C. 1156(c), 1157(a-b), 40 U.S.C. 471 *et seq.*, 42 U.S.C. 1855-1855g, 22 U.S.C. 1611-1613c, 1750 *et seq.*, 26 U.S.C. 501(c)(3), 10 U.S.C. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 38 U.S.C. 5003, 42 U.S.C. 1891-1893, 40 U.S.C. 483a. E.O. 10885, 25 FR 8471.

SOURCE: 25 FR 4674, May 27, 1960, unless otherwise noted.

§ 736.1 General.

Real and personal property under the jurisdiction of the Department of the Navy, exclusive of battleships, aircraft carriers, cruisers, destroyers, and submarines (referred to as warships in this part) and certain public domain lands and mineral interests, may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (40 U.S.C. 471), in this part referred to as the Federal Property Act. The Federal Property Act places the responsibility for the disposition of ex-

cess and surplus property located in the United States, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands with the Administrator of General Services, and for disposition of such property located in foreign areas, with the head of each executive agency. The Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 of January 21, 1974, (39 FR 2577) provide authority for the disposal of warships as well as other vessels stricken from the Naval Vessel Register. The United States Maritime Commission, however, is authorized to dispose of surplus vessels, other than warships, or 1,500 gross tons or more which the Commission determines to be merchant vessels or capable of conversion to merchant use (40 U.S.C. 484(i)). Accordingly, in disposing of its property, the Department of the Navy is subject to applicable regulations of the Administrator of General Services and the Secretary of Defense, and, in regard to potential merchant vessels other than warships, to determinations of the United States Maritime Commission. In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to the educational institutions.

(a) Within the limitations indicated in the introductory paragraph of this section, the Department of the Navy is authorized to sell its surplus personal property under the authority of the Federal Property Act and the Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7305), and to report its real property, when excess to the needs of the Department of Defense, to the General Services Administration for ultimate disposition by that agency or the Department of the Navy. The Department of the Navy is also authorized to transfer

real and personal property to other departments or agencies of the Government, and to sell, transfer and otherwise dispose of certain vessels and other personal property under special statutory authority. Ships other than warships are sold pursuant to the Federal Property Act (40 U.S.C. 484(i)) by the U.S. Maritime Commission if over 1500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. In certain cases, Navy vessels and other property may be transferred or otherwise made available to other agencies without reimbursement (sec. 616, 73 Stat. 381; 40 U.S.C. 483a).

(b) This part sets forth the general procedures and authority with respect to the disposition of property under the control of the Department of the Navy except disposition of property to foreign governments under the authority of such statutes as the Aid to American Republics Act (54 Stat. 396; 22 U.S.C. 521) and the Mutual Defense Assistance Control Act of 1951 (65 Stat. 644; 22 U.S.C. 1611-1613c).

(c) The Department of Defense Disposal Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Navy Personnel Property Disposal Manual and the Marine Corps Supply Manual contain information and operating instructions for the guidance of field personnel in disposing of personal property at Navy and Marine Corps installations, respectively. Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the Naval Material Command Headquarters, Washington, DC; at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

[25 FR 4674, May 27, 1960, as amended at 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976]

§ 736.2 Dispositions under contracts.

(a) Contractor inventory (that is, personal property acquired by a con-

tractor under terms vesting title in the Government but in excess of the amount required for performance of a contract) may be sold to the contractor or otherwise disposed of in accordance with the terms and conditions set forth in the contract and applicable Navy instructions. See also parts 8 and 13 and §§ 30.2 and 30.3 of this title.

(b) Industrial and plant equipment provided by the Government to a contractor for the performance of a contract may, subject to applicable statutory authority and Navy instructions be disposed of in accordance with the applicable contract terms and conditions.

(c) Transfer to nonprofit education or research institutions of title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research is authorized by the act of September 6, 1958 (sec. 2, 72 Stat. 1793; 42 U.S.C. 1892) and implementing regulations (§§ 13.800 to 13.803 of this title).

§ 736.3 Sale of personal property.

(a) The sale of personal property determined to be surplus or foreign excess or for exchange purposes is authorized by the Federal Property Act and regulations of the Administrator of General Services (see § 736.1(a)). Certain vessels stricken from the Naval Vessel Register may be sold under the act of August 19, 1956, (70A Stat. 451, 10 U.S.C. 7305).

(b) Sales are by sealed bid, auction, spot bid or, under limited conditions prescribed by law, negotiated method. A deposit, generally 20 percent of the amount bid, is normally required of each bidder. Awards are usually made to the highest acceptable bidder. Normally property may not be removed from Government control until full payment is made. Arrangements must be made by the successful bidder to remove the property within the time limit prescribed in the invitation to bid or sales contract. The Government reserves the right to withdraw any property from sale when in the best interest of the Government.

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the

United States. The contact point is the Defense Surplus Bidders Control Office, Defense Logistics Service Center, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person's buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamphlet "How to Buy Surplus Personal Property From The Department of Defense," prepared by the Defense Logistics Services Center, Defense Supply Agency, Battle Creek, Michigan.

(2) Retail sales at fixed prices based on the current market value are conducted by certain Defense property disposal offices.

[39 FR 18442, May 28, 1974]

§ 736.4 Disposition of real property.

(a) Real property, including related personal property, determined to be excess to the needs of the Department of Defense is subject to disposition under the Federal Property Act. In the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense and not required for the needs and the discharge of the responsibilities of all Federal agencies, is generally disposed of by the General Services Administration as surplus property. Exceptions, however, are property worth less than \$1,000; certain leases, permits, licenses, easements or similar interests; certain fixtures, structures, and improvements; and other special classes of property which, when determined to be surplus, are disposed of by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers under authority delegated in Title II, Regulations of the General Services Administration, or under special delegations from the Administrator of General Services.

(b) Outside the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense is disposed of directly by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers.

(5 U.S.C. 301, 40 U.S.C. 471-514)

[35 FR 10008, June 18, 1970, as amended at 41 FR 26008, June 24, 1976]

§ 736.5 Disposition of real and personal property under special statutory authority.

In addition to the authority to sell personal property to the general public and to transfer real property to the General Services Administration under the provisions of §§ 736.3 and 736.4, the Department of the Navy has further authority to dispose of personal and real property as described in paragraphs (a) through (h) of this section.

(a) *Disposition to other Government agencies.* The Department of the Navy is authorized to transfer real and personal property to other governmental departments or agencies under statutes applicable to particular agencies, the act of March 4, 1915 (38 Stat. 1084) as amended (31 U.S.C. 686) and, as to certain personal property, under directives of the General Services Administration.

(b) *Leases.* Real and personal property under the control of the Department of the Navy not excess to its needs and not for the time being required for public use may be leased, when the Secretary of the Navy shall deem it to be advantageous to the Government, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Such leases shall be for a period of not exceeding five years unless the Secretary determines that a longer period will promote the national defense or will be in the public interest. Such leases are authorized by the act of August 10, 1956 (70A Stat. 150; 10 U.S.C. 2667). Leases of Government-owned real property where the estimated annual rental is more than 50,000 must be deferred for 30 days

after reporting the proposed transaction to the Armed Services Committees of Congress in accordance with the act of August 10, 1956 (70A Stat. 147), as amended (10 U.S.C. 2662).

(c) *Disposition of strategic materials.* Strategic materials may be disposed of by the Department of the Navy under the authority described in § 736.3 only when such property is excess to the needs of the Department of Defense and when the Director of the Office of Civil and Defense Mobilization (acting through the Defense Materials Service of the General Services Administration) determines that the amounts of such materials to be disposed of are so small as to make transfer thereof under the act of June 7, 1939 (53 Stat. 811) as amended (50 U.S.C. 98-98h) economically impractical, or such materials are not necessary for stockpile requirements determined in accordance with section 2 of said act.

(d) *Disposition of vessels.* Vessels stricken from the Naval Vessel Register may be sold by the Department of the Navy under the authority and subject to the limitations of the Federal Property Act (sections 203(i), 63 Stat. 386, 40 U.S.C. 484(i)) and the act of August 10, 1956, (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 (39 FR 2577). However, pursuant to section 203(i) of the Federal Property Act (40 U.S.C. 484(i)), the United States Maritime Commission disposes of vessels, other than warships, if over 1,500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. Vessels may be sold for scrapping or for use under such authority or, if such sale is not feasible, the Naval Ship Systems Command may arrange for the demolition of a vessel and sale of the resulting materials by an authorized selling activity as set forth in § 736.3.

(e) *Exchange of sale of property for replacement purposes.* Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and of the Armed Services Procurement Regulation, the Department of the Navy is authorized in the procurement of new equipment, to exchange or sell similar items which are not excess to its needs, and apply the exchange allowance or

proceeds of sale in whole or part payment for the items procured.

(f) *Donations and loans of personal property.* (1) Certain personal property of the Department of the Navy, including vessels, which become surplus, may be donated or loaned under the authority contained in the Federal Property Act and the act of August 10, 1956 (70A Stat. 453; 10 U.S.C. 2572, 7308, 7545) to:

(i) Schools such as maritime academies or military, naval, Air Force or Coast Guard preparatory schools, designated by the Secretary of Defense as educational activities of special interest to the armed services.

(ii) Accredited schools, colleges and universities and educational institutions which have been exempted from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 and State Departments of Education for use by tax exempt educational institutions. Applications for donation shall be approved by the Department of Health and Human Services and the Administrator of General Services and may be filed with the field representative of the Department of Health and Human Services located nearest the applicant.

(iii) States, Territories, Commonwealths, or possessions of the United States and political subdivisions, municipal corporations, veterans associations, soldiers' monument associations, State museums, and non-profit educational museums, subject in certain cases to the approval of the Curator for the Navy and to objection by a concurrent resolution of the Congress.

(2) Applications other than those to be filed with the field representative of the Department of Health and Human Services shall be filed with the Department of the Navy and referred to the cognizant Command or Headquarters for action except that applications for vessels and district craft shall be referred to the Chief of Naval Operations, applications for boats to the Naval Ship Systems Command, and applications for barges, floating drydocks, and other floating construction equipment to the Naval Facilities Engineering Command. Detailed instructions with respect to such applications are set forth in the Defense Disposal Manual.

(g) *Disposition of equipment for research.* Under the act of September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891-1893), equipment purchased with research grant or contract funds may be transferred for the conduct of basic or applied scientific research to (1) non-profit institutions of higher education or (2) non-profit organizations whose primary purpose is the conduct of scientific research. An annual report of such transfers must be made to the appropriate Committees of Congress.

(h) *Assistance in major disaster relief.* Under the act of December 31, 1970, (42 U.S.C. 4401-4485) and subject to directions of the Director of the Office of Emergency Preparedness, certain excess personal property may be utilized for or donated to States and local governments for relief of suffering and damage resulting from major disasters. Surplus property may also be disposed of to States for sale to small business concerns affected by specific disasters such as hurricanes.

[25 FR 4674, May 27, 1960, as amended at 25 FR 11066, Nov. 22, 1960, 26 FR 12158, Dec. 20, 1961; 35 FR 10008, June 18, 1970; 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976; 47 FR 28371, June 30, 1982]

§ 736.6 Certification prior to disposition.

The transfer, sale, or other disposition of a battleship, aircraft carrier, cruiser, destroyer, or submarine shall not be made unless and until the Chief of Naval Operations, in accordance with the act of August 10, 1956 (70A Stat. 452; 10 U.S.C. 7307), has certified that such material is not essential to the defense of the United States.

§ 736.7 Approval by the Attorney General.

Prior to the disposition, either competitively or by negotiation, to private interests of a plant or plants, or other property, which cost the Government \$1,000,000 or more if real property, or \$3,000,000 or more if personal property (other than a patent, process, technique or invention), or of patents, processes, techniques or inventions, irrespective of cost, the Department of the Navy must notify the Attorney General of the proposed disposal and the probable terms and conditions thereof.

Within a reasonable time, in no event to exceed sixty days after receiving such notification, the Attorney General will advise the Department of the Navy, whether, insofar as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. In such cases, the Department of the Navy must obtain from the proposed purchaser information regarding its financial status, the anticipated use to be made of the property and any other information as may be required by the Attorney General; the award or final sale must be delayed until the Attorney General advises of his determination.

PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

AUTHORITY: Sec. 301, 80 Stat. 379, secs. 5031, 6011, 70A Stat. 278, 375 as amended; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply the Mutual Security Act of 1954 (68 Stat. 832) as amended, 22 U.S.C. 1750 et seq., and Act of Sept. 4, 1961 (Pub. L. 87-195, 75 Stat. 424), 22 U.S.C. 2151-2406 (2351, 2356).

§ 744.1 Purpose.

This part implements part 264 of this title and the Technical Property Interchange Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

[26 FR 12217, Dec. 21, 1961]

§ 744.6 Authorization for release without consent of the owner.

(a) Military equipment including the information essential for its operation, maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with § 264.4(d)(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action

§ 746.1

clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

(b) Where any technical information is released in accordance with this section, such release shall be subject to the conditions of release set forth in § 264.4(f).

(c) Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with § 264.4(d)(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

[24 FR 10715, Dec. 25, 1959, as amended at 44 FR 30686, May 29, 1979]

PART 746—LICENSING OF GOVERNMENT INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE NAVY

- Sec.
- 746.1 Purpose.
- 746.2 Policy
- 746.3 Delegation of authority.
- 746.4 Definitions.
- 746.5 Government inventions available for licensing.
- 746.6 Nonexclusive license.
- 746.7 Limited exclusive license.
- 746.8 Additional licenses.
- 746.9 Royalties.
- 746.10 Reports.
- 746.11 Procedures.
- 746.12 Litigation.
- 746.13 Transfer of custody of Government inventions.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 40 U.S.C. 486(c); and 41 CFR 101-4.1.

SOURCE: 41 FR 55712, Dec. 22, 1976, unless otherwise noted.

§ 746.1 Purpose.

This part implements Department of Defense Directive 5535.3 of November 2, 1973 and 41 CFR subpart 101-4.1, and sets forth the policy, terms, conditions,

and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America and in the custody of the Department of the Navy.

§ 746.2 Policy.

(a) A major premise of the Presidential Statement fo Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that government inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a United States citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria

and achieving the goals set forth in this part.

(d) Subject to the following: (1) Any existing or future treaty or agreement between the United States and any foreign government or inter-governmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Navy research and development contracts where such licenses or other rights to such inventions are provided for in the contract and retained by the party contracting with the Department of the Navy, no license shall be granted or implied in a government invention, except as provided for in this part.

(e) No grant of a license under this part shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or federal law by reason of the source of the grant.

§ 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

§ 746.4 Definitions.

(a) *Government invention* means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) *To the point of practical application* means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

§ 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclu-

sive licenses to responsible applicants according to the factors and conditions set forth in §§ 746.6 and 746.7, subject to the applicable procedures of § 746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

§ 746.6 Nonexclusive license.

(a) *Availability of licenses.* Each government invention normally shall be made available for the granting of non-exclusive revocable licenses, subject to the provisions of any other licenses, including those under § 746.8.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensees to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of

the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.7 Limited exclusive license.

(a) *Availability of licenses.* Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to paragraph (a) of § 746.11 for a period of at least six months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any non-exclusive license granted on the invention; and

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of § 746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a)(3) of § 746.7 the Chief of Naval Research has determined that no applicant for a non-exclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 746.2 and in accordance with the procedures set forth in § 746.11.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or

in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c)(6) and (c)(7) of § 746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a non-exclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United States, and by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States. If the Chief of Naval Research finds it to be in the public interest, this license may also be expressly subject to this same royalty-free right by or on behalf of state and municipal governments.

(7) The license shall reserve to the Chief of Naval Research the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances:

(i) The extent that the invention is required for public use by government regulations, or

(ii) As may be necessary to fulfill health or safety needs, or

(iii) For other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Chief of Naval Research. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Chief of Naval Research.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government shall make no representation or warranty as to validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inventions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

§ 746.9 Royalties.

(a) *Nonexclusive license.* Normally, royalties shall not be changed under nonexclusive licenses granted to United States citizens and United States corporations on government inventions; however, the Chief of Naval Research may require other consideration.

(b) *Limited exclusive license.* A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

§ 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

§ 746.11 Procedures.

(a) *Publication requirements.* The Chief of Naval Research shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) *Contents of a nonexclusive license application.* An application for a non-exclusive license under a government invention should be addressed to the

Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant's business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant's plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) *Contents of an exclusive license application.* An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of § 746.11, an application for an exclusive license shall include:

(1) Applicant's status, if any, in any one or more of the following categories:

- (i) Small business firm;
- (ii) Minority business enterprise;
- (iii) Location in a surplus labor area;
- (iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant's best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under inventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) *Published notices.* (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the selected licensee;
- (iii) Duration and scope of the contemplated license; and
- (iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of § 746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application withing a reasonable period under a nonexclusive license; or

(B) The Chief of Naval Research determines that third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

Department of the Navy, DoD

§ 746.13

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) §746.11, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Effective date of the modification or revocation.

(e) *Modification or revocation.* (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Research if the licensee willfully makes a false statement of material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Research shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days

after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e)(1) of §746.11, or to show cause why the license should not be modified or revoked.

(f) *Appeals.* An applicant for a license, a licensee, or such other third party who has participated under paragraph (d)(1)(iv)(B) of §746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 746.12 Litigation.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

§ 746.13 Transfer of custody of Government inventions.

The Chief of Naval Research may enter into an agreement to transfer custody of a Government invention to another government agency for purposes of administration, including the granting of licenses pursuant to this part.

SUBCHAPTER E—CLAIMS

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 the adjudicating authority.
- 750.9 Claims: Payments.
- 750.10 Claims: Settlement and release.
- 750.11 Claims: Denial.
- 750.12 Claims: Action when suit filed.
- 75.13 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 judgments related to certain medical or legal malpractice claims.

750.55 Attorney's fees.

750.56—750.60 [Reserved]

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

- 750.61 Scope of subpart D.
- 750.62 Statutory authority.
- 750.63 Definitions.
- 750.64 Claim procedures.
- 750.65 Statute of limitations.
- 750.66 Officials with authority to settle.
- 750.67 Scope of liability.
- 750.68 Claims not payable.
- 750.69 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.

SOURCE: 57 FR 4722, Feb. 7, 1992, unless otherwise noted.

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 Torts 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.

Department of the Navy, DoD

§ 750.12

(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. 1346(b) also constitutes a complete release of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.11 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 (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.

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

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

respondent 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 non-appropriated-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;

§ 750.28

32 CFR Ch. VI (7-1-97 Edition)

(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 re-

turn 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 presentation 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.
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, Pasquotonk, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, and Onslow only), Bermuda, Iceland, Greenland, Azores, The Caribbean, The Republics 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, Pasquotonk, 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 Gadsen, Liberty, and Franklin Counties and Georgia (counties of Charlton, Camden, and Glynn).

Responsible command	Territory
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 presentation 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.

Department of the Navy, DoD

§ 750.44

(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 fa-

miliar 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

§ 750.49

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

32 CFR Ch. VI (7-1-97 Edition)

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.

PART 751—PERSONNEL CLAIMS REGULATIONS

Subpart A—Claims Against the United States

- Sec.
- 751.1 Scope of subpart A.
- 751.2 Claims against the United States: In general.
- 751.3 Authority.
- 751.4 Construction.
- 751.5 Definitions.
- 751.6 Claims payable.
- 751.7 Claims not payable.
- 751.8 Adjudicating authorities.
- 751.9 Presentment of claim.
- 751.10 Form of claim.
- 751.11 Investigation of claim.
- 751.12 Computation of award.
- 751.13 Payments and collections.
- 751.14 Partial payments.
- 751.15 Reconsideration and appeal.
- 751.16—751.20 [Reserved]

Subpart B—Demand on Carrier, Contractor, or Insurer

- 751.21 Scope of Subpart B.
- 751.22 Carrier recovery: In general.
- 751.23 Responsibilities.
- 751.24 Notice of loss or damage.
- 751.25 Types of shipments and liability involved.
- 751.26 Demand on carrier, contractor, or insurer.

- 751.27 Preparation and dispatch of demand packets.
- 751.28 Assignment of claimants rights to the government.
- 751.29 Recoveries from carrier, contractor, or insurer.
- 751.30 Settlement procedures and third party responses.
- 751.31 Common reasons for denial by carrier or contractor.
- 751.32 Forwarding claims files for offset action.
- 751.33 Unearned freight packet.
- 751.34 GAO appeals.
- 751.35 Forms and instructions.

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.

SOURCE: 57 FR 5055, Feb. 12, 1992, unless otherwise noted.

Subpart A—Claims Against the United States

§ 751.1 Scope of subpart A.

Subpart A of this part prescribes procedures and substantive bases for administrative settlement of claims against the United States submitted by Department of the Navy (DON) personnel and civilian employees of the naval establishment.

§ 751.2 Claims against the United States: In general.

(a) *Maximum amount payable.* The Military and Civilian Employees' Personnel Claims Act (Personnel Claims Act), 31 U.S.C. 3701, 3702, and 3721, provides that the maximum amount payable for any loss or damage arising from a single incident is limited to \$40,000.00. Claims for losses occurring prior to 31 October 1988 are limited to \$25,000.00.

(b) *Additional instructions.* The Judge Advocate General of the Navy may issue additional instructions or guidance as necessary to give full force and effect to this section.

(c) *Preemption.* The provisions of this section and the Personnel Claims Act are preemptive of other claims regulations. Claims not allowable under the Personnel Claims Act may, however, be allowable under another claims act.

(d) *Other claims.* Claims arising from the operation of a ship's store, laundry, dry cleaning facility, tailor shop, or

cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.3 Authority.

The Personnel Claims Act provides the authority for maximum payment up to \$40,000.00 for loss, damage, or destruction of personal property of military personnel or civilian employees incident to their service. The Act provides for the recovery from carriers, warehouse firms, and other third parties responsible for such loss, damage, or destruction. No claim may be paid unless it is presented in writing within 2 years of the incident giving rise to the claim.

§ 751.4 Construction.

The provisions of this section and the Personnel Claims Act provide limited compensation to service members and civilian employees of the DON for loss and damage to personal property incurred incident to service. This limited compensation is not a substitute for private insurance. Although not every loss may be compensated under the Personnel Claims Act, its provisions shall be broadly construed to provide reasonable compensation on meritorious claims. Adjudications must be based on common sense and the reasoned judgment of the claims examiner giving the benefit of realistic doubt to the claimant.

§ 751.5 Definitions.

(a) *Proper claimants*—(1) *Members of the DON.* All Navy and Marine Corps active duty members and reservists on active duty for training under Federal law whether commissioned, enrolled, appointed, or enlisted. A retired member may only claim under this Act if loss or damage occurred while the claimant was on active duty or in connection with the claimant's last movement of personal property incident to service.

(2) *Civilian employees of the Navy.* Federal employees of the naval establishment paid from appropriated funds. This term does not include Red Cross employees, USO personnel, and employees of Government contractors (including technical representatives).

(3) *Claims by nonappropriated-fund employees.* Claims by employees of Navy

and Marine Corps nonappropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this enclosure and forwarded to the appropriate local nonappropriated-fund activity which employs the claimant for payment from nonappropriated-funds.

(4) *Separation from service.* Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provision of these regulations when such claim accrued prior to separation or termination.

(b) *Improper claimants.* Insurers, assignees, subrogees, vendors, lienholders, contractors, subcontractors and their employees, and other persons not specifically mentioned as proper claimants.

(c) *Unusual occurrence.* Serious events and natural disasters not expected to take place in the normal course of events. Two different types of incidents may be considered unusual occurrences: those of an unusual nature and those of a common nature that occur to an unexpected degree of severity. Examples of unusual occurrences include structural defects in quarters, faulty plumbing maintenance, termite or rodent damage, unusually large size hail, and hazardous health conditions due to Government use of toxic chemicals. Examples of occurrences that are not unusual include potholes or foreign objects in the road, ice and snow sliding off a roof onto a vehicle, and tears, rips, snags, or stains on clothing. Claims that electrical or electronic devices were damaged by a power surge may be paid when lightning has actually struck the claimant's residence or objects outside the residence, such as a transformer box, or when power company records or similar evidence shows that a particular residence or group of residences was subjected to a power surge of unusual intensity. In areas subject to frequent thunderstorms or power fluctuations, claimants are expected to use surge suppressors, if

available, to protect delicate items such as computers or videocassette recorders.

(d) *Personal property.* Property including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV's), mobile homes, and boats.

(e) *Intangible property.* Property that has no intrinsic marketable value such as bankbooks, checks, promissory notes, non-negotiable stock certificates, bonds, baggage checks, insurance policies, money orders, and travelers checks.

(f) *Vehicles.* Includes automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks, mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft. Mobile homes and other property used as dwelling places are not considered vehicles.

§ 751.6 Claims payable.

Claims for loss, damage, or destruction of property may be considered as set out below if possession of the property was reasonable and useful under the circumstances and the loss did not result from the negligence of the claimant.

(a) *Transportation and storage losses.*

(1) Incurred during transportation under orders, whether in possession of the Government, carrier, storage warehouse, or other Government contractor.

(2) Incurred during travel under orders, including temporary duty.

(3) Incurred during travel on a space available basis on a military aircraft, vessel, or vehicle.

(4) *Do-it-yourself (DITY) moves.* In certain circumstances, loss of or damage to property during a DITY move is compensable. Claimants, however, are required to substantiate the fact of loss or damage in shipment. Claimants who do not prepare inventories have difficulty substantiating thefts. In addition, unless evidence shows that something outside the claimant's control caused the damage, breakage is presumed to be the result of improper packing by the claimant. For example, if a claimant's truck is rear-ended by a drunk driver during a DITY move, it is out of claimant's control. If the claim-

ant can substantiate that he was free from negligence, he can file a claim for damages to his household goods.

(5) *Shipment or storage at the claimant's expense.* The shipment or storage is considered Government-sponsored if the Government later reimburses the claimant for it. The Government, however, will not compensate a claimant for loss or damage that occurs while property is being shipped or stored at the claimant's expense, even if the Government reimburses the claimant for the shipment or storage fees. The reason for this is that there is no contract, called a Government Bill of Lading (GBL), between Government and the carrier. In such cases the claimant must claim against the carrier.

(b) *Losses at assigned quarters or other authorized places.* Damage or loss caused by fire, explosion, theft, vandalism, lightning, flood, earthquake, and unusual occurrences. Losses due to theft may only be paid if the claimant took reasonable measures to safeguard the property and the theft occurred as a result of a forced entry. Claimants are expected to secure windows and doors of their barracks, quarters, wall lockers, and other storage areas. Claimants are expected to store valuables in a secure area within their barracks, quarters, and storage areas. Claimants are also expected to take extra measures to protect cash, valuable jewelry, and similar small, easily pilferable items. Normally, such items should be kept in a locked container within a secured room. It is also advisable that the locked container be large enough that it is not convenient for a thief to carry off. Bicycles located at quarters or on base must be secured to a fixed object. Overseas housing is considered assigned quarters for claimants who are not local inhabitants.

(c) *Vehicle losses.* (1) Incurred while a vehicle is used in the performance of military duty, if such use was authorized or directed for the convenience of the Government, provided the travel did not include commuting to or from the permanent place of duty, and did not arise from mechanical or structural defect of the vehicle. There is no requirement that the loss be due to fire, flood, hurricane, or other unusual occurrence, or to theft or vandalism.

As a general rule, however, travel is not considered to be for the convenience of the Government unless it was pursuant to written orders authorizing use for which the claimant is entitled to reimbursement. The claimant must be free from negligence in order to be paid for a collision loss. Travel by the claimant to other buildings on the installation is not considered to be under orders for the convenience of the Government. Travel off the installation without written orders may only be deemed to be for the convenience of the Government if the claimant was expressly directed by his superior to use POV to accomplish the mission. The issuance of written orders after the fact raises the presumption that travel was not for the convenience of the Government. The maximum payment of \$2,000.00 authorized by the Allowance List-Depreciation Guide still applies to loss of or damage to vehicles and contents. This maximum does not apply to DITY moves.

(2) Incurred while a vehicle is shipped at Government expense, provided the loss or damage did not arise from mechanical or structural defect of the vehicle during such shipment. Damage caused during shipment at the claimant's expense or while the vehicle is being moved to or from the port by an agent of the claimant is not compensable.

(3) Incurred while a vehicle is located at quarters or other authorized place of lodging, including garages, carports, driveways, assigned parking spaces, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. Vandalism is damage intentionally caused. Stray marks caused by children playing, falling branches, gravel thrown by other vehicles, or similar occurrences are not vandalism. The amount payable on vandalism claims is limited to \$2,000.00.

(4) Incurred while a vehicle is located at places other than quarters but on a military installation, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. "Military installation" is used broadly to describe any fixed land area, wherever situated, controlled, and used by military activities

or the Department of Defense (DOD). A vehicle properly on the installation should be presumed to be used incident to the claimant's service. A vehicle that is not properly insured or registered in accordance with local regulations is not properly on the installation. A vehicle left in a remote area of the installation that is not a designated long-term parking area for an undue length of time is presumed not to be on the installation incident to service.

(5) *Theft of property stored inside a vehicle.* Claimants are expected to lock doors and windows. Neither the passenger compartment nor the trunk of a vehicle is a proper place for the long-term storage of property unconnected with the use of the vehicle. The passenger compartment of a vehicle does not provide adequate security, except for very short periods of time for articles that are not of high value or easily pilferable. Car covers and bras are payable if bolted or secured to the vehicle with a wire locking device.

(6) *Rental vehicles.* Damage to rental vehicles is considered under paragraphs of the Joint Federal Travel Regulations (JFTR), rather than as a loss incident to service.

(d) *Mobile homes and contents in shipment.* Claims for damage to mobile homes and contents in shipment are payable unless the damage was caused by structural or mechanical defects (see §751.12(g) below on mobile homes).

(e) *Borrowed property (including vehicles).* Loss or damage to borrowed property is compensable if it was borrowed for claimant's or dependent's own use. A statement will be provided by the owner of the property attesting to the use of the property by the claimant.

(f) *Clothing and articles being worn.* Repairs/replacement of clothing and articles being worn while on a military installation or in the performance of official duty may be paid if loss is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. This paragraph shall be broadly construed in favor of compensation, but see §751.5(c) for the definition of unusual occurrence. Articles being worn include hearing aids, eyeglasses, and items the claimant is carrying, such as a briefcase.

(g) *Personal property held as evidence or confiscated property.* If property belonging to the victim of a crime is to be held as evidence for an extended period of time (in excess of 2 months) and the temporary loss of the property will work a grave hardship on the claimant, a claim for the loss may be considered for payment. This provision will not be used unless every effort has been made to determine whether secondary evidence, such as photographs, may be substituted for the item. No compensation is allowed to a person suspected of an offense for property seized from that same person in the investigation of that offense. This also applies to property a foreign government unjustly confiscates or an unjust change in a foreign law that forces surrender or abandonment of property.

(h) *Theft from possession of claimant.* Theft from the person of the claimant is reimbursable if the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreation facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

(i) *Property used for the benefit of the Government.* Compensation is authorized where property is damaged or lost while being used in the performance of Government business at the direction or request of superior authority or by reason of military necessity.

(j) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Compensation is authorized for personal funds delivered to and accepted by military and civilian personnel authorized by the commanding officer to receive these funds for safekeeping, deposit, transmittal, or other authorized disposition, if the funds were neither applied as directed by the owner nor returned to the owner.

(k) *Fees—(1) For obtaining certain documents.* The fees for replacing birth cer-

tificates, marriage certificates, college diplomas, passports, or similar documents may be allowed if the original or a certified copy is lost or destroyed incident to service. In general, compensation will only be allowed for replacing documents with a raised seal that are official in nature. No compensation will be allowed for documents that are representative of value, such as stock certificates, or for personal letters or records.

(2) *Estimate fees.* An estimate fee is a fixed cost charged by a person in the business of repairing property to provide an estimate of what it would cost to repair property. An estimate fee in excess of \$50.00 should be examined with great care to determine whether it is reasonable. A person becomes obligated to pay an estimate fee when the estimate is prepared. An estimate fee should not be confused with an appraisal fee, which is not compensable (see § 751.7). A reasonable estimate fee is compensable if it is not going to be credited toward the cost of repair. If it is to be credited toward the cost of repair, it is not compensable regardless of whether the claimant chooses to have the work done. When an estimate fee is claimed, the file must reflect whether the fee is to be credited.

§ 751.7 Claims not payable.

(a) *Losses in unassigned quarters in the United States.* Claims for property damaged or lost at quarters occupied by the claimant within the United States that are not assigned or otherwise provided by the Government.

(b) *Currency or jewelry shipped or stored in baggage.* Claims for lost money, currency, or jewelry shipped or stored in baggage are not payable. Coin or paper money included in collections is payable only if listed on an inventory prepared at origin.

(c) *Enemy property or war trophies.* This includes only property that was originally enemy property or a war trophy that passed into the hands of a collector and was then purchased by a claimant.

(d) *Unserviceable or Worn-Out Property.*

(e) *Loss or Damage to Property to the Extent of any Available Insurance*

Coverage as Set Forth in §751.26 of this part.

(f) *Inconvenience or loss of use.* Expenses arising from late delivery of personal property, including but not limited to the expenses for food, lodging, and furniture rental, loss of use, interest, carrying charges, attorney's fees, telephone calls, additional costs of transporting claimant or family members, time spent in preparation of claim, or cost of insurance are not compensable. While such claims do not lie against the Government, members should be referred to the Personal Property Office for assistance in filing their inconvenience claims against the commercial carriers (NAVSUP Publication 490, Transportation of Personal Property).

(g) *Items of speculative value.* Theses, manuscripts, unsold paintings, or a similar creative or artistic work done by the claimant, friend, or a relative is limited to the cost of materials only. The value of such items is speculative. Compensation for a utilitarian object made by the claimant, such as a quilt or bookcase, is limited to the value of an item of similar quality.

(h) *Loss or damage to property due to negligence of the claimant.* Negligence is a failure to exercise the degree of care expected under the circumstances that is the proximate cause of the loss. Losses due, in whole or in part, to the negligence of the claimant, the claimant's spouse, child, houseguest, employee, or agent are not compensable.

(i) *Business property.* Losses of items acquired for resale or use in a private business are not compensable. If property is acquired for both business and personal use, compensation will not be allowed if business use is substantial, or is the primary purpose for which the item was purchased, or if the item is designed for professional use and is not normally intended for personal use.

(j) *Motor vehicles.* Collision damage is not payable unless it meets the criteria for payment as property used for the benefit of the Government as established in §751.6(c)(1).

(k) *Violation of law or directives.* Property acquired, possessed, or transported unlawfully or in violation of competent regulations or directives. This includes vehicles, weapons, or

property shipped to accommodate another person, as well as property used to transport contraband.

(l) *Sales tax.* Sales taxes associated with repair or replacement costs will not be considered unless the claimant provides proof that the sales tax was actually paid.

(m) *Appraisal fees.* An appraisal, as distinguished from an estimate of replacement or repair, is defined as a valuation of an item provided by a person who is not in the business of selling or repairing that type of property. Normally, claimants are expected to obtain appraisals on expensive items at their own expense.

(n) *Quantities of property not reasonable or useful under the circumstances are not compensable.* Factors to be considered are claimant's living conditions, family size, social obligations, and any particular need to have more than average quantities, as well as the actual circumstances surrounding the acquisition and loss.

(o) *Intangible Property,* such as Bankbooks, Checks, Promissory Notes, Stock Certificates, Bonds, Bills of Lading, Warehouse Receipts, Baggage Checks, Insurance Policies, Money Orders, and Traveler's Checks are not Compensable.

(p) *Property Owned by the United States,* Except where the Claimant is Responsible to an Agency of the Government other than the DON.

(q) *Contractual coverage.* Losses, or any portion thereof, that have been recovered or are recoverable pursuant to contract are not compensable.

§ 751.8 Adjudicating authorities.

(a) *Claims by Navy personnel.* (1) The following are authorized to adjudicate and authorize payment of personnel claims up to \$40,000.00:

- (i) The Judge Advocate General;
- (ii) Deputy Judge Advocate General;
- (iii) Any Assistant Judge Advocate General;
- (iv) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and
- (v) Commanding officers of Naval Legal Service Offices.

(2) The Staff Judge Advocate attached to Naval Supply Center, Oakland is authorized to adjudicate and pay claims up to \$25,000.00.

(3) The Staff Judge Advocate attached to Naval Station, Panama Canal is authorized to adjudicate and pay claims up to \$10,000.00.

(4) The following are authorized to adjudicate and authorize payment of personnel claims up to \$5,000.00:

(i) Officers in charge of Naval Legal Service Office Detachments;

(ii) The Staff Judge Advocate attached to Naval Station, Keflavik; and

(iii) Any personnel attached to a Naval Legal Service Office when specifically designated by the commanding officer of that Naval Legal Service Office.

(5) Any individual, when personally designated by the Judge Advocate General, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, not to exceed \$40,000.00.

(b) *Claims by Marine Corps personnel.*

(1) The following individuals are authorized to adjudicate and authorize payment of personnel claims up to \$40,000.00:

(i) Commandant of the Marine Corps;

(ii) Deputy Chief of Staff, Manpower and Reserve Affairs Department;

(iii) Director, Human Resources Division;

(iv) Head, Personal Affairs Branch;

(v) Deputy Head, Personal Affairs Branch;

(vi) Head, Personnel Claims Section; and

(vii) Any individual, when personally designated by the Commandant of the Marine Corps, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, and not to exceed \$40,000.00.

(2) The following individuals are authorized to adjudicate and authorize payment of personnel claims up to \$25,000.00:

(i) Head, Adjudication Unit;

(ii) Head, Carrier Recovery Unit; and

(iii) Head, Administration Unit.

§ 751.9 Presentment of claim.

(a) *General.* A claim shall be submitted in writing and, if practicable, be presented to the claims office or per-

sonal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred. If submission in accordance with the foregoing is impractical under the circumstances, the claim may be submitted in writing to any installation or establishment of the Armed Forces which will forward the claim to the appropriate Navy or Marine Corps claims office for processing. To constitute a filing under this regulation, a claim must be presented in writing to one of the military departments. Claims that are incomplete will not be refused and shall be logged in as received. Claimants submitting such claims, however, shall be informed in writing that properly completed forms or necessary substantiation must be received within a fixed period of time (normally 30 days), otherwise the claim will be denied or paid only in the amount substantiated.

(b) *Statute of limitations.* A claim must be presented in writing to a military installation within 2 years after it accrues. This requirement is statutory and may only be waived if a claim accrues during armed conflict, or armed conflict intervenes before the 2 years have run, and good cause is shown. In this situation, a claim may be presented not later than 2 years after the end of the armed conflict. A claim accrues on the day the claimant knows or should know of the loss. For losses that occur in shipment of personal property, normally the day of delivery or the day the claimant loses entitlement to storage at Government expense (whichever occurs first) is the day the claim accrues. If a claimant's entitlement to Government storage terminates, but the property is later delivered at Government expense, the claim accrues on delivery. In computing the 2 years, exclude the first day (day of delivery or incident) and include the last day. If the last day falls on a non-workday, extend the 2 years to the next workday.

(c) *Substantiation.* The claimant is responsible for substantiating ownership or possession, the fact of loss or damage, and the value of property. Claimants are expected to report losses promptly. The greater the delay in reporting a loss, the more substantiation the claimant is expected to provide.

(1) *Obviously damaged or missing inventory items that are not reported at delivery.* Claimants are expected to list missing inventory items and obvious damage at time of delivery. Claimants who do not should be questioned. Obviously some claimants will simply not notice readily apparent damage. If, however, the claimant cannot provide an explanation or lacks credibility, payment should be denied based on lack of evidence that the item was lost or damaged in shipment.

(2) *Later-discovered shipment loss or damage.* A claimant has 70 days to unpack, discover, and report loss and damage that is not obvious at delivery. In most cases, loss and damage that is discovered later and reported in a timely manner should be deemed to have been incurred in shipment.

(3) *Damage to POV's in shipment.* Persons shipping POV's are expected to list damage on DD Form 788 (Private Vehicle Shipping Document for Automobile) when they pick up the vehicle. Obvious external damage that is not listed is not payable. Damage the claimant could reasonably be expected not to notice at the pickup point should be considered if the claimant reports the damage to claims personnel within a short time, normally a few days, after arriving at the installation.

(4) *Credibility.* Most claimants are honest. Most claimants objectively attempt to claim only what is due them. These persons are entitled to the presumption that what they list is honest, although it may not be correct. Some claimants lack credibility and their claims require careful scrutiny. Factors that indicate a claimant's credibility is questionable include amounts claimed that are exaggerated in comparison with the cost of similar items, insignificant or almost undetectable damage, very recent purchase dates for most items claimed, and statements that appear incredible. Such claimants should be required to provide more evidence than is normally expected.

(5) *Inspections.* Whenever a question arises about damage to property, the best way to determine a proper award is to examine the item closely to determine that nature of the damage. For furniture, undersurfaces and the edges of drawers and doors should be exam-

ined to determine whether the material is solid hardwood, fine quality veneer over hardwood, veneer over pressed wood, or other types of material. If the inspection is conducted at the claimant's quarters, the general quality of property should be determined. Claimants should routinely be directed to bring in vehicles and small broken items of value such as figurines for inspection, and inspections should be conducted on all large claims. Observations by repairmen and transportation inspectors are very valuable, but on occasion, claims personnel must go out of the office and inspect items themselves. Such inspections are necessary to reduce the number of reconsiderations and fraudulent claims and are invaluable in enabling claims personnel to understand the facts in many situations.

§ 751.10 Form of claim.

The claim should be submitted on DD Form 1842 (Claim for Personal Property) accompanied by DD Form 1844 (List of Property). If DD Forms 1842 and 1844¹ are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant (see § 751.5) or by a person with a power of attorney for a proper claimant. A copy of the power of attorney must be included with the claim.

§ 751.11 Investigation of claim.

Upon receipt of a claim filed under the Personnel Claims Act, the claim shall be stamped with the date and receiving office, and be referred to a claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate.

¹Copies of these forms may be obtained by contacting the claims office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred.

§ 751.12 Computation of award.

The Judge Advocate General will periodically publish an Allowance List-Depreciation Guide specifying rates of depreciation and maximum payments applicable to categories of property. The Allowance List-Depreciation Guide will be binding on all DON claims personnel. The value of the loss is determined and adjusted to reflect payments, repairs, or replacement by carriers or insurers, or lost potential insurance or carrier recoveries.

(a) *Repair of items.* For items that can be economically repaired, the cost of repair or an appropriate loss in value is the measure of the loss. The cost of repair may be the actual cost, as demonstrated by a paid bill, or reasonable estimated costs, as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property.

(1) *Loss of value (LOV)*—(i) *Minor damage not worth repairing.* An LOV, rather than replacement cost, should be awarded when an item suffers minor damage that is not economical to repair but the item remains useful for its intended purpose. An LOV is particularly appropriate when the item is not of great value and has preexisting damage (PED). An LOV is also appropriate to compensate claimants for minor damage, such as a chip or surface crack to a figure or knickknack. For example, if an inexpensive, fiberboard coffee table with extensive PED is scratched, repair of the scratch would exceed the value of the table. Under the circumstances, LOV is appropriate.

(ii) *Damage to upholstered furniture.* If damage can be repaired imperceptibly by cleaning or reweaving, the claimant is only entitled to repair cost. If repairs would be somewhat noticeable but the damage is to an area not normally seen, repair costs plus an LOV would be appropriate. Alternatively, if repairs would be somewhat noticeable but the item is of no great value and has already suffered PED, repair costs and LOV would be appropriate even if the damage is in an obvious area. If, however, repairs would be so noticeable as to destroy the usefulness of the item, the item should be reupholstered or replaced. What is noticeable will depend on the nature and value of the

item, and the nature of the damage, and claims personnel should exercise sound judgment to avoid being too lenient or too harsh.

(iii) *Cosmetic damage to nondecorative items.* LOV should also be awarded to compensate claimants for cosmetic damage to items that were not purchased for purposes of display or decoration. For example, the casing of a washing machine is dented. The washing machine is not decorative in nature and still functions perfectly. An LOV, rather than replacement of the washing machine or the casing, is the appropriate measure of the claimant's loss.

(2) *PED to repairable items.* PED is damage to an item that predates the incident giving rise to a claim. PED is most commonly identified by the use of symbols on household goods shipment inventories. Whenever PED is listed on an inventory, claims personnel must determine whether the PED did in fact exist and whether the cost of repairing the item includes repairing PED. The fact that a claimant signed the inventory that listed PED is conclusive evidence that PED did exist unless the member has taken written exceptions on the inventory to the carrier's description of PED. These findings are essential for recovery purposes. Often inspecting the item or calling the repairman who prepared the estimate is the only way to make an effective determination.

(i) *Estimates that do not include repair of PED.* If the estimate does not include repair of PED, even if PED is listed on the inventory, no deduction should be made. This fact should be recorded on the chronology sheet and on carrier recovery documents.

(ii) *Estimates that include repair of PED.* If repair of PED is included in the estimate, the percentage attributable to repair of PED is deducted.

(3) *Mechanical defects.* The Personnel Claims Act only provides compensation for losses incurred incident to service. Damage resulting from a manufacturer's defect or from normal wear and tear is not compensable. Damage to the engine or transmission of an old vehicle during shipment is probably due to a mechanical defect. Internal damage to appliances, such as old televisions,

is also often due to a mechanical defect, particularly when there is no external damage to the item. Claims for internal damage to small appliances that are not normally repaired, such as toasters or hair dryers, should be assessed based on damage to other items in the carton and the shipment, the age of the item, the honesty of the claimant, and whether there are loose parts inside. If the evidence suggests rough handling caused the damage, a claim for the item should be paid. Internal damage to larger items such as televisions or stereos should be evaluated by a repairman. Evidence that suggests rough handling, such as smashed boards, provides a basis for payment. Evidence that suggests a fault in the item, such as burned-out circuits, does not. Deterioration because an item in storage was not used for a long time, rather than because the item was mishandled or the conditions of storage were improper, is also considered due to a mechanical defect.

(4) *Wrinkled clothing.* Clothing wrinkled in shipment presents special problems. Normally, unless the wrinkling is so severe as to amount to actual damage, the cost to press wrinkles out of clothing after a move is not compensable. The mere fact that clothing was "wadded up" or "used as packing material" is not in itself sufficient. The wrinkling must be such that professional pressing is necessary to make the clothing usable. This determination will depend on the wrinkling and the nature of the material.

(5) *Wet and mildewed items.* A claimant has a duty to mitigate damages by drying wet items to prevent further deterioration. Items that have been wet are not necessarily damaged and claimants who throw them away have difficulty substantiating that a loss has occurred. Although a deeply seated mildew infestation is almost impossible to remove completely, items lightly infested can often be cleaned.

(b) *Replacement of items.* A claimant is entitled to the value of missing and destroyed items. An item that has sustained damage is considered destroyed if it is no longer useful for its intended purpose and the cost of repairing it exceeds its value. Value is measured in the following ways:

(1) *Similar used items.* If there is a regular market for used items of that particular type, the loss may be measured by the cost of a similar item of similar age. Prices obtained from industry guides or estimates from dealers in this type of property are acceptable to establish value. There is a regular market on used cars and the value of a used automobile is always measured according to the N.A.D.A. Official Car Guide rather than the depreciated replacement cost. Similarly, the Mobile Home Manufactured Housing Replacement Guide may be used to value a destroyed mobile home. Where there is no regular market in a particular type of used item, however, estimates from dealers in "collector's items" should be avoided.

(2) *Depreciated replacement cost.* This is the normal measure of a claimant's loss. A catalog or store price for a new item similar in size and quality is depreciated using the Allowance List-Depreciation Guide to reflect wear and tear on the missing or destroyed item. The replacement cost for identical items—particularly decorative items—should be used whenever the item is readily available in the local area, but a claimant who is eligible to use the Navy Exchange (NEX) and the NEX Mail Order Catalog should not be allowed a higher replacement cost of an item, such as a television, from a specialty store when the NEX carries an item comparable in size, quality, and features from another manufacturer.

(3) *"Fair and reasonable" (F&R) awards.* A fair and reasonable award should be used sparingly when other measures would compensate the claimant appropriately. Overuse of such awards impedes carrier recovery and "F&R" should never be used when a more precise measure of damages is available. An F&R award for a missing or destroyed item should reflect the value of an item similar in quality, description, age, condition, and function to the greatest extent possible. An F&R award for a damaged item should reflect either the amount a firm would charge for repair or the reduced value to the greatest extent possible. Whenever such an award is made, the basis for the award should be explained on the chronology sheet, in the comments

block of DD Form 1844 (List of Property), or in a separate memorandum. A fair and reasonable award may be considered in the following instances:

(i) The item is obsolete and a simple deduction of a percentage for obsolescence is not appropriate.

(ii) The claimant cannot replace the item in the local area.

(iii) The claimant cannot replace the item at any cost.

(iv) Repair costs or replacement costs are excessive for the item and an LOV is not appropriate.

(v) The claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

(c) *Depreciation.* The Personnel Claims Act is only intended to compensate claimants for the fair market value of their loss. Except in unusual cases, a used item that has been lost or destroyed is worth less than a new item of the same type. The price of a new replacement item must be depreciated to award the claimant the value of the lost or destroyed item. Average yearly and flat rates of depreciation have been established to determine the fair value of used property in various categories. These rates are listed in the Allowance-List Depreciation Guide. The listed depreciation rate should be adjusted if an item has been subjected to greater or lesser wear and tear than normal or if the replacement cost the claimant provides is for a used item rather than a new one. Yearly depreciation is not taken during periods of storage and normally no depreciation is taken on repair costs or on replacement cost for items less than 6 months old, excluding the month of purchase and the month the claim accrued (but see § 751.12(c)(3)).

(1) *Depreciating replacement parts.* No depreciation should be taken on replacement parts for damaged items unless these are parts separately purchased or normally replaced during the useful life of these items. The replacement cost for these latter items should be depreciated. For example, the glass top to a table is not normally replaced during the useful life of the table and should not be depreciated.

(2) *Depreciating fabric for reupholstery.* Fabric is normally replaced during the

useful life of upholstered furniture. When upholstered furniture is reupholstered because the damage is too severe to be repaired and an LOV is not appropriate, the cost of new fabric is depreciated at a rate of 5 percent per year. If the item has been reupholstered since it was purchased, depreciation is measured from the date the item was last reupholstered, rather than from the date the item was originally purchased. Labor costs are allowed as claimed. If the estimate does not list separate costs for fabric and labor, the labor costs may be assumed to be 50 percent of the total bill.

(3) *Rapidly depreciating items.* Tires, most clothing items, and most toys rapidly lose their value, as the high depreciation rate for these items reflects. Depreciation should be taken on such items even when they are less than 6 months old. As a rule of thumb, half of the normal yearly or flat rate depreciation should be taken on such items when they are between 3 and 6 months old at the time of loss.

(4) *Obsolescence.* Even though depreciation is not taken during periods of storage, obsolescence should be claimed on those items that have lost value because of changes in style or technological innovations.

(5) *Military uniforms.* Normally, no depreciation should be taken on military uniforms. Depreciation, however, should be taken on military uniform items that are being phased out or that belong to persons separating from the service. Socks and underwear are not considered military uniform items.

(d) *Salvage value.* Whenever a claimant has been fully compensated for a destroyed item that still has some value, the claimant has the option of either retaining the item and having the claims office deduct an amount for the salvage value, or turning the item over to the Government or to the carrier if the carrier will fully reimburse the Government.

(1) *Turn-in to the Government.* On all claims, except CONUS domestic shipments, if the claimant does not choose to retain the items and accepts a reduction in the amount paid on the claim for salvage value, the claims office will require the claimant to turn them into a disposal unit designated by

the Personal Property Office. Normally, the amount that the Government may obtain from selling such items is very low. If the claims office determines that the salvage value is less than \$25.00, the claimant may be advised to dispose of the items by other means, either by throwing the item away or by turning it over to a charitable organization. Claimants may also be directed to make alternative disposition of items that have been refused by the designated disposal unit. This alternate disposition must be noted on the chronology sheet that is kept as part of the claims file. Claims personnel will not divert such items to personal use or use them to furnish Government offices. In determining whether an item has salvage value, the size of the item and the distance the claimant must travel to turn it in should be considered. A claimant must make his own arrangements to transport salvageable items prior to payment. Claims personnel should ask the claimant's command to make transportation available to assist the claimant in appropriate cases, particularly when the item is large or bulky. Sound discretion prohibits requiring a claimant living far from a designated disposal unit to turn in an item of relatively slight value.

(2) *Turn-in to the carrier.* On CONUS domestic shipments, the carrier may choose to pick up items for which it will fully reimburse the Government. Pursuant to a Joint Military-Industry Memorandum on Salvage, items that are hazardous to keep around, such as mildewed items or broken glass (except items such as figurines and crystal with a per item value of more than \$50.00), may be disposed of as the claimant chooses. Claimants must retain other items for a maximum of 120 days from the date of delivery to allow the carrier to pick them up. Pursuant to this memorandum of understanding, the carrier has until the end of the inspection period or 30 days after receipt of the demand, whichever is greater, to identify such items. Claims offices must identify files in which the carrier is entitled to salvage and must process these claims for recovery action within 30 days so that the claimant does not dispose of salvageable items before the

end of the period allotted for carrier pick-up.

(3) *Maximum allowances.* If the claimant will not be fully compensated for an item because a maximum allowance is applied, he will not be required to turn in the item.

(e) *Standard abbreviations.* The claims examiner's intent should be clear and unmistakable to anyone reviewing the remarks section of DD Form 1844. The following standardized abbreviations are used in completing the remarks section. Other abbreviations should not be used. Whenever one or more of these abbreviations will not adequately explain how the claimant has been compensated, a brief explanation should be inserted in the remarks section, in the comments section on the bottom of DD Form 1844, or on the chronology sheet that is kept in each claims file.

(1) *AC: Amount claimed.* The amount claimed was awarded to the claimant. This abbreviation is not used if the claimant has presented an estimate of repair.

(2) *AGC: Agreed cost of repairs.* The claimant did not present an estimate but instead, after discussing the matter with claims personnel, entered an amount that represents the claimant's guess as to how much it would cost to repair the damaged item. The claims office may accept this amount as a fair estimation of the cost of repair based on the amount of damage, the value of the item, and the cost of similar repairs in the area. A claimant may be allowed up to \$50.00 as an AGC without an inspection and between \$50.00 and \$100.00 if claims personnel have inspected the item. The use of AGC is an integral part of small claims procedures.

(3) *CR: Carrier recovery.* The claimant was paid this amount by the carrier for the item. The payment is recorded in the remarks column, and the total carrier payment is deducted at the bottom of DD Form 1844 in the same manner as insurance recovery.

(4) *D: Depreciation.* Yearly depreciation was taken on the destroyed or missing item in accordance with the appropriate depreciation guide in effect at the time of the loss. Deviations from standard rates must be explained.

(5) *DV: Depreciated value.* A claimant's repair costs exceeded the value of the item, so the depreciated value was awarded instead. Whenever a claimant claims a repair cost that is very high, relative to the age and probable replacement cost, the replacement cost should be obtained and the depreciated value determined.

(6) *ER: Estimate of repair.* The claimant provided an estimate of repair that was used to value the loss. If multiple estimates were provided, they should be numbered and referred to as exhibits.

(7) *EX: Exhibit.* When numerous documents have been provided to substantiate a claim, they should be numbered and referred to as exhibits.

(8) *FR: Flat rate depreciation.* Flat rate depreciation was taken on an item in accordance with the Depreciation Guide in effect at the time of the loss. Deviations from the normal rate must be explained.

(9) *F&R: Fair and reasonable.* A fair and reasonable award was made (see § 751.12(b)(3)).

(10) *LOV: Loss of value.* An LOV was awarded (see § 751.5(a)(1)).

(11) *MA: Maximum allowance.* The adjudicated value, listed in the "Amount Allowed" column, exceeds a maximum allowance. The amount in excess of the maximum allowance is subtracted at the bottom of the DD Form 1844.

(12) *N/P: Not payable.* The item is not payable. The reason for this comment should be noted (i.e., "not substantiated").

(13) *OBS: Obsolescence.* A percentage was deducted for obsolescence.

(14) *PCR: Lost potential carrier recovery.* A deduction was made for lost PCR.

(15) *PED: Preexisting damage.* A deduction was made for PED.

(16) *PP: Purchase price.* The purchase price was used to value the loss. Normally, the purchase price is not an adequate measure of the claimant's loss. If, however, the claimant used the replacement cost of a dissimilar item or otherwise failed to substantiate the replacement cost, a recent purchase price may be used at the discretion of claims personnel, if a true replacement cost is not available.

(17) *NEX: Navy Exchange replacement cost.* A replacement from the NEX was used.

(18) *RC: Replacement cost.* A replacement cost was used. The store or catalog from which the replacement cost was taken should be listed.

(19) *SV/N: Item has no salvage value.* A destroyed item was determined to have no salvage value.

(20) *SV/R: Salvage value, item retained.* A destroyed item was determined to have salvage value and the claimant chose to keep the item. Accordingly, a deduction was made for the salvage value.

(21) *SV/T: Salvage value, item turned in.* A destroyed item was determined to have salvage value and the claimant chose not to keep the item. If the item is part of a CONUS domestic shipment, the claimant must keep it for the carrier to pick up. Otherwise, the claimant must turn the item in prior to payment on the claim.

(f) *Sets.* Normally, when component parts of a set are missing or destroyed, the claimant is only entitled to the replacement cost of the missing or destroyed components. In some instances, however, a claimant would be entitled to replacement of the entire set or to an additional LOV. Some claimants will assert that all of the items in a room are part of a set. Pieces sold separately, however, are ordinarily not considered parts of a set, and pieces that merely complement other items, such as a loveseat purchased to complement a particular hutch, are never considered part of a set. When a component part of a set is missing or destroyed and cannot be replaced with a matching item, or has to be repaired so that it no longer matches other component parts of the set, the following rules apply:

(1) *The set is no longer useful for its intended purpose.* When a set is no longer useful for its intended purpose because component parts are missing or destroyed the entire set may be replaced. Note that several firms will match discontinued sets of china and crystal and that replacement of the set is not authorized if replacement items can be thus obtained. Generally, with china and crystal the value of the set as a whole is not destroyed unless more

than 25 percent of the place settings are unusable. Exceptions may be made if the claimant can demonstrate a particular need for a certain number of place settings because of family size or social obligations. In those rare instances when an entire set is replaced, the claimant will be required to turn in undamaged pieces.

(2) *The set is still useful for its intended purpose.* When missing pieces cannot be matched and there is measurable decrease in the value of the set, but the set is still useful for its intended purpose, the claimant is awarded the value of the missing pieces plus an amount for the diminution in value of the set as a whole. The amount awarded as an LOV will vary depending on the exact circumstances.

(3) *Mattresses and upholstered furniture are recovered.* A mattress and box spring set is covered during normal use. Such sets are still useful for their intended purpose if one piece of the set has to be recovered in a different fabric. No award will be made for the undamaged piece. When one piece of a set of upholstered furniture suffers damage that cannot be repaired or recovered in matching fabric, recovering the entire set or recovering the damaged piece plus LOV should be considered. Factors to take into account include the value of the set, PED to the set, the nature of the current damage, and the extent to which the claimant's furniture is already mismatched.

(g) *Mobile homes.* Mobile homes present special problems. Most mobile homes, particularly larger ones, are not built to withstand the stress of multiple long moves. While the Mobile Home One-Time Only rate solicitation program, effective 1 November 1987, may have reduced the incidence of loss and damage by encouraging carriers to use extra axles when necessary, mobile home shipments can result in enormous, uncompensated losses for servicemembers and present unusual difficulties for claims adjudicators. Because the risk is so great, claims offices must coordinate with their servicing transportation offices to ensure both that servicemembers shipping mobile homes are advised of the risk and of their responsibilities, and that the transportation office does not author-

ize shipment of a mobile home that has not been placed in a fit condition to be shipped.

(1) *Transportation counseling prior to shipment.* Servicemembers should be advised of the following:

(i) They are responsible for placing the mobile home and its tires, tubes, frames, and other parts in fit condition to ship and for loading the mobile home to withstand the stresses of normal transportation. They will not be compensated for any damage that results either from a latent defect in the construction of the mobile home (except when the carrier is aware of the defect and the servicemember is not) or from their failure to place the mobile home in fit condition to ship.

(ii) They are responsible for paying for necessary repairs en route. Such repairs can amount to several hundred or even several thousand dollars, and some mobile homes have been left in storage at the servicemember's expense hundreds of miles from destination because the owner could not pay for necessary repairs.

(iii) They are responsible for resealing the roof and weatherproofing the mobile home after delivery. The cost of this is not compensable, nor is any damage caused by the servicemember's failure to have it done.

(iv) They are responsible for removing obstructions, grading the roadway, or otherwise preparing the site to make it accessible for the carrier's equipment at both origin and destination.

(v) Because of the risk that damage will result for which they cannot be compensated, servicemembers should strongly consider purchasing private insurance coverage. A claimant usually must purchase separate insurance for property shipped inside the mobile home and most mobile home carriers will sell some sort of insurance coverage for damage to the mobile home itself. Often, when a mobile home has been moved repeatedly, the risk of uncompensated loss is so high that the servicemember should consider selling the home rather than attempting to ship it.

(2) *Inspection Prior to Shipment.* Transportation personnel should inspect the

home prior to shipment in all instances. All defects should be recorded. In particular:

(i) A mobile home should not be shipped with a servicemember's furniture and other household goods inside. The maximum safe weight of appliances and additional property is very low. An overweight mobile home tends to blow tires and break apart during shipment. Servicemembers should be advised long before shipment that they will have to make other arrangements for shipping such items at their own expense.

(ii) A mobile home should never be shipped with defects in the steel frame or tow hitch.

(iii) The condition of all tires should be checked and recorded. Some carriers submit huge bills for "blown" tires during shipment.

(iv) Structural changes to the interior of the home, particularly those that involve cutting through beams, should be examined closely and a civil engineer should be called in to render an opinion. Frequently, it is not safe to ship mobile homes in which the claimant has altered the interior framing.

(3) *Latent Defects.* Many carriers will attempt to escape liability by attributing all damage to latent manufacturing defects. A loss due to such a defect, like a loss due to any other mechanical defect, is not considered incident to service. When an engineer's report or other evidence shows that damage was indeed caused by a defect rather than by the carrier's failure to take the necessary care, the following rules apply:

(i) If both the carrier and the claimant knew or should have known of the defect, and if the claimant took no corrective action and had the mobile home shipped anyway, the claim is not payable.

(ii) If the carrier knew or should have known of the defect, and the claimant could not reasonably have been expected to know of it, the claim is payable and liability should be pursued against the carrier.

(iii) If neither the claimant nor the carrier could reasonably be expected to know of the defect, the claim is not payable.

(4) *Substantiation of a claim.* Prior to adjudication of such claims, the mobile

home should be inspected and the following evidence obtained, if possible:

(i) *DD Form 1800 (Mobile Home Shipment Inspection at Destination).* This document shows the condition of the home at origin prior to shipment. This document is prepared by the Transportation Office (TO) and is signed by the servicemember, the carrier's representative, and the Government inspector. It is vital and a claim should not be paid without it. At destination, damages noted at delivery should be annotated and the form dated and signed by the driver and the servicemember. Damages may be listed on this form or on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

(ii) *DD Form 1863 (Accessorial Services-Mobile Home).* For shipments after 1 November 1987, DD Form 1863 lists all services the carrier is required to provide, including line-haul, payment of tolls, overdimension charges, permits and licenses, provision of anti-sway devices, axles with wheels and tires, temporary lights, and escort services. All costs and services may not appear on the GBL. For shipments prior to 1 November 1987, damages may also be listed on this form.

(iii) *DD Form 1840/1840R.* Beginning 1 November 1987, later-discovered damages must be listed on DD Form 1840R and dispatched to the carrier within 75 days of delivery. Timely notice on mobile home shipments differs slightly from such notice on other shipments. Item 306 of the carrier's rate solicitation provides that "upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late discovered loss or damage, including personal property within the mobile home, will be noted on the DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt."

(iv) *DD Form 1412 (Inventory of Items Shipped in Housetrailer).* Prior to 1 November 1987, the servicemember prepared DD Form 1412. After 1 November 1987, the carrier is required to prepare this in coordination with the servicemember.

(v) *DD Form 1841*. If a Government representative does not inspect the mobile home at delivery, an inspection should be requested.

(vi) *Driver's statement*. The mobile home carrier should be requested to provide (within 14 days) a statement from the driver of the towing vehicle explaining the circumstances surrounding the damage as well as detailed travel particulars. If the mobile home carrier does not respond, the file should be so annotated. Such statements are often self-serving and should be reviewed critically to determine whether the carrier is attributing damage to a latent defect.

(vii) *Owner's statement*. The claimant should provide a statement concerning the age of the mobile home, the date and place purchased, any prior damage or repairs, all prior moves, and prior claims.

(viii) *Estimates of repair*. When possible, the claimant should obtain two estimates of repair from firms in the business of repairing, rather than selling, mobile homes. Such estimates should list the approximate value of the home before and after damage, a detailed breakdown of the repairs needed and their cost, and the cause of damage.

(ix) *Engineer's statement*. Where the facts indicate the possibility of a latent defect, the claimant should be assisted in obtaining a statement from a qualified engineer or vehicle maintenance professional with expertise in mobile homes explaining the cause of damage. The claims office should coordinate in advance with facilities engineers or with local reserve units with engineering expertise to provide such inspection where possible.

(5) *Compensable damage*. In adjudicating the claim, the claimant may be paid for loss of or damage to the mobile home except when the damage is due to a latent defect, to the servicemember's failure to place the home in fit condition to ship, or to the servicemember's failure to have the roof resealed. The servicemember may also be compensated for the reasonable cost of repair estimates provided by firms in the business of mobile home repair and of opinions prepared by qualified engineers. The claimant may not be com-

pensated for services the carrier failed to perform or performed improperly or for other incidental expenses. The claimant should be referred to the transportation office for these. Such services (listed on DD Form 1843 and the GBL correction notice) include:

(i) Escort or pilot services, ferry fees, tolls, permits, overdimension charges, or taxes.

(ii) Storage costs or parking fees en route.

(iii) Expand charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.

(iv) Wrecker service.

(v) Connecting or disconnecting utilities.

(vi) Blocking, unblocking, or removing or installing skirting.

(vii) The cost of separating or reassembling and resealing a double-wide mobile home.

(6) *Carrier liability and attempted waivers*. In the absence of additional coverage, the carrier's maximum liability for personal property shipped with the mobile home is \$250.00. The carrier is fully liable for damages to the mobile home itself. Carriers are also liable for damage caused by third parties with whom they contract, such as wrecker services. Some carriers may still try to obtain waivers, from the servicemember. A waiver signed by the servicemember, however, is not binding on the United States. The Navy is the contracting party and the owner has not authority to sign a waiver agreement or any other document purporting to exempt the carrier from the liability imposed under the GBL.

§ 751.13 Payments and collections.

Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2 or in superseding messages, if applicable.

§ 751.14 Partial payments.

(a) *Partial payments when hardship exists.* When claimants need funds to feed, clothe, or house themselves and/or their families as a result of sustaining a compensable loss, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment is made, a copy of the payment voucher and all other information related to the partial payment shall be placed in the claim file. Action shall be taken to ensure the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(b) *Marine hardship payments.* The Marine claimant's Transportation Management Office (TMO) shall ensure compliance with all requirements of § 751.14(a), and may request authority for payment by message from the Commandant of the Marine Corps (MHP-40).

(c) *Effect of partial payment.* Partial payments are to be subtracted from the adjudicated value of the claim before payment of the balance due. Overpayments are to be promptly recouped.

§ 751.15 Reconsideration and appeal.

(a) *General.* When a claim is denied either in whole or in part, the claimant shall be given written notification of a the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within 6 months from the date the claimant receives notice of the initial adjudication of the claim. If a claimant requests reconsideration and if it is determined that the original action was erroneous or incorrect, it shall be modified and, when appropriate, a supplemental payment shall be approved. If full additional payment is not granted, the file shall be forwarded for reconsideration to the next higher adjudicating authority. The next higher adjudicating authority may be the commanding officer of the Naval Legal Service Office if a properly delegated subordinate has acted initially on the claim. For claims originally adjudicated by the commanding officer, the files will be forwarded to the Judge Advocate General for final ac-

tion. The claimant shall be notified of this action either by letter or by copy of the letter forwarding the file to higher adjudicating authority. The forwarding letter shall include a synopsis of action taken on the file and reasons for the action or denial, as well as a recommendation of further action or denial.

(b) *Files forwarded to JAG.* For files forwarded to JAG in accordance with § 751.15(a), the forwarding endorsement shall include the specific reasons why the requested relief was not granted and shall address the specific points or complaints raised by the claimant's request for reconsideration.

(c) *Appeals procedure for claims submitted by Marine Corps personnel.* Where any of the Marine Corps adjudication authorities listed in § 751.8(b) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General.

§§ 751.16-751.20 [Reserved]**Subpart B—Demand On Carrier, Contractor, or Insurer****§ 751.21 Scope of subpart B.**

Subpart B addresses the recovery process for loss or damage occurring during the storage or transport of household goods and other personal property for which military personnel and civilian employees were paid under the provisions of 31 U.S.C. 3721. The authority for pursuing recovery action is found at 31 U.S.C. 3711.

§ 751.22 Carrier recovery: In general.

(a) *Responsibility.* Recovery of amounts due for personal property lost or damaged while in transit or in storage at Government expense is a joint Personal Property Office/Naval Legal Service Office responsibility. In order to establish liability and to effectively pursue a recovery claim against a carrier, warehouseman, or other third party, it is essential that all required action be accomplished in an expeditious manner. Failure of the property

owner or any Government agent to exercise diligence in the performance of duties may render collection of the claim impossible and thereby deprive the Government of rightful revenue. Claims approving and settlement authorities will ensure that all actions required of the property owner and naval personnel are accomplished promptly.

(b) *Elements of collection.* There are four elements in the successful assertion and collection of a recovery claim. They are:

- (1) Proving that a transit loss occurred;
- (2) Determining who had responsibility for the goods at the time of the transit loss;
- (3) Calculating the amount of damages; and
- (4) Pursuing the responsible party or parties vigorously.

§ 751.23 Responsibilities.

(a) *Notice of loss.* Claims office personnel must ensure that Notice of Loss or Damage, DD Form 1840R, is properly completed and dispatched to the liable third party or parties within 75 days of delivery of the property.

(b) *Counseling of claimant.* Claims office personnel should coordinate with the local personal property office to ensure proper counseling regarding potential claim procedures.

(c) *Documents.* Claims office personnel must obtain from the claimant or from the transportation office the following documents needed to process recovery actions:

- (1) A copy of the GBL or other document used for shipment or storage.
- (2) A copy of the inventory.
- (3) A copy of the DD Form 1840 and DD Form 1840R.
- (4) Where storage in transit was extended from 180 days to 270 days, a copy of the authorization from the transportation office allowing this extension at Government expense.
- (5) Where storage converted from Government paid storage to storage at owner's expense, a copy of the claimant's contract with the warehouse.

(6) When necessary, a copy of DD Form 1164, Service Order for Personal Property, from the transportation office.

(7) When necessary, DD Form 619-1, Statement of Accessorial Services Performed, from the transportation office.

(d) *Carrier inspection.* Claims office personnel should inform claimants that the carrier has the right to inspect damaged goods within 75 days of delivery, or 45 days of dispatch of DD Form 1840R, whichever is later, and that damaged items must be held out for carrier inspection during that period. Essential items such as washer, dryer, television etc., may be repaired prior to that time if necessary.

(e) *Repair estimates.* Claims personnel must ensure that repair estimates describe the specific location and damage claimed and that the same damage is claimed on DD Form 1844, Schedule of Property and Claims Analysis Chart. Repair estimates that merely note "refinished" or "repaired" are not acceptable.

(f) *DD Form 1844.* Claims personnel must ensure that DD Form 1844 is properly completed with the nature and extent of the loss or damage to each item fully described, the correct inventory numbers supplied, and correct item weights utilized from the Military-Industry Table of Weights (when these weights are required for the code of service involved).

(g) *Demands on third parties.* Claims personnel must ensure that written demands against appropriate third parties are prepared as described in § 751.26 and § 751.27. No demand will be made where it conclusively appears that the loss or damage was caused solely by Government employees or where a demand would otherwise be clearly improper under the circumstances. If it is determined that a demand is not required, a brief written statement setting forth the basis for this determination will be included on the chronology sheet. Pursuant to the Joint Military-Industry Agreement on Claims of \$25.00 or Less, claims of \$25.00 or less will not be pursued because administrative costs outweigh recovery proceeds.

§ 751.24 Notice of loss or damage.

(a) *Exceptions.* The claimant is required to take exceptions and note any loss of damage at the time of delivery on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery). Later

discovered damage must be noted on the DD Form 1840R (Notice of Loss or Damage) and delivered to the claims office or Personal Property Office within 70 days of delivery. Failure to take exceptions at delivery and note and report later discovered damage will result in deduction on any lost potential carrier recovery from payment of the claim. Failure to note on the DD Form 1840 items missing at the time of delivery may result in denial of claims for those items.

(b) *DD Form 1840/1840R.* The DD Form 1840/1840R is printed in carbon sets of five with DD Form 1840 on the front side and DD Form 1840R on the reverse side. DD Form 1840/1840R is provided by the carrier to the member at delivery. Carriers were required to use this revised DD Form 1840/1840R beginning 15 August 1988 for international shipments and 15 September 1988 for domestic shipments. This is the only document the carriers will accept for reporting loss and damage to household goods. The requirement to list all known loss and damage at the time of delivery on the DD Form 1840 is a joint responsibility of the claimant and the carrier. If the carrier fails to give the claimant a DD Form 1840 at the time of the delivery, the carrier is liable for all damage and does not have to be notified in the 75-day timeframe.

(c) *Military-Industry Memorandum of Understanding on Loss and Damage Rules.* The Military-Industry Memorandum of Understanding on Loss and Damage Rules became effective in 1985 with the implementation of the new DD Form 1840/1840R. This document should be thoroughly studied and completely understood.

§ 751.25 Types of shipments and liability involved.

(a) *Codes 1 and 2 (domestic including Alaska).* Increased released valuation, also referred to as "Basic Coverage," became effective within CONUS and Alaska on 1 April 1987 for intrastate shipments (shipments within a single State), and on 1 May 1987 for interstate shipments (shipments from one State to another). For Codes 1 and 2 shipments picked up after these dates, the carrier's released valuation (the carrier's maximum liability for loss and

damage) increased from \$.60 per pound per article to \$1.25 multiplied by the net weight of the shipment (\$2.50 for shipments to and from Alaska). For Codes 1 and 2 shipments picked up prior to these dates, carrier liability remains at \$.60 per pound per article and is calculated the same as for Code 4 shipments. There are also two higher levels of coverage available in which the owner pays the difference between the basic coverage and the higher level requested: High or higher increased released valuation (Option 1) and full replacement protection (Option 2). These higher carrier released valuation rates only apply to Codes 1 and 2 shipments and they do not affect the liability of a non-temporary storage (NTS) warehouse which remains at \$50.00 per line item.

(1) *Increased Released Valuation (IRV).* IRV is the basic valuation for service Codes 1 and 2 and is fully paid by the Government. If the claimant is due additional recovery money, the words "claimant due carrier recovery" must be added on the claims file to ensure the recovered amount is provided to the claimant if eligible. IRV is not reflected on the GBL by an special language. For Codes 1 and 2 shipments picked up after the effective dates mentioned above, the carrier's released valuation is \$1.25 multiplied by the new weight of the shipment (\$2.50 multiplied times the net weight of the shipment for shipments to and from Alaska). For example, if the weight of an IRV shipment moved from Kansas to New York is 10,000 pounds, the most the carrier could be held liable for would be \$12,500 (10,000 pounds times \$1.25=\$12,500). If the same shipment was moved from Alaska to New York, the maximum carrier liability would instead be \$25,000 (10,000 pounds times \$2.50=\$25,000).

(2) *Higher Increased Released Valuation (Option 1).* This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance or for a shipment whose value exceeds the statutory maximum. If the claimant is due additional recovery money, the words "claimant due carrier recovery" must be added in the claims file. Option 1 must be annotated on the original

GBL. A GBL correction notice is acceptable only if the carrier or his agent has notice of the correction before pick-up. Option 1 may be listed in block 27 or block 30 either as a lump sum, such as "Option 1—\$30,000," or as a multiple, such as "Option 1—\$3.00 times the net weight." The carrier's maximum liability is whatever higher valuation the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests Option 1 coverage of \$30,000.00 and has this listed on the GBL. The carrier's maximum liability is \$30,000.00. Under basic coverage, the carrier's maximum liability for this shipment would only be \$12,500.00. The claimant must initially file a claim with the carrier. The Government will only accept a claim if the carrier denies the claim, if delay would cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. The claim is adjudicated in the normal fashion, applying depreciation and maximum allowances. Demand is then made on the carrier for the full value of the item lost or damaged. When recovery is effected, the Government keeps an amount equal to that paid to the claimant and disperses the remaining recovery to the claimant.

(3) *Full Replacement Protection (Option 2)*. This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance, for a shipment whose value exceeds the statutory maximum, or because the claimant does not wish to have the replacement cost of destroyed or missing items depreciated to their fair market value. The minimum coverage available under Full Replacement Protection is \$21,000.00 or \$3.50 times the net weight of the shipment, whichever is greater. A member who chooses this coverage must initially file a claim with the carrier, allowing the carrier the right to repair or replace items. The Government will only accept a claim if the carrier denies the claim, if delay would cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. If a claim is submitted to the Government, the claim is adjudicated normally, applying depreciation and maximum allowances. The claimant should be informed that any additional

amount will be forwarded after recovery action is effected against the carrier. Option 2 must be annotated on the original GBL. A GBL correction notice is acceptable only if the carrier or his agent receives notice of the correction before pick-up. Option 2 may be listed in block 27 or block 30 either as a lump sum, such as "Full Replacement Protection—\$50,000.00," or as a multiple, such as "Full Replacement Protection—\$3.50 times the net weight." The carrier's maximum liability is the higher valuation the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests full replacement protection of \$3.50 times the net weight of the shipment and has this listed on the GBL. The carrier's maximum liability is \$35,000.00 (10,000 pounds times \$3.50=\$35,000.00). Under basic coverage, the carrier's maximum liability for this shipment would only be \$12,500.00.

(4) *Calculating liability on IRV, Option 1, and Option 2 shipments*. (i) Under IRV and Option 1, the carrier's maximum liability for loss or damage to a single item is limited to the repair cost or depreciated replacement cost of the item. Under Option 2, the carrier's maximum liability for a single item is the repair cost or the undepreciated replacement cost of the item. The carrier's maximum liability for the entire claim is limited to the released valuation, which is either the lump sum declared by the owner or the net weight of the shipment times the applicable multiplier. The net weight of the shipment is normally listed in block 4 of DD Form 1840 (block 3 of DD Form 1840 dated September 84). If the net weight is missing, it should be obtained from the transportation office.

(ii) In completing the carrier liability section of DD Form 1844, ignore the Joint Military-Industry Table of Weights. Assert the amount adjudicated on each item for which the carrier is liable in the carrier liability column. Where the Government payment was limited by application of a maximum allowance (or by depreciation on full replacement cost claims), assert the full, substantiated value. Total the amounts for which the carrier is liable in the carrier liability column. If this

total exceeds the maximum carrier liability for the entire claim, the maximum carrier liability should be entered on DD Form 1843 as the amount demanded. Do not, however, change the total of the amounts for which the carrier is liable on the DD Form 1844.

(iii) If the amount the claimant receives from the Government is limited by application of a maximum allowance (or by depreciation on full replacement protection claims) leaving the claimant with an uncompensated loss, the claimant may be due reimbursement from recovery money after recovery is effected on the claim. Claimants with uncompensated losses who have basic coverage are only entitled to reimbursement from recovery money if the amount recovered exceeds the amount paid by the Government (unless the loss was in excess of the statutory maximum). Claimants with uncompensated losses who purchased Option 1 or Option 2 are entitled to reimbursement up to the value of their additional coverage. Such files should be marked: "claimant due carrier recovery." The claimant should be informed that recovery from the carrier is dependent on the amount and quality of the substantiation the claimant provided, and that the actual recovery may be less than anticipated. The claimant should further be informed that considerable time will elapse before recovery is effected and reimbursement made. Such claims should be processed for recovery action as expeditiously as possible.

(b) *Codes 4 and 6 (International and Hawaii)*. On Codes 4 and 6, international GBL shipments, carrier liability is computed at \$.60 per pound multiplied by the weight of the article or carton as prescribed by the Joint Military-Industry Table of Weights. In cases where the entire shipment is lost or damaged, liability will be computed on the net weight of the shipment times \$.60 per pound. The net weight of the shipment may be obtained from the origin transportation office.

(c) *Codes 5 and T (International and Hawaii)*. (1) A Code 5 shipment is the movement of household goods in Military Traffic Management Command (MTMC) approved door-to-door shipping containers (wooden boxes) and

where a carrier provides line-haul service from origin residence to a military ocean terminal. The Government, through the Military Sealift Command (MSC), provides ocean transportation to the designated port of discharge, and the carrier provides line-haul service to the destination residence.

(2) A Code T shipment is the movement of household goods where the carrier provides containerization at origin and transportation to the designated Military Airlift Command (MAC) terminal. MAC provides terminal services at both origin and destination, and air transportation to a designated MAC terminal. The carrier provides transportation to the destination residence.

(3) On Code 5 and T shipments, it is often difficult to decide whether the Government or the carrier was in actual custody of the shipment at the time of loss or damage. In order to reduce liability disputes in such situations, a 50-percent compromise agreement between industry and the military has been reached.

(4) When the 50-percent compromise is appropriate or applicable, the DD Form 1844 is prepared in the normal fashion utilizing weights indicated in the Military-Industry Table of Weights multiplied by \$.60 per pound. Two different sums should be listed for carrier liability at the bottom of the DD Form 1844, the amount of liability due under the 50-percent compromise and the full amount that will be offset if carrier fails to pay, e.g., "\$100.00 Code T, \$200.00 Full Liability." This same computation should be reflected in the "amount of claim" box on DD Form 1843 (Demand on Carrier/Contractor). If a carrier refuses to make a satisfactory settlement or fails to make a timely response to the demand, the carrier's full liability will be collected.

(d) *Codes 7, 8, and J (Unaccompanied Baggage Shipments)*. *Gross Weight Rules*. Government payment to the carrier for transportation of unaccompanied baggage (Codes 7, 8, and J) is based upon gross weight of the shipment. Unless the inventory is prepared as a "Proper Household Goods Descriptive Inventory," computation of carrier liability for loss or damage incurred in a Code 7, 8, or J shipment will also be based upon gross weight. Gross weight is defined as

the total weight of all articles, including necessary packing materials and packing containers. The shipping container is the external crate (tri-wall or other Government approved container) into which individual articles and/or packing cartons are placed. For the majority of claims, liability will be asserted on gross weight of the container.

(2) *Baggage shipments prepared using a "Proper Household Goods Descriptive Inventory."* The Joint Military/Industry Table of Weights will apply to Code 7, 8, or J unaccompanied baggage shipments if the inventory has been prepared as a "Proper Household Goods Descriptive Inventory," in accordance with Paragraph 54 of the Tender of Service for Personal Property Household Goods and Unaccompanied Baggage (DOD 4500.34-R, appendix A). A properly prepared inventory should reflect the size of each individual carton, give a general description of carton contents, and note preexisting damage. The complete inventory, not just a portion, must have been prepared as a proper household goods inventory. If an inventory is only partially prepared as a proper household goods descriptive inventory, gross weight will be used.

(e) *Local moves and NTS.* There are basically two types of NTS shipments: A direct delivery from NTS by the same company that stored the property and a delivery from NTS which was picked up at the warehouse by a GBL carrier. Direct deliveries of household goods from NTS are often erroneously construed as local moves. It is sometimes difficult to tell the difference between the two since a shipment delivered from NTS by the warehouseman is usually also a short distance (local) move. The type of contract involved determines whether or not the shipment is considered a local move, a direct delivery from NTS, or a carrier delivery picked up from NTS. These distinctions are important since different liability is involved.

(1) *Local move.* A local move is a shipment performed under a local contract that authorizes property to be moved from one residence to another within a specified area (usually a move from off base to on base, or the reverse). The contract for a local move is the purchase order prepared by the transpor-

tation office which lists the services required of the carrier in accordance with the provisions of the Federal Acquisition Regulation (FAR). The purchase order usually includes packing and picking up the goods at origin residence or from storage, transporting the goods within a designated distance, and delivering and unpacking the goods at destination. All these services are performed under the authority of one purchase order and will usually be accomplished the same day or within a few days of pickup. Timely notice must exist in order to pursue carrier recovery and liability is usually based on a released valuation of \$.60 per pound per article. The Joint Military/Industry Table of Weights is used to calculate liability. There is no insurance coverage required on local contractors; if the local contractor is no longer in business or bankrupt, the file may be closed.

(2) *Direct delivery from NTS.* In circumstances where one contractor is responsible for pick-up, NTS, and delivery of the shipment, liability for loss or damage is assessed against that carrier. Nontemporary storage of household goods requires completion of DD Form 1164 (Service Order for Personal Property) in accordance with the provisions of the Basic Ordering Agreement (BOA). The "handling-in" portion of the shipment is accomplished by issuance of the Initial Service Order, DD Form 1164. The goods are usually stored for a period of 6 months to 4 years. The "handling-out" and post-storage services are accomplished by a supplemental service order. These are usually long term storage, short distance moves processed under the authority of at least two documents: the initial service order and the supplemental service order. The BOA states that the contractor shall be liable "in an amount not exceeding fifty dollars (\$50.00) per article or package listed on the warehouse receipt or inventory form" (i.e., \$50.00 per inventory line item).

(3) *Carrier delivery picked up from NTS.* The NTS portion of the shipment requires completion of an Initial Service Order, DD Form 1164, to accomplish the "handling-in" of the goods into the warehouse for storage, as prescribed by

the provisions of the BOA. When storage is terminated, the "handling-out" and post-storage services are accomplished by issuance of a GBL in accordance with the tender of service. The GBL may be issued to a different company or in some cases to the same company that stored the goods. These are long-term storage, long-distance moves processed under the authority of two documents: the initial service order and the GBL. Liability is assessed entirely against the delivering carrier at whatever rate is appropriate for the code of service involved, unless the carrier prepares an exception sheet (rider) noting damage or loss at the time the goods are picked up from the warehouse. The exception sheet must be signed by a warehouse representative. If a valid exception sheet exists, liability for items noted on the exception sheet is assessed against the NTS warehouse at \$50.00 per inventory line item. An exception sheet should be prepared by the GBL carrier who picks up the goods from NTS even if that carrier is the same company that stored the goods. This is necessary in order to relieve the carrier from liability as a carrier. If either the carrier alone, or both the carrier and the NTS facility, fail to pay their proper liability, the file is forwarded to the Naval Material Transportation Office, (NAVMTO), Norfolk, Virginia for offset action.

(f) *Direct Procurement Method (DPM).*

(1) A DPM move is a method in which the Government manages the shipment from origin to destination. Contracts are issued to commercial firms for packing, containerization, local drayage, and storage services, or Government facilities and employees provide these services. Separate arrangements are made with carriers and separate documents are issued for each segment throughout. DPM contractors are also known as packing and crating (P&C) contractors, as local drayage contractors, or just as local contractors.

(2) GBL's for DPM shipments are usually only issued to motor freight carriers.

(i) Block 3 on the GBL entitled "service code" will contain the letters A, B, H, or V, followed by a second letter A, H, K, N, P, R, W, X, or Y. These two

letter codes identify the GBL as a DPM contract.

(ii) Block 18, "consignee," and Block 19, "from," on the GBL contain the name and address of another carrier or transportation office rather than the name and address of the claimant.

(iii) Block 27, "description of shipment," on most GBL's contains the statement, "household goods released at a value of 10 cents per pound per article." This refers to the motor freight carrier's liability only. The origin and destination contractors' liability is still \$.60 per pound times the weight of the article or carton, as indicated in the Joint Military/Industry Table of Weights.

(iv) If liability lies against the motor freight carrier, the term "article" is defined as the weight of each packed item, such as the weight of a broken dish within a carton rather than the net weight of a carton, as used against the origin and destination contractors. Liability is computed against the motor freight carrier at a rate of \$.10 per pound times the weight of the article.

(3) Since 1 January 1981 the destination contractor has been held liable for loss and damage unless it can prove that it is not at fault, i.e., took exceptions prior to receipt of goods. The motor freight carrier is liable for any damage or loss noted against it during its portion of the move. If the motor freight carrier has noted specific damage when it received the shipment, liability is charged against the origin contractor at \$.60 per pound times the weight of the article or carton. Damage noted against the origin contractor or motor freight carrier should be indicated on a valid shipping document and generally involves distinct damage to or missing containers. These documents must be signed by all parties involved in the transfer of the goods.

(4) The destination contractor must receive timely notice of loss or damage via DD Form 1840/1840R and a demand packet. If exceptions were taken against the origin contractor or motor freight carrier on a transfer document, they should receive only demand packets.

(5) In determining destination or origin contractor's liability, the term "article" has been defined as each shipping carton or container and the contents thereof, less any exterior crate or shipping carton. The net weight of each article (carton or box) packed within the exterior crate or carton may be used to determine the contractor's liability for a damaged or missing item originating out of that carton.

(6) Claims offices should obtain a copy of the DPM contract from the local contracting office or transportation office in order to identify which company has the DPM contract and verify the limits of the liability clause. Contracts are awarded on a calendar-year basis.

(g) *Mobile homes.* Mobile home claims represent such a small percentage of claims received that claims personnel are often unfamiliar with the requirements and documentation necessary to process such claims. For an explanation of the adjudication of such claims and the forms used to effect shipment, see §751.12(g) above.

(1) *Carrier liability*—(i) *For damage to the mobile home.* Carrier liability for damage to a mobile home is generally the full cost of repairs for damage incurred during transit. A mobile home carrier is excused from liability when the carrier can introduce substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

(ii) *For damage to contents.* The carrier's liability for loss or damage to household or personal effects inside the mobile home (such as clothing and furniture, or furnishings which were not part of the mobile home at the time it was manufactured) is limited to \$250.00 unless a greater value is declared in writing on the GBL. Under the Mobile Home One-Time-Only (MOTO) rate system, effective for shipments after 1 November 1987 the owner no longer prepares his own inventory. Under the MOTO system, the carrier in coordination with the owner is required to prepare a legible descriptive inventory on DD Form 1412, Inventory of Articles Shipped in House Trailer.

(iii) *Agents of the mobile home carrier.* If the shipment is transferred to an

other mobile home carrier for transport, the first carrier will continue to be shown on the GBL and is responsible for the mobile home from pickup to delivery. The carrier is also responsible for damage caused by third parties it engages to perform services such as auxiliary towing and wrecking.

(iv) *Water damage.* Water damage to a double-wide or expando-type mobile home is usually due to the carrier's failure to provide sufficient protection against an unexpected rainstorm. Carriers will often assert that this damage is due to an "act of God" and attempt to avoid liability. It is, however, the carrier's responsibility to ensure safe transit of the mobile home from origin to destination. Not only should carriers be aware of the risk of flash floods and storms in certain locales during certain seasons, but a carrier is supposed to provide protective covering over areas of the mobile home exposed to the elements. Carrier recovery should be pursued for water damage to these types of mobile homes.

(v) *Waivers signed by the claimant.* The carrier may attempt to escape liability by having the owner execute a waiver of liability. Such waivers are not binding upon the United States.

(vi) *Extensions of storage in transit (SIT).* The extension of SIT past 180 days is only applicable to household goods and holdbaggage shipments. It is not applicable to the shipment of mobile homes. If a mobile home remains in SIT past 180 days, storage is at the owner's expense.

(2) *Notice.* Item 306 of the carrier's rate solicitation states that: "Upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late(r) discovered loss or damage, including personal property within the mobile home, will be noted on DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt." Notification to the carrier may be made on any of the documents. Claims personnel will dispatch the DD Form 1840R in accordance with §751.14.

(3) *Preparation of demands.* The carrier is liable for the full amount of substantiated damage to the mobile home itself (less estimate fees), plus up to \$250.00 for loss or damage to contents (unless the claimant purchased increased released valuation on the contents). Prepare a demand for this amount. In addition to the DD Form 1843 and DD Form 1844, the demand packet should include the following documents:

- (i) DD Form 1800, Mobile Home Inspection Record;
- (ii) DD Form 1863, Assessorial Services, Mobile Home;
- (iii) DD Form 1840/1840R, Joint Statement of Loss or Damage at Delivery/Notice of Loss;
- (iv) DD Form 1412, Inventory of Items Shipped in House Trailer;
- (v) DD Form 1841, Government Inspection Report;
- (vi) Driver's statement, from the driver of the towing vehicle;
- (vii) Claimant's statement concerning previous moves;
- (viii) Estimates of repair, preferably two, from firms in the business of repairing mobile homes; and
- (ix) Engineer's statement, or statement by other qualified professionals.

(4) *References.* Chapter 3 and Appendix E of DOD 4500.34-R, pertain to mobile home shipment and contain much valuable information. Another source is NAVSUP 490, Chapter 10 "Mobile Homes of Military Personnel."

§ 751.26 Demand on carrier, contractor, or insurer.

(a) *Carrier.* When property is lost, damaged, or destroyed during shipment under a GBL pursuant to authorized travel orders, the claims investigating officer or adjudicating authority (whichever can more efficiently perform the task) shall file a written claim for reimbursement with the carrier according to the terms of the bill of lading or contract. This demand shall be made against the last carrier known to have handled the goods, unless the carrier in possession of the goods when the damage or loss occurred is known. In this event, the demand shall be made against the responsible carrier. If it is apparent the damage or loss is attributable to packing,

storing or handling while in the custody of the Government, no demand shall be made against the carrier.

(b) *Marine Corps claimants.* For Marine Corps claimants, the claims investigating officer will prepare the claim against the carrier, contractor, and/or insurer and will mail it (together with the DD Form 1842 claim package) to the Commandant of the Marine Corps (MHP-40), who will submit and assume the responsibility of monitoring the claim against the carrier.

(c) *NTS warehousemen.* Whenever property is lost, damaged, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the claims investigating officer, or appropriate Naval Legal Service Command (NLSC) activity, shall file a written claim for reimbursement with the warehouseman under the terms of the storage agreement.

(d) *Insurer.* When the property lost, damaged, or destroyed is insured, the claimant must make a demand against the insurer for payment under the terms of the insurance coverage within the time provided in the policy. If the amount claimed is clearly less than the policy deductible, no demand need be made. Failure to pursue a claim against available insurance will result in reducing the amount paid on the claim by the amount which could have been recovered from the insurer. When an insurer makes a payment on a claim in which the Government has made a recovery against the carrier or contractor, the insurer shall be reimbursed a pro rated share of any money recovered.

§ 751.27 Preparation and dispatch of demand packets.

Demand on a carrier or contractor shall be made in writing on DD Form 1843 (Demand on Carrier) with a copy of the adjudicated DD Form 1844 (Schedule of Property) attached.

(a) *Demand packets.* A demand is a monetary claim against a carrier, contractor, or insurer, to compensate for loss or damage incurred to personal property during shipment or storage. DD Form 1843 represents the actual demand. The demand packet is a group of documents, stapled together and sent

to the liable third party. More than one demand packet should be prepared when more than one party is deemed to be liable. Do not use original documents. Demand packets should be mailed in official DON envelopes. No demand packet should be prepared for claim files that have been closed or when potential recovery is \$25.00 or less. In those cases the outside of file folders in the upper left-hand corner should be marked "CLOSED." A demand packet will include the following:

(1) DD Form 1843, Demand on Carrier/Contractor;

(2) DD Form 1844, Schedule of Property and Claim Analysis Chart;

(3) DD Form 1841, Government Inspection Report (if available);

(4) DD Form 1164, Service Order for Personal Property (when applicable);

(5) Copies of all repair estimates (translated from foreign languages); and

(6) Copies of all other supporting documents deemed appropriate.

(b) *Dispatch of demand packets.* (1) The demand packets are directly dispatched by the appropriate personal property office or the Naval Legal Service Office to the third party.

(2) *Privately Owned Vehicles (POV's).* Demands for loss or damage to POV's will not be made directly against ocean carriers operating under contract with the MSC. After payment is made to the claimant, one copy of the complete claim file will be forwarded directly to Commander, MSC. Each file shall include the following:

(i) The payment voucher;

(ii) The completed personnel claim forms;

(iii) The estimated or actual cost of repair;

(iv) A document indicating the conditions of the items upon delivery to the carrier; and

(v) a document indicating the forwarding condition of the POV upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available, the sailing date.

§ 751.28 Assignment of claimants rights to the government.

The claimant shall assign to the Government, to the extent of any payment made on the claim, all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based. The claimant shall also furnish such evidence as may be required to enable the Government to enforce its claim. If the claimant refuses to cooperate, steps may be taken to ensure return of monies paid on the item which the Government is trying to collect.

§ 751.29 Recoveries from carrier, contractor, or insurer.

(a) *Recoveries.* If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same loss, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim, excess recoveries from carriers, and other third parties shall be paid to the member as long as the total amount paid does not exceed the value of the claim as adjudicated.

(b) *Recovered property.* When lost property is found, the claimant may, at his option, accept all or part of the property and return the full payment or a pro-rated share of the payment received from the Government on the claim for the recovered property. Surrendered property shall be disposed of under applicable salvage and disposal procedures.

§ 751.30 Settlement procedures and third party responses.

(a) *Settlement procedures.* In the interest of expeditious office administration, correspondence to carriers and contractors should be kept to a minimum. Normally, one rebuttal to a third party's denial of liability is sufficient, unless the carrier or contractor raises new arguments or provides new information.

(1) *Checks from third parties.* Accept checks for the amount demanded from

carriers and contractors. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in the light of all evidence, deposit the check and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED."

(2) *Third party offers of settlement.* If a carrier or contractor offers to settle the claim, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in light of all evidence, inform the carrier that the offer is accepted, but that offset action will be initiated if a check for that amount is not received within 45 days. If a check in the amount acceptable to the Government is received, deposit it and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED." If a check in the proper amount is not received within 45 days, send the request to NAVMTO, Norfolk (or appropriate contract officer) for offset action (see § 751.32 of this part).

(3) *Unacceptable third party checks and offers of settlement.* If a third party's basis for denying liability is not valid, respond to that carrier or contractor. Return unacceptable checks. Explain the reasons for not accepting the check or offer, and request the amount that is justified under the circumstances in the light of all the evidence. If a release was included, amend the release to the revised amount and sign, date, witness, and return it. Warn the carrier or contractor that the claim will be forwarded for offset action if a check for the amount justified under the circumstances is not received within 45 days. Suspend the file for 45 days and if a check in the proper amount is received, deposit it and dispatch the unearned freight letter, if applicable. If a check in the proper amount is not received within 45 days, request NAVMTO, Norfolk (or appropriate contract officer) to take offset action.

(4) *Third party denials of liability.* Upon receipt, review the carrier or con-

tractor's basis for denying liability in the light of all the evidence.

(i) *Acceptable third party reasons for denial.* Mark the front upper left-hand corner of such files as "CLOSED."

(ii) *Partially acceptable and unacceptable third party reasons for denial.* If the carrier or contractor's basis for denying liability is acceptable only in part or is completely unacceptable, follow the procedures in subparagraph (3) above, requesting the amount that is justified under the circumstances in the light of all the evidence. If a response is not received within 45 days, or if the third party's reply is not responsive, request NAVMTO, Norfolk (or appropriate contract officer) take offset action as described above.

(b) *Depreciation.* In determining payments to claimants, the depreciation rates from the Allowance List—Depreciation Guide are used. In determining third party liability, however, a different depreciation guide, the Joint Military/Industry Depreciation Guide is used instead. In most instances, the depreciation rates are the same in both guides, and claims personnel are not required to consult the Joint Military/Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands. If, however, a carrier or contractor objects to the depreciation rate utilized for certain items, consult the Joint Military/Industry Depreciation Guide and use the depreciation rate found in that guide if it differs from the rate in the Allowance List-Depreciation Guide.

§ 751.31 Common reasons for denial by carrier or contractor.

The following are common reasons given for denial of an entire claim, or for individual items on a claim. Each reason for denial is followed by a short discussion of the validity of such a denial.

(a) *The carrier alleges that valid exceptions were made at the time of pickup from the NTS facility.* When a carrier provides an exception sheet it contends was made at time of transfer, this exception sheet must bear the signature of a representative of the NTS facility. Without a signed exception sheet there is no evidence that the NTS facility was made aware of these exceptions

and given the opportunity to confirm or deny the alleged condition of the items in question. The burden of proof is on the carrier to provide the valid exception sheet and establish its freedom from liability.

(b) *The carrier denies liability for missing or damaged item packed in cartons because it did not pack the shipment and the cartons did not show outside damage.* When a carrier accepts a shipment in apparent good order, it is responsible for damage to packed items, unless it can prove that the packing was improper and was the sole cause of the damage.

(c) *The carrier contends that the mildew damage occurred in NTS and not during its transport of the shipment.* Mildew formation is more likely to occur in NTS than in transport. Unsupported by evidence, however, an allegation that mildew formation occurred during NTS does not rebut the established prima facie case of a carrier liability. A carrier must prepare an exception sheet and note any mold or mildew damage when the items were picked up from the NTS facility. The burden of proof is on the carrier to show that it was free from negligence and that the damage was due solely to the formation of mildew or mold during the NTS storage.

(d) *The carrier claims that damage is due to "inherent vice."* Although the carrier may allege that damage was due to "inherent vice," the mere allegation of "inherent vice" is insufficient to relieve the carrier of liability. The burden of proof is on the carrier to establish that an "inherent vice" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to "inherent vice" is seldom acceptable.

(e) *The carrier contends that it was denied the right to inspect.* Often a carrier will state that it made several attempts to make an inspection, but the shipper failed to keep the appointment. If such a case exists, the proper procedure for the carrier to follow is to contact the claims office for assistance in accomplishing the inspection within a timely manner. A carrier's efforts to obtain the inspection should be documented in the file by claims personnel. Lack of an inspection alone, however,

does not relieve the carrier of liability and is insufficient to rebut a well-established prima facie case of liability.

(f) *The carrier denies liability on missing items because the items do not appear on the new inventory made at pickup from the NTS facility.* When a carrier picks up a shipment from NTS and chooses to prepare a new inventory, it must use identical or cross-referenced numbers. If an article such as a chair or a lawnmower is missing, it must be indicated as "missing" on the new inventory. Whether or not a new inventory is made, an exception sheet must be prepared and the missing articles must be noted thereon. To relieve the carrier of liability, both the new inventory and the exception sheet must be signed by representatives of the NTS facility and the carrier.

(g) *The carrier denies liability due to "act of God."* An act of God is an event that could not have been prevented by human prudence. It is generally seen as an occurrence in which human skill or watchfulness could not have foreseen the disaster. The burden of proof is on the carrier to establish that an "act of God" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to an "act of God" is generally not acceptable. The carrier cannot avoid liability if it has been negligent in exposing the goods to potential danger or if it failed to take reasonable steps to reduce the extent of the injury once the danger was discovered.

(h) *The carrier contends that the claimant's repair estimate is excessive and that its own repair firm can do the job cheaper.* A claimant has the right to select a repair firm provided the cost is reasonable and not in excess of the item's value. The carrier is liable for the reasonable cost of repairing damaged merchandise that includes labor, material, overhead, and other incidental expenses incurred in reconditioning or putting the goods in salable condition. If the carrier did not provide the claims office with an acceptable, lower estimate to use in adjudicating the claim, and if the claimant's estimate is reasonable, then the carrier is liable for the amount paid the claimant.

(i) *The carrier contends that liability should have been predicated on the agreed weight of a sofa and not a hide-a-bed.* This argument only applies when carrier liability is based on weight. At the time the inventory is prepared, the carrier's driver must establish whether a sofa is merely a sofa, or one that converts into a bed. Failure to properly identify the item on the inventory does not relieve the carrier of liability for the greater weight of a sofa bed.

(j) *The carrier argues that it is not responsible for warpage, rust, etc., due to climatic changes.* This argument does not relieve a carrier of liability unless the carrier offers substantial evidence to show that the damages resulted solely from unusual circumstances beyond its control, as with an "act of God," or that it occurred while the property was in the hands of another contractor, as reflected upon a valid NTS exception sheet. The burden of proof is on the carrier to establish that the damage was not due to its negligence and that circumstances beyond its control were the sole cause of the loss. Because the carrier can rarely establish this, denial due to "climatic changes" is rarely acceptable.

§ 751.32 Forwarding claims files for offset action.

(a) *General.* Claim files are forwarded with a recommendation for offset action when 120 days have passed since a demand and a response has not been received from the carrier or contractor. Files are also forwarded for offset action when an impasse is reached. An impasse occurs when legitimate efforts to collect the fully justified amount demanded have reached a standstill and the carrier has no valid basis for denial. Prior to forwarding files for offset action, claims personnel must ensure that timely notice has been given, that all necessary documents are included, and that the demand and any correspondence were mailed to the proper carrier or contractor at its correct address. When applicable, claims personnel must also ensure that an unearned freight packet is included.

(b) *Claim files forward to local contracting offices.* Claims forwarded to local contracting offices for offset action include claims involving local moves and

DPM shipments in which the origin and/or destination contractor is determined to be liable. When the contractor fails to reply to a demand within 120 days or fails to make an acceptable offer, the file should be forwarded to the local contracting office with a request for offset action.

(c) *Unjustified denials and inadequate settlement offers by carrier or contractor—*

(1) *GBL carriers.* If a GBL carrier or insurer has refused to acknowledge or respond to a demand within a reasonable time (usually 30 days), if the claims investigating officer considers a valid claim to have been denied or not adequate settlement offered, or if settlement has been delayed beyond 120 days (see § 751.32(a)), the claim shall be forwarded to the NLSC activity serving the geographical location recommending that set-off action be taken against the carrier or contractor. The 120-day period begins to run on the date initial demand is made on the carrier. The NLSC activity shall review the file and if the carrier liability is correctly computed, forward a copy of the GBL, copies of the DD Forms 1843 and 1844, SCAC code, and final demand on carrier to the Commanding Officer, Naval Material Transportation Office, Code 023, Bldg. Z-133-5, Naval Station, Norfolk, VA 23511 directing set-off action against the carrier or contractor.

(2) *Nontemporary warehousemen.* If a warehouseman or insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if settlement has been delayed beyond 120 days, the claim shall be referred to the NLSC activity serving the geographic location recommending set-off action be taken against the contractor. The 120-day time period begins to run on the date the initial demand was made. The NLSC activity shall review the file and if the warehouseman's liability is correctly computed, forward the file to the appropriate MTMC Regional Storage Management Office for set-off.

§ 751.33 Unearned freight packet.

(a) *Preparation.* An unearned freight packet should be prepared when the

Department of the Navy, DoD

§ 752.2

loss or destruction of an item in shipment is attributable to a GBL carrier. Unearned freight packets should be addressed to the carrier, and not to the agents of GBL carriers, NTS contractors, or other contract movers. An unearned freight packet is required when a mobile home is lost or completely destroyed. An unearned freight packet includes:

- (1) A Request For Deduction of Unearned Freight Charges;
- (2) A copy of DD Form 1843;
- (3) A copy of DD Form 1844; and
- (4) A copy of the GBL.

(b) *Dispatch*. The unearned freight packet is not dispatched to the NAVMTO, Norfolk until the carrier has paid its agreed liability or when offset has been accomplished.

§ 751.34 GAO appeals.

(a) *General*. Sections 1 through 12 and 52 through 65 of Title 4, GAO Manual, Policy and Procedures Manual for Guidance of Federal Agencies, and 4 CFR parts 30-32 set forth procedures for carriers to appeal setoff action. Before a carrier can appeal a setoff action to GAO, the command requesting setoff action must make an administrative report to GAO.

(b) *Procedures for appeals*. (1) The carrier must request appeal from the command requesting setoff action and request a GAO review.

(2) The command requesting setoff action will review the appeal and if it is determined the setoff action was appropriate, will do an administrative report and notify the carrier when this has been accomplished.

(3) The administrative report and complete claims file will be forwarded to the NLSC activity serving the geographic location for review prior to forwarding to GAO.

(4) The complete claims package, including all correspondence with the carrier, will then be forwarded to GAO.

(c) The administrative report and enclosures must support the setoff action.

(d) *GAO Manual*. All NLSC activities have been provided a copy of a manual published by the Claims Group General Government Division, U.S. General Accounting Office entitled Procedures of the U.S. General Accounting Office for

Household Goods Loss and Damage Claims. Other commands dealing with carrier recoveries should get a copy of the manual from the NLSC activity servicing the local area.

§ 751.35 Forms and instructions.

Copies of all of the forms and instructions discussed in this part may be obtained if needed, from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

PART 752—ADMIRALTY CLAIMS

Sec.

752.1 Scope.

752.2 Organization.

752.3 Claims against the Navy.

752.4 Affirmative claims.

752.5 Salvage.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5013, 5148, and 7621-7623; 32 CFR 700.206 and 700-1202.

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

[39 FR 9962, Mar. 15, 1974]

§ 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy*. The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed \$1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1982)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to

property under the jurisdiction of the Navy (10 U.S.C. 7623 (1982)).

(b) *Admiralty Division of the Office of the Judge Advocate General.* The Navy's admiralty-tort claims are processed and adjudicated in the Admiralty Division of the Office of the Judge Advocate General. All correspondence with the Admiralty Division should be addressed to the Office of the Judge Advocate General (Code 31), Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400.

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

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

(e) *Admiralty-contract claims.* Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned

to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

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

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

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12173, Apr. 2, 1990]

§ 752.3 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 7622 (1982) provides settlement authority for "(1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy." The limit on the Secretary's settlement authority is payment of \$1,000,000. A claim which is settled for

an amount over \$1,000,000 is certified to Congress for payment. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over \$100,000. Under the Secretary's delegation, settlements not exceeding \$100,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Deputy Commander in Chief, U.S. Naval Forces, Europe, and to Commander Sixth Fleet, to pay admiralty claims against the Navy not exceeding \$10,000, and to Commander Fleet Air, Caribbean, for damage to fishing equipment arising in Culebra-Vieques waters, not to exceed \$3,000.

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

(c) *Settlement procedures.* Where the amount paid is over \$100,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of annual Department of Defense appropriations.

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

ment reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

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

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12173, Apr. 2, 1990]

§ 752.4 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623 (1982), and is the reciprocal of 10 U.S.C. 7622 (1982) referred to in § 752.3.

(b) *Scope.* 10 U.S.C. 7623 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416 (1982)).

(d) *Litigation.* 10 U.S.C. 7623 does not apply to any claim where suit is filed. If the Admiralty Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the

§ 752.5

Navy has no further authority to effect settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12174, Apr. 2, 1990]

§ 752.5 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365 (1982). Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OOCL), Washington, DC 20362-5101. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367 (1982).

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976; 55 FR 12174, Apr. 2, 1990]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Sec.

755.1 Statutory authority.

755.2 Scope.

755.3 Claims not cognizable.

32 CFR Ch. VI (7-1-97 Edition)

755.4 Limitation on claims.

755.5 Complaint by the injured party and investigation.

755.6 Action where offenders are members of one command.

755.7 Action where offenders are members of different commands.

755.8 Reconsideration and appeal.

755.9 Effect of court-martial proceedings.

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

SOURCE: 56 FR 42232, Aug. 27, 1991, unless otherwise noted.

NOTE 1: This part 755 is chapter IV of the Manual of the Judge Advocate General of the Navy.

NOTE 2: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this part 755 as the "UCMJ". The Manual for Courts-Martial, United States, 1984 (E.O. 12473 of August 1, 1984) is referred to in this part 755 as "MCM 1984".

§ 755.1 Statutory authority.

Article 139, UCMJ, redress of injuries to property, is the basis for this chapter.

§ 755.2 Scope.

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

§ 755.3 Claims not cognizable.

The following claims are not cognizable under this chapter.

(a) Claims resulting from simple negligence.

(b) Claims of subrogees.

(c) Claims for personal injury or death.

(d) Claims arising from acts or omissions within the scope of employment of the offender.

(e) Claims for reimbursement for damage, loss, or destruction of Government property.

§ 755.4 Limitation on claims.

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

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

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

§ 755.5 Complaint by the injured party and investigation.

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

(b) Where the claim alleges misconduct by members of the command, a commanding officer to whom the claim is submitted shall convene an investigation under this Manual to inquire into the matter. Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the member's commanding officer who will convene an investigation into the incident. Where

the command of the alleged offenders cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

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

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

§ 755.6 Action where offenders are members of one command.

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

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

and action on the claim. That officer's action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

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

§ 755.7 Action where offenders are members of different commands.

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

(b) *Forwarding to SECNAV (JAG).* Where it is not practical or possible to carry out the procedure in § 755.7(a) of this section, the investigation or inves-

tigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.8 Reconsideration and appeal.

(a) *Reconsideration.* The OEGCM may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCM contemplates acting favorably on the request, he will provide all individuals interested in the claim with notice and an opportunity to respond. The basis for any change will be noted in the OEGCM's decision.

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

§ 755.9 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender. The two proceedings are independent. Acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, but is not determinative on the issue of responsibility for damages under these regulations.

Part 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

Sec.

- 756.1 Scope.
- 756.2 Definitions.
- 756.3 Notification.
- 756.4 Responsibility.
- 756.5 Investigation.
- 756.6 Negotiation.
- 756.7 Payment.
- 756.8 Denial.
- 756.9 Claims by employees.

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.

SOURCE: 57 FR 4736, Feb. 7, 1992, unless otherwise noted.

§ 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of nonappropriated-fund instrumentalities.

§ 756.2 Definitions.

(a) *Nonappropriated-fund instrumentality (NAFI)*. An instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

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

(c) *Employees of NAFI*. Civilian personnel employed by NAFI's whose salaries are paid from nonappropriated-funds. Also, military personnel working part-time at NAFI's when compensated from nonappropriated-funds.

§ 756.3 Notification.

(a) Some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Com-

mander, Naval Supply Systems Command determine whether NAFI's within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

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

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

§ 756.4 Responsibility.

The primary responsibility for the negotiation and settlement of claims resulting from nonappropriated-fund activities is normally with the NAFI and its insurer. NAFI's, however, are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Department of the Navy and if the degree of control and supervision by the Navy is more than casual or perfunctory. Compare *United States v. Holcombe*, 277 F.2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F. Supp. 846, (D. Ga. 1963). Consequently, to the extent sovereign immunity is waived by the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671-2672, 2674-2680, the United States remains ultimately liable for payment of NAFI claims.

§ 756.5 Investigation.

Claims arising out of the operation of NAFI's, in and outside the United

States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities in order to protect the residual liability of the United States. All claims should be submitted to the command having cognizance over the NAFI involved.

§ 756.6 Negotiation.

(a) *General.* Claims from NAFI's should be processed primarily through NAFI claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated fund activity claims.

(b) *When the NAFI is insured.* When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The appropriate naval adjudicating authority as shown in 32 CFR 750.34(c)(2)(ii) has the responsibility of monitoring the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action. Under special circumstances, even when there is an insurer or TPA, the appropriate naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the insurer or TPA for payment.

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

§ 756.7 Payment.

(a) *Claims that can be settled for less than \$1000.00.* A claim not covered by insurance (or not paid by the insurer),

that can be settled for \$1000.00 or less, may be adjudicated by the commanding officer of the activity concerned or designee. The claim shall be paid out of funds available to the commanding officer.

(b) *Claims that cannot be settled for less than \$1000.00.* A claim negotiated by the Navy, not covered by insurance, that cannot be settled for less than \$1000.00, shall be forwarded to the appropriate nonappropriated-fund headquarters command for payment from its nonappropriated-funds.

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

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

§ 756.8 Denial.

Claims resulting from nonappropriated-fund activities may be denied only by the appropriate naval adjudicating authority. Such a denial is necessary to begin the 6-month limitation on filing suit against the United States for claims filed under the Federal Tort Claims Act. Denial of a claim shall be in writing and in accordance with subparts A or B of part 750 of this chapter, as appropriate. The appropriate naval adjudicating authority should not deny claims which have initially been processed and negotiated by a nonappropriated-fund activity, its insurer or TPA until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court.

§ 756.9 Claims by employees.

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

(b) *Personal injury or death of foreign nationals employed outside of the continental United States.* Employees who are not citizens or permanent residents, and who are employed outside the continental United States, are protected by private insurance of the NAFI or by other arrangements (5 U.S.C. 8172). When a nonappropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter shall be processed as a Foreign Claims Act or a Military Claims Act claim if appropriate, and any award will be paid from nonappropriated-funds.

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Subpart A—Property Damage Claims

- Sec.
 757.1 Scope of subpart A.
 757.2 Statutory authority.
 757.3 Regulatory authority.
 757.4 Claims that may be collected.
 757.5 Assertion of claims and collection procedures.
 757.6 Waiver, compromise, and referral of claims.
 757.7—757.10 [Reserved]

Subpart B—Medical Care Recovery Act (MCRA) Claims

- 757.11 Scope of subpart B.
 757.12 Statutory authority.
 757.13 Responsibility for MCRA action.
 757.14 Claims asserted.
 757.15 Claims not asserted.
 757.16 Claims asserted only with JAG approval.

- 757.17 Statute of limitations.
 757.18 Asserting the claim.
 757.19 Waiver and compromise.
 757.20 Receipt and release.

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.

SOURCE: 57 FR 5072, Feb. 12, 1992, unless otherwise noted.

Subpart A—Property Damage Claims

§ 757.1 Scope of subpart A.

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

§ 757.2 Statutory authority.

(a) *General.* With the exception of MCRA claims, all affirmative claims for money or property in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 3711). Department of Defense Directive 5515.11¹ of 10 December 1966 delegates to the Secretary of the Navy, and designees, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

(b) *Statute of limitations.* There is a 3-year statute of limitations on affirmative Government tort claims pursuant to 28 U.S.C. 2415(b).

§ 757.3 Regulatory authority.

The regulations published in 4 CFR chapter II control the collection and settlement of affirmative claims. This section supplements the material contained in those regulations. Where this section conflicts with the materials and procedure published in 4 CFR chapter II, the latter controls.

§ 757.4 Claims that may be collected.

(a) *Against responsible third parties for damage to government property, or the property of nonappropriated-fund activities.* It should be noted, however, that as a general rule, the Government does

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

not seek payment from servicemembers and Government employees for damages caused by their simple negligence. Exceptions to this general policy will be made when the incident involves aggravating circumstances.

(b) *For medical costs from third party payers in accordance with 10 U.S.C. 1095.* These claims are asserted and collected by the medical treatment facilities under the coordination of benefits program.

(c) *For money paid or reimbursed by the government for damage to a rental car in accordance with the Joint Federal Travel Regulations (volume 1, paragraph U 3415-C and volume 2, paragraph C 2101-2).* Collection action shall be taken against third parties liable in tort. Collection action shall not be taken against Government personnel who rented the vehicle.

(d) *Other claims.* Any other claim for money or property in favor of the United States cognizable under the Federal Claims Collection Act not specifically listed above.

§ 757.5 Assertion of claims and collection procedures.

(a) *General.* The controlling procedures for administrative collection of claims are established in 4 CFR part 102.

(b) *Officials authorized to pursue claims.* The following officers are authorized to pursue and collect all affirmative claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(2) Commanding officers of Naval Legal Service Offices and applicable Detachments, except Naval Legal Service Offices in countries where another service has single service responsibility in accordance with DOD Directive 5515.8.²

(c) *Dollar limitations.* All of the officers listed in § 757.5(b) are authorized to compromise and terminate collection

action on affirmative claims of \$20,000.00 or less.

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

(e) *Assertion of a claim.* (1) Assertion of the claim is accomplished by mailing to the tortfeasor a "Notice of Claim." The notice is to be mailed certified mail, return receipt requested, and should include the following information:

(i) Reference to the statutory right to collect;

(ii) A demand for payment or restoration;

(iii) A description of damage;

(iv) The date and place of the incident; and

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

(2) See also 4 CFR part 102.

(f) *Full payment.* When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to the collection activity, such as the "Commanding Officer, Naval Legal Service Office, (Name)." The check or money order shall then be forwarded to the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual.

(g) *Installment payments.* See 4 CFR 102.11 for specific procedures. In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Installment payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than \$50.00 per month should be accepted only if justified on the grounds of financial hardship or for some other reasonable cause. In all installment arrangements, a confession

²See footnote 1 to § 757.2.

of judgment note setting out a repayment schedule should be executed.

(h) *Damage to nonappropriated-fund instrumentality (NAFI) property.* Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the nonappropriated-fund activity for deposit with that activity. In those situations where the recovery involves damage to both NAFI-owned property and other Government property, e.g., destruction of an exchange building resulting in damage to both the building and the exchange-owned property inside, recovery for the exchange-owned property shall be forwarded to the NAFI. Recovery for building damage shall be deposited in accordance with § 757.5(f) above.

(i) *Damage to industrial-commercial property.* When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual. When a claim is based on a loss or damage sustained by such an activity, a notation to this effect shall be included in any claim file forwarded to the Judge Advocate General.

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

(k) *Release.* The commanding officer or officer in charge is authorized to execute a release of the claim when all repairs have been completed to the Government's satisfaction, and when all repair bills have been paid. No prior approval from the Judge Advocate General is required for this procedure. If repair or replacement is made, a notation shall be made in any investigation or claims file.

§ 757.6 Waiver, compromise, and referral of claims.

(a) *Officials authorized to compromise claims.* The officers identified in § 757.5(b) may collect the full amount on all claims, and may compromise, execute releases or terminate collec-

tion action on all claims of \$20,000.00 or less. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue recovery efforts.

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

(c) *Notification.* The Judge Advocate General shall be notified prior to all requests made to the DOJ to compromise, terminate collection, or referral for further collection action or litigation.

(d) *Litigation Reports.* Litigation reports prepared in accordance with 4 CFR part 103 shall be forwarded to the DOJ along with any case file forwarded for further collection action or litigation as required by the Federal Claims Collections Standards.

§§ 757.7—757.10 [Reserved]

Subpart B—Medical Care Recovery Act (MRCA) Claims

§ 757.11 Scope of subpart B.

Subpart B describes the assertion and collection of claims for medical care under the Medical Care Recovery Act (MCRA). The MCRA states that when the Federal Government provides treatment or pays for treatment of an individual who is injured or suffers a disease, the Government is authorized to recover the reasonable value of that treatment from any third party legally liable for the injury or disease.

§ 757.12 Statutory authority.

Medical Care Recovery Act, 42 U.S.C. 2651–2653 (1982).

§ 757.13 Responsibility for MCRA action.

(a) *JAG designees.* (1) Primary responsibility for investigating, asserting, and collecting Department of the Navy (DON) MCRA claims and properly forwarding MCRA claims to other Federal departments or agencies rests with the following officers:

(i) Commanding officers and officers in charge, Naval Legal Service Command (NLSC) activities, in their areas of geographic responsibility;

(ii) Officer in charge, U.S. Sending State Office, Rome in his area of geographic responsibility.

(2) JAG designees may assert and receive full payment on any MCRA claim. They may, however, agree to compromise or waive only claims for \$40,000.00 or less. Claims in excess of \$40,000.00 may be compromised or waived only with DOJ approval. Such claims will be forwarded to the Judge Advocate General in accordance with § 757.6. See § 757.7 for further discussion of waiver and compromise.

(b) *Navy Medical Treatment Facilities (MTF).* (1) Naval MTF's are responsible for ensuring potential MCRA claims are brought to the attention of the appropriate NLSC activity or U.S. Sending State Office (USSSO).

(2) The MTF reports all potential MCRA cases by forwarding a copy of the daily injury log entries and admissions records to the cognizant NLSC activity or USSSO within 7 days of treatment for which a third party may be liable. The NLSC activity or USSSO makes the determination of liability.

(i) MTF computes the value of the care it provided on NAVJAG Form 5890/12. Rates used to compute this value are published annually in the FEDERAL REGISTER by the Office of Management and Budget.

(ii) Block 4 of NAVJAG Form 5890/12 requires a statement from the patient describing the circumstances of the injury or disease.

(iii) An "interim" report is prepared for inpatients only. An interim report is prepared every 4 months until the patient is released, transferred or changed to an outpatient status.

(iv) A "final" report is prepared for all patients when inpatient and outpatient treatment is completed or the

patient's care is transferred to another facility. A narrative summary should accompany the final report in all cases involving inpatient care. In addition, the back side of NAVJAG Form 5890/12 is completed as part of the final report when the value of Federal Government care exceeds \$1,000.00.

(c) *The Office of Medical and Dental Affairs (OMA).* The office pays emergency civilian medical expenses incurred by active duty members. This office furnishes MCRA claims information to the NLSC activity or USSSO. The address is Bldg. 38H, U.S. Naval Training Center, Great Lakes, IL 60088-5200.

(d) *Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) contractors.* CHAMPUS contractors forward reports of payments in injury cases to the appropriate NLSC activity. Responsible JAG designees should, however, initiate regular contact with contractors within their geographic area to ensure all relevant cases have been reported.

(e) *Department of Justice (DOJ).* Only the DOJ may authorize compromise or waiver of an MCRA claim in excess of \$40,000.00; settle an MCRA claim which was previously forwarded by the DON to DOJ for action; or settle an MCRA claim in which the third party has filed a suit against the United States or the injured person as a result of the incident which caused the injury.

§ 757.14 Claims asserted.

(a) *General.* The DON asserts MCRA claims when medical care is furnished to Navy and Marine Corps active duty personnel, retirees, or their dependents, and third-party tort liability for the injury or disease exists. Claims are asserted when the injured party is treated in a military MTF or when the DON is responsible for reimbursing a non-Federal care provider. Claims for medical care furnished are also asserted using alternate theories of recovery if the MCRA does not apply. See § 757.14(e).

(b) *Independent cause of action.* The MCRA creates an independent cause of action for the United States. The Government can administratively assert and litigate MCRA claims in its own

name and for its own benefit. Procedural defenses, such as a failure of the injured person to properly file and/or serve a complaint on the third party, that may prevent the injured person from recovering, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the injured person. The right arises directly from the statute; the statutory reference to subrogation pertain only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government's claim.

(c) *Liable parties.* MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in §757.15.

(d) *Reasonable value of medical care.* The reasonable value of medical care provided to an injured person is determined:

(1) By using the rates set by the Office of Management and Budget and published in the FEDERAL REGISTER for care provided in Federal medical care facilities; or

(2) By the actual amount paid by the Federal Government to non-Federal medical care providers.

(e) *Alternate Theories of Recovery.* Often, recovery under the MCRA is not possible because no third-party tort liability exists. For example, if a member, retiree, or dependent is driving a vehicle and is injured in a single-car accident, there is no tortfeasor. State law, including insurance, workers' compensation, and uninsured motorist coverage provisions, determines the DON's right to recover in situations not covered by the MCRA. If, under the law where the injury occurred, the injured party is entitled to compensation for medical care received, usually the Federal Government may recover. The two most common alternate theories are described below.

(1) Recovery may be possible under the injured party's automobile insurance policy. In most cases, the Federal Government should seek recovery as a third-party beneficiary under the medical payments or the underinsured/uninsured portion of the injured party's

policy. The ability of the Federal Government to recover as a third-party beneficiary has been upheld in some states, while other states have taken the contrary position.

(2) Recovery may also be possible under State workers' compensation laws. Case law in this area is still emerging, but in most jurisdictions, the United States stands in the position of a lien claimant for services rendered.

§ 757.15 Claims not asserted.

In some cases, the MCRA or public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors. MCRA claims are not asserted against:

(a) *Federal Government agencies.* Claims are not asserted against any department, agency or instrumentality of the United States. "Agency or instrumentality" includes self-insured, non-appropriated-fund activities but does not include private associations.

(b) *Injured servicemembers, dependents and employers of the United States.* Claims are not asserted directly against a servicemember, the dependent of a servicemember, or an employee of the United States who is injured as a result of his willful or negligent acts. The United States does assert, however, against medical care and treatment insurance coverage the member, employee, or dependent might have.

(c) *Employers of merchant seamen.* Claims are not asserted against the employer of a merchant seaman who receives Federal medical care under 42 U.S.C. 249.

(d) *Department of Veterans Affairs care for service-connected disability.* Claims are not asserted for care provided to a veteran by the Department of Veterans Affairs when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided an individual before he is transferred to a Department of Veterans Affairs hospital.

§ 757.16 Claims asserted only with JAG approval.

The responsible NLSC activity or USSSO will investigate potential MCRA claims against the following

third parties and forward a copy of their claims file, along with recommendations on assertion, to the Judge Advocate General:

(a) *Certain Government contractors.* JAG approval is required before asserting an MCRA claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

(b) *Foreign Governments.* JAG approval is required before asserting MCRA claims against foreign governments, their political subdivisions, Armed Forces members, or civilian employees.

(c) *U.S. personnel.* JAG approval is required before asserting MCRA claims against U.S. servicemembers, their dependents and employees of the United States, or their dependents for injury to another person.

§ 757.17 Statute of limitations.

(a) *Federal.* The United States, or the injured party on behalf of the United States, must file suit within 3 years after an MCRA action accrues. 28 U.S.C. 2415. Generally this is 3 years from the date of initial Federal treatment or Federal Government payment to a private care provider, whichever is first.

(b) *State.* Some State statutes of limitations may also apply where recovery is based on authority such as workers' compensation statutes, no-fault insurance statutes, no-fault medical payments, or uninsured motorist provisions of insurance contracts.

§ 757.18 Asserting the claim.

(a) *Initial action by JAG designee.* When advised of a potential MCRA claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When the DON has reimbursed a non-Federal provider for health care or when CHAMPUS has made payment for a Navy health care beneficiary, the DON will assert any resulting MCRA claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency

which will assert a resulting MCRA claim.

(i) Where Navy or Marine Corps members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DON will usually assert any MCRA claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a Navy MTF provides care to personnel of another Federal agency or department, that other agency or department will usually assert any claim on behalf of the United States.

(3) If the claim is not one which the DON should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DON should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA.

(b) *Investigating the claim.* While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. Usually the file will contain:

(1) Identification of each person involved in the incident including name, address, occupation, and nature of involvement;

(2) Police, social service, and other Federal, State and local agency reports on the incident;

(3) Completed copies of NAVJAG Form 5890/12³ or equivalent forms from other agencies and departments;

(4) Inpatient summaries and outpatients records of treatment of the involved injury in non-Federal facilities;

(5) Documents reflecting Federal payment for non-Federal treatment of the injured person;

(6) Calculations of the reasonable value of the Government's MCRA claim;

³See footnote 3 to § 757.2.

(7) Itemized repair bills or estimates of repair of damaged Federal Government property;

(8) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee, information and findings concerning that person's duty or scope of employment status at the time of the incident giving rise to the injury;

(9) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee or the dependent of a uniformed service member or U.S. employee, information and findings concerning whether that individual was grossly negligent or willfully culpable and whether that individual had insurance coverage at the time of the incident giving rise to the injury;

(10) Financial information on identified third-party tortfeasors including names and addresses of insurance carriers, insurance policy numbers, and extent of coverage; and

(11) A statement whether the injured person or his attorney will protect the interests of the United States.

(c) *Claims forwarded to JAG or DOJ.* In those cases where the file must be forwarded to JAG or DOJ, the file will also include:

(1) A summary of the case which includes the circumstances of the incident which caused the injury, the source, extent and value of medical care provided and a brief of the applicable law on the liability of the third party;

(2) Copies of all correspondence; and

(3) Recommended disposition.

(d) *Request for assistance in conducting investigation.* When an injury for which the DON may assert an MCRA claim occurs at a place where the DON does not have a command, unit, or activity conveniently located for conducting an inquiry into the circumstances underlying the injury, the NLSC activity or USSSO having responsibility for administering any resulting MCRA claim may request assistance from any other command, unit, or activity within the DOD. Such assistance may take the form of a complete inquiry into the circumstances underlying the incident or it may only cover part of the necessary inquiry and fact gathering. If a NLSC

activity or USSSO receives a similar request from another command, unit or activity within the DOD, every effort should be made to honor the request. Assistance will normally be provided without reimbursement from the requesting service.

(e) *Notice of claim.* (1) The JAG designee will assert appropriate MCRA claims by mailing, certified mail, return receipt requested, a notice of claim (SF 96) to identified third-party tortfeasors and their insurers, if known. Many insured tortfeasors fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may preclude such an invocation by giving the requisite notification itself. The purpose of the insurance clause is satisfied if the insurer receives actual notice of the incident, regardless of the informant. This notice should be mailed as soon as it reasonably appears an identified third party may be liable for the injuries to the injured person. It is not necessary or desirable to delay mailing this notice until the completion of the investigation convened to inquire into the circumstances underlying the incident causing the injury. The prompt assertion of the claim will ensure that the Government is named on the settlement draft. If the United States is not so named, and the claim has been asserted, the insurer settles at its own risk.

(2) The JAG designee will also notify the injured person or his legal representative of the Government's interest in the value of the medical care provided by the United States. This notice will advise that:

(i) The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(ii) The injured person is required to cooperate in the efforts of the United States to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(iii) The injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;

(iv) The injured person may seek legal guidance concerning any possible claim for personal injury;

(v) The injured person is required to furnish information concerning legal action brought against any individual involved in the incident and provide the name of counsel representing the parties to such an action; and

(vi) The injured person should not execute a release or settle a claim arising from the incident causing the injury without first notifying the JAG designee.

(f) *Administering the claim.* (1) After investigating and asserting the claim, the JAG designee will maintain contact with all parties, their legal representatives, and insurers.

(2) An effort should be made to coordinate collection of the Federal Government's MCRA interest with the injured person's action to collect his own claim for damages.

(i) Attorneys representing an injured person may be authorized to include the Federal Government's MCRA claim as an item of special damages with the injured person's claim or suit.

(ii) An agreement that the Government's claim will be made a party of the injured person's action should be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the injured person is not bringing an action for damages or is refusing to include the Federal Government's MCRA interest, the JAG designee will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured person against the liable third person or bring an original suit in its own name or in the name of the injured person. The JAG designee will ensure all parties are aware that the United States must be a party to all subsequent collection negotiation.

(4) When the MCRA interests are not being represented by the injured person and independent collection efforts have failed, the JAG designee will request

JAG to refer the claim to the DOJ for possible suit. In such cases, the JAG designee will forward the complete file to JAG in accordance with §§ 757.18 (b) and (c).

(g) *Access to DON records and information.* (1) The medical records of the injured person will be released to the injured person or his legal representative upon request. This release will be without cost except in unusual circumstances. These records may not be released to anyone else outside the DON except in accordance with the provisions of the Privacy Act, 5 U.S.C. 552a. Usually such a release will require authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction."

(2) In appropriate cases, military health care providers who have examined or treated the injured person may be made available by their commands to testify regarding the medical care provided to the injured person. Requests for such testimony will be processed in accordance with DOD Directive 5405.2, 28 CFR part 725, and 32 CFR part 725, except when the injured party is asserting the Federal Government's MCRA claim as part of his action for damages. In that situation, the injured person or legal representative is considered also to be a representative of the United States and the foregoing regulations are not applicable. In such a case, the JAG designee may, if appropriate, request the command of an involved military health care provider to make the provider available for testimony on behalf of the injured person.

§ 757.19 Waiver and compromise.

(a) *General.* A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed \$40,000.00. A third party's liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than \$40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds \$40,000.00, the

Department of the Navy, DoD

§ 757.20

claim file will be forwarded to JAG in accordance with §§ 757.18 (b) and (c).

(b) *Waiver.* The JAG designee may waive the Federal Government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection would cause undue hardship to the injured person. In assessing undue hardship, the following circumstances of the injured person should be considered:

- (1) Permanent disability or disfigurement;
- (2) Lost earning capacity;
- (3) Out-of-pocket expenses;
- (4) Financial status;
- (5) Disability, pension and similar benefits available;
- (6) Amount of settlement or award from third-party tortfeasor; and

(7) Any other factors which objectively indicate fairness requires waiver.

(c) *Compromise.* The JAG designee may, upon written request of the injured person or legal representative, compromise the Federal Government's MCRA interest using the criteria listed above.

§ 757.20 Receipt and release.

(a) *Payment.* The JAG designee may receive payment in part or in full for any claim for which he is responsible. Written acknowledgment of this receipt will be mailed to the party making payment and a copy of the acknowledgement kept in the claim file.

(b) *Release.* The JAG designee will execute and deliver a release to third parties making full or compromised payment on the Federal Government's MCRA interest. A copy of the release will be kept in the claims file.

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Subpart A—Introduction

Sec.

- 761.1 Scope.
- 761.2 Background and general policy.
- 761.3 Authority.
- 761.4 Special provisions.
- 761.5 Definitions.

Subpart B—Criteria and Basic Controls

- 761.6 Criteria.
- 761.7 Basic controls.

Subpart C—Entry Authorization

- 761.8 General.
- 761.9 Entry Control Commanders.
- 761.10 Persons: Group authorizations.
- 761.11 Persons: Individual authorizations.
- 761.12 Ships: Group authorizations.
- 761.13 Ships: Individual authorizations.
- 761.14 Aircraft: Group authorizations.
- 761.15 Aircraft: Individual authorizations.
- 761.16 Notice of action.
- 761.17 Revocation.
- 761.18 Appeals.
- 761.19 Forms.

Subpart D—Additional Instructions

- 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5031, 6011, 18 U.S.C. 2152. The text of part 761 contains additional references, including Executive Orders.

SOURCE: 28 FR 13778, Dec. 18, 1963, unless otherwise noted.

Subpart A—Introduction

§ 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see § 761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see § 761.3(b)).

(3) The Trust Territory of the Pacific Islands (see § 761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons, ships, and aircraft are excluded unless and until they qualify for admission under the applicable Executive order or regulation.

(b) The control of entry into or movement within defense areas by persons, ships, or aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, facilities and other installations within or contiguous to defense areas. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(c) This part will be administered so as to provide for the prompt processing of all applications and to insure uniformity of interpretation and application, insofar as changing conditions permit.

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.3 Authority.

(a) *Naval Defensive Sea Areas and Naval Airspace Reservations.* By Executive orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See § 761.4(b) for delineation of areas where entry controls are suspended.)

(1) *Atlantic areas.* Guantanamo Bay Naval Defensive Sea Area; Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 FR 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas.* (i) Honolulu Defensive Sea Area: Executive Order 8987 of December 20, 1941 (6 FR 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(ii) Kaneohe Bay Naval Defensive Sea Area; Kaneohe Bay Naval Airspace Reservation: Executive Order 8681 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(iii) Pearl Harbor Defensive Sea Area: Executive Order 8143 of May 26, 1939 (4 FR 2179; 3 CFR, 1943 Cum. Supp., p. 504).

(iv) Johnston Island Naval Defensive Sea Area; Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) Kingman Reef Naval Defensive Sea Area; Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2,

1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vi) Midway Island Naval Defensive Sea Area; Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vii) Wake Island Naval Defensive Sea Area; Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(viii) Kiska Island Naval Defensive Sea Area; Kiska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(ix) Kodiak Naval Defensive Sea Area: Executive Order 8717 of March 22, 1941 (6 FR 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation: Executive Order 8597 of November 18, 1940 (5 FR 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 FR 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See § 761.4(d) for delineation of areas where entry controls are suspended.

(b) *Administrative areas.* By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named areas including their appurtenant reefs and territorial waters:

(1) Johnston Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(2) Kingman Reef—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(3) Midway Island—Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(4) Sand Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(c) *Trust Territory of the Pacific Islands*. The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of May 7, 1962 (27 FR 4409; 3 CFR, 1959-1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1951 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see § 761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Terri-

tory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided*, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases with information on the applicants for its consideration and comment, granting thereby the right of the Department of the Navy to object to the issuance of an authorization.

(d) [Reserved]

(e) *Exercise of authority*. The authority of the Secretary of the Navy to control entry of ships, planes, and persons into the areas listed is exercised through the Chief of Naval Operations and certain of his subordinates as prescribed in this part.

(f) *Penalties*. Penalties are provided by law: (1) For violations of orders or regulations governing persons or ships within the limits of defensive sea areas

Department of the Navy, DoD

§ 761.5

(62 Stat. 799; 18 U.S.C. 2152); (2) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U.S.C. 1382); (3) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer of employee of said department or agency (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 20 August 1954 (19 FR 5446)); and (4) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970; 36 FR 21889, Nov. 17, 1971; 41 FR 28957, July 14, 1976]

§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) *Suspension of restrictions.* Restrictions imposed under the authority of the above cited Executive Orders on

entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

(1) All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation

(2) Honolulu Defensive Sea Area.

(3) Kiska Island Naval Defensive Sea Area.

(4) Kodiak Island Naval Defensive Sea Area.

(5) Unalaska Island Naval Defensive Sea Area.

(6) Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.

(7) The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]

§ 761.5 Definitions.

(a) *Defense area.* A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) *Department of Defense.* The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization.* A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) *Entry Control Commander.* A commander empowered to issue entry authorizations for one or more defense areas (see § 761.9).

(e) *Excluded person.* A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for

him to enter any defense area has been denied, suspended or revoked.

(f) *Foreign nationals.* Persons who are not citizens or nationals of the United States.

(g) *Military installation.* A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(h) *Public vessel or aircraft.* A ship or aircraft owned by or belonging to a government and not engaged in commercial activity.

(i) *Territorial sea—(1) Trust Territory.* In accordance with title 19, section 101(3), of the Trust Territory Code “* * * that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory.”

(2) *Other areas.* That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term “coast” includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(j) *Trust Territory Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(k) *U.S. Registry.* Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(l) *U.S. Armed Forces.* Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10009, June 18, 1970; 41 FR 28958, July 14, 1976]

Subpart B—Criteria and Basic Controls

§ 761.6 Criteria.

(a) *General.* (1) Entry authorizations may be issued only after an Entry Control Commander, or a duly authorized subordinate acting in his behalf, has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability, or effectiveness of any military installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of national defense.

(b) *Adverse.* Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

(1) Prior noncompliance with entry control regulations or failure to observe terms under which any entry authorization may have been granted;¹

(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;¹

(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;

(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;

¹The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

(5) Performing, or attempting to perform, duties, or otherwise acting so as to serve the interest of another government to the detriment of the United States;

(6) Deliberate unauthorized disclosure of classified defense information;

(7) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means;

(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;¹

(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments; arson, unlawful trafficking in drugs, murder, kidnaping, blackmail, or sex offenses involving minors or perversion.

(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;¹

(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;¹

(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant's favor;¹

(13) Conviction of larceny of property of the United States, willful injury to or destruction of property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.¹

(c) *Aliens.* (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of National Defense, and then only for specified periods and under prescribed conditions.

(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the obtaining of a United States visa. Naval authorization for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.

(3) Alien spouses and bona fide dependents of U.S. citizen employees of the United States may, if otherwise qualified, be granted entry authorization so long as the U.S. citizen sponsor or principal remains on duty or resident within the defense area.

(d) *Renewals.* Entry authorizations having been granted and utilized may be extended or renewed upon request at the expiration of the period for which the entry was originally authorized or extended, provided the justification for remaining in the area or for making a reentry meets the criteria set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation

¹The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

of this part and may result in denial of future authorizations.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

§ 761.7 Basic controls.

(a) *General.* Except for such persons, ship, or aircraft as are issued an authorization to enter by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation of the airspace over other defense areas.

(b) *Excluded persons—(1) Entry prohibited.* Excluded persons, as defined in § 761.5(e), are prohibited from entering any defense area. In a bona fide emergency which requires an excluded person's presence in or transit through a military installation which is also a defense area, the commanding officer of the installation may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required.

(2) *Carrying prohibited.* Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in this part, as passenger, officer or crew member.

(c) *Control of violators.* No commanding officer of a military installation shall permit any ship or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdiction and request disposi-

tion instructions from the appropriate Entry Control Commander.

(d) *Trust Territory.* An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll).

(e) *Military areas.* Entries authorized under this Instruction do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military installations.

(f) *Waiver prohibited.* No officer of the U.S. Armed Forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

Subpart C—Entry Authorization

§ 761.8 General.

(a) As indicated in § 761.7(a), certain persons, ships, and aircraft must be specifically authorized under the provisions of this part to enter defense areas.

(b) When entering or transiting a defense area each person, ship, or aircraft must have a valid authorization or satisfactory evidence thereof.

§ 761.9 Entry Control Commanders.

The following commanders are designated Entry Control Commanders with authority to approve or disapprove individual entry authorizations for persons, ships, or aircraft as indicated (Commander Seventeenth Coast Guard District has been designated an Entry Control Commander by the authority of the Commandant, U.S. Coast Guard and Commander, Western Area, U.S. Coast Guard);

(a) *Chief of Naval Operations.* Authorization for all persons, ships, or aircraft to enter all defense areas.

(b) *Commander in Chief, U.S. Atlantic Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Atlantic.

(c) *Commander in Chief, U.S. Pacific Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Pacific.

(d) *Commander U.S. Naval Forces Caribbean.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation. (This authority delegated to Commander U.S. Naval Base, Guantanamo Bay.)

(e) *Commander U.S. Naval Base, Guantanamo Bay.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation.

(f) *Commander Third Fleet.* Authorization for U.S. citizens and U.S. registered private vessels to enter Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, Pearl Harbor Defensive Sea Area and Filipino workers employed by U.S. contractors to enter Wake Island.

(g) *Commander U.S. Naval Forces, Marianas.* Authorization in conjunction with the High Commissioner, for non-U.S. citizens, ships, or aircraft documented under laws other than those of the United States or the Trust Territory to enter those portions of the Trust Territory where entry is not controlled by the Department of the Army or the Defense Nuclear Agency.

(h) *Senior naval commander in defense area.* Emergency authorization for persons, ships, or aircraft in cases of emergency or distress. In all cases the Chief of Naval Operations, and as appropriate, the Commander in Chief, U.S. Atlantic Fleet or the Commander in Chief, U.S. Pacific Fleet, and other interested commands, shall be informed immediately of the nature of the emergency, and action taken.

(i) *U.S. Coast Guard.* The U.S. Coast Guard regulates the movement of shipping within the Honolulu Harbor under the authority of Executive Orders 10173 and 10289; such shipping is considered to be under U.S. authorized supervision within the meaning of Executive Order 8987. The Commandant, Fourteenth

Naval District, as representative of the Secretary of the Navy, retains responsibility for security of the Honolulu Defensive Sea Area, as required by naval interest, and, as such, issues amplifying instructions relating to the Honolulu Defensive Sea Area.

[41 FR 28958, July 14, 1976]

§ 761.10 Persons: Group authorizations.

Persons in the following categories, except those persons who have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation.

(b) Military members of the U.S. Armed Forces or U.S. civil service employees of the Department of Defense when traveling on official orders.

(c) U.S. ambassadors, cabinet members, elected U.S. Government officers and U.S. citizen civil service employees of the U.S. Government traveling on official orders on U.S. Government business may enter defense areas as required by their orders.

(d) Dependents of military members of the U.S. Armed Forces and U.S. citizen dependents of U.S. civil service employees traveling on official orders and entering for purposes of joining a principal permanently stationed in an area covered by this part.

(e) U.S. Navy Technicians, U.S. Army Contract Technicians, or U.S. Air Force Contract Technicians, who are traveling on official (does not include invitational) travel orders on U.S. Government business, may enter defense areas as specifically required by such orders.

(f) [Reserved]

(g) Individuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official U.S. Government authorization to enter an area covered by this part.

(h) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic vessels authorized to enter areas covered by this part. This does not include an authorization to disembark at a

port contiguous to or within the areas covered in this part. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the particular port.

(i) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic aircraft authorized to enter areas covered by this part. Such persons are subject to local regulations governing entry into or movement within military air stations or facilities. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the air facility.

(j) U.S. citizen news correspondents and photographers when properly accredited by the Department of Defense to enter areas covered by this part except that special authorization is required to enter the restricted areas listed in § 761.4(a).

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.11 Persons: Individual authorizations.

(a) *Application; filing.* Applications for authorization to enter defense areas shall be filed with one of the following:

- (1) Chief of Naval Operations.
- (2) Commander in Chief, U.S. Atlantic Fleet.
- (3) Commander in Chief, U.S. Pacific Fleet.
- (4) Any Naval Sea Frontier Commander.
- (5) Any Naval Fleet or Force Commander.
- (6) Any Naval District Commandant.
- (7) Any Naval Attache. The Commander or Attache with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding

activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter.

(b) *Form.* (1) Applications for entry authorizations will be made on the standard form Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, "Remarks":

21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)
22. Proposed duration of visit:
23. Estimated date of arrival:
24. Address to which authorization should be mailed:

In the event that a DD 398 form is not available, a locally produced form containing identical information including the certification and signature of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

- (i) Name of applicant.
- (ii) Date and place of birth.
- (iii) Citizenship.
- (iv) Residence for last ten (10) years.
- (v) Employers and their addresses for last ten (10) years.
- (vi) Results of Local Agency Check, if pertinent.
- (vii) Place to be entered and date of entry.
- (viii) Purpose of entry and duration of stay.
- (ix) Comments and/or recommendations of forwarding officer as appropriate.
- (x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) *Processing.* The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:

- (1) Initiate or conduct such investigation as may be required to establish

facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in § 761.6.

(2) Request additional information from the applicant if required, or

(3) Issue an entry authorization as requested or modified as circumstances require, or

(4) Deny the request and advise the applicant of his right to appeal, or,

(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) *Authorizations.* Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U.S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U.S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28958, July 14, 1976]

§ 761.12 Ships: Group authorizations.

Ships or other craft in the following categories, except those ships which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorizations:

(a) U.S. Public vessels, to enter all defense areas.

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clear-

ances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

(d) Privately owned local craft, registered with and licensed by appropriate local U.S. Government authorities, and owned and operated by local inhabitants who have been granted an authorization to enter the local defense area at the discretion of the local commanders.

(e) Foreign flag ships traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(f) Ships operating under a group authorization issued by the Chief of Naval Operations.

(g) Ships in distress, subject to local clearances and control by senior officer present.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.13 Ships: Individual authorizations.

(a) *Applications; form; filing.* Applications for authorization to navigate ships within the limits of defense areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:

(1) Name of ship.

(2) Place of registry and registry number.

(3) Name, nationality and address of operator.

(4) Name, nationality and address of owner.

(5) Gross tonnage of ship.

(6) Nationality and numbers of officers and crew (include crewlist when practicable).

(7) Number of passengers (include list when practicable).

(8) Last port of call prior to entry into area for which clearance is requested.

(9) Purpose of visit.

(10) Proposed date of entry and estimated duration of stay.

(b) *Processing.* Authorization for single entries or for multiple entries for a period not to exceed one year may be

granted or denied by an Entry Control Commander. Authorizations for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 Aircraft: Group authorizations.

Aircraft in the following categories, except those aircraft which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) U.S. public aircraft to enter all defense areas.

(b) U.S. private aircraft which are under charter to the Department of Defense (including the Military Airlift Command), or operating under a contract with the Department of Defense providing for the employment of such aircraft to overfly U.S. island positions to enter defense areas as authorized by controlling Defense Department agency. If landing at U.S. military facilities is required, see § 761.15(a).

(c) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(d) Aircraft operated by companies authorized to utilize naval facilities in defense areas for regular commercial activity, to enter defense areas associated therewith. For landing clearance at U.S. military facilities, see § 761.15(a).

(e) Any aircraft in distress, subject to local clearance and control by senior officer present.

[41 FR 28958, July 14, 1976]

§ 761.15 Aircraft: Individual authorizations.

(a) *Special procedures.* In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If landing at U.S. naval aviation facilities, an Aviation Facility License must be obtained, in accordance with Secretary of the Navy Instruction 3770.1B, Use of Department of the Navy aviation facilities by other than United States Department of Defense aircraft.

(2) If landing at U.S. Air Force aviation facilities, a Civil Aircraft Landing Permit must be obtained, in accordance with Department of the Airforce Regulation 55-20, Use of United States Air Force installations by other than United States Department of Defense aircraft.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) *Application; Form; Filing.* Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the appropriate entry control commander as indicated in § 761.9 with information copies to the Chief of Naval Operations, Commander in Chief, U.S. Atlantic (or Pacific) Fleet, as appropriate, and other local commanders who are known to be concerned. Applications shall include the following:

(1) Type and serial number of aircraft (the number of aircraft in flight if a mass movement is involved), nationality and name of registered owner.

(2) Name and rank of senior pilot.

* (3) Number in crew.

* (4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.

(5) Purpose of flight.

(6) Plan of flight route, including:

(i) Point of origin of flight and its destination.

(ii) Estimated date and times of arrival and departure at all airspaces covered by this part 761 including stops within the Trust Territory, when pertinent.

(7) Radio call signs of aircraft and radio frequencies available.

(8) Whether cameras are to be carried and whether they will be used.

* (9) Whether arms are to be carried.

* (10) Whether authorization to land as indicated in § 761.15(a) has been obtained.

NOTE: Information on those items marked with an asterisk (*) need not be reported when the aircraft will only overfly the areas covered by this part.

(c) *Processing.* Authorization for individual entries or for multiple entries for a period not to exceed three months

*See "Note" to this paragraph.

Department of the Navy, DoD

§ 761.19

may be granted by an Entry Control Commander. Authorizations for multiple entries over a period to exceed three months and applications for group authorizations must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

[41 FR 28958, July 14, 1976]

§ 761.16 Notice of action.

All applicants will be kept advised of action being taken relative to the processing of applications. Individuals whose applications cannot be processed promptly (usually within ten working days) or whose applications must be forwarded to another office for processing will be notified of the anticipated delay and advised of the approximate time when action may be expected to be taken. Under no circumstances will a notice of disapproval include a statement of the reason therefor. Copies of all notices will be distributed to commands and Entry Control Commanders concerned. Copies of all notices of disapproval will be mailed to the Chief of Naval Operations concurrently with the mailing to the applicant.

§ 761.17 Revocation.

Entry authorizations will be revoked only by an Entry Control Commander upon being advised of the discovery of information which would have been ground for denial of the initial request. Such a revocation will be confirmed in writing to the holder of an entry authorization. No reason for revocation of the entry authorization will be given. When an entry authorization is revoked, a one-way permit will be issued as appropriate, to permit the ship, aircraft, or person to transit the defense area in order to depart from a contiguous area.

§ 761.18 Appeals.

(a) Appeals may be filed with the Entry Control Commander who issued the denial or revocation. It shall contain a complete statement of the purpose of the proposed entry and a statement of reasons why the entry should be authorized, including a showing that the entry will be consistent with the purposes of national defense.

(b) Appeal letters shall be forwarded promptly to the next superior Entry Control Commander with an endorsement setting forth the reasons for the denial or revocation and a recommendation as to the action to be taken by the superior.

(c) The superior may act on the appeal and notify the applicant of the decision, or he may forward the appeal to the next superior and notify the applicant of this referral.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28959, July 14, 1976]

§ 761.19 Forms.

The following forms shall be used in connection with the processing of applications for authorization to enter defense areas and for revocation of authorizations as indicated:

(a) *Application.* Statement of Personal History (Form DD 398, Stock Number 0102-004-220) may be obtained from NAVPUBFORMCEN, Building 26, 5801 Tabor Ave., Philadelphia, PA 19120.

(b) *Entry authorization.* (1) Defense Area Entry Authorization (OPNAVForm 4600-2 (Rev. 5-59) may be obtained from Office of the Chief of Naval Operations (OP-09B33), Navy Department, Washington, DC 20350.

(2) Letter or message authorization.

(c) *Disapproval of request for entry authorization.*

MY DEAR -----: Your application of ----- has been reviewed and we regret to advise you that the requested authorization for ----- to enter ----- is not granted as the entry at this time for the purpose stated is not considered to be in the interest of national defense.

The application may be resubmitted again in six months at which time it will be reconsidered in the light of then existing circumstances.

If you desire to appeal this decision, you may do so by submitting a letter to this office setting forth in full why you consider that the granting of the application would be in the interest of national defense and any other information that you believe will be of value of this person considering the appeal. Your letter will be forwarded to the appropriate authority for review and you will be advised in due course of his determination.

Sincerely yours,

(d) *Revocation of entry authorization.*

MY DEAR -----: This is to notify you that entry authorization to enter

§ 761.20

_____ granted by (issuing activity) on _____ is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

Subpart D—Additional Instructions

§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the Act approved June 25, 1942 (Pub. L. 627, 77th Congress), as amended (50 U.S.C. App. 781-785), and the regulations promulgated thereunder (7 FR 7307; 32 CFR 765.19(b)).

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the

32 CFR Ch. VI (7-1-97 Edition)

regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

PART 762—MIDWAY ISLANDS CODE

Subpart A—General

- Sec.
762.1 Applicability.
762.3 Purpose.
762.4 Scope.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

- 762.6 Executive authority; duration.
762.8 Authorized functions, powers, and duties.
762.10 Emergency authority.

Subpart C—Criminal Law; Petty Offenses; Penalties

- 762.15 General.
762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.
762.17 Conflicts of laws.
762.18 Time limitations.
762.19 Petty offenses; general.
762.20 Breach of the peace offenses.
762.22 Offenses against property.
762.24 Moral offenses.
762.26 Alcoholic beverages offenses.
762.28 Vehicle offenses.
762.30 Weapons offenses.
762.32 Offenses against the environment.
762.34 Miscellaneous offenses.
762.35 Attempt.
762.40 Penalties for petty offenses.
762.42 Penalties for motor vehicle violations.
762.44 Contempt.

Subpart D—Midway Islands Court; Rules of Criminal Procedure

- 762.50 Establishment; members; sessions.
762.52 Attorney for the United States.
762.54 Criminal jurisdiction.
762.55 Venue.
762.56 Rules of criminal procedure.
762.58 Release prior to trial and bail.

Department of the Navy, DoD

§ 762.4

- 762.62 Information.
- 762.64 Motions and pleas.
- 762.66 Trial.
- 762.68 Sentence.
- 762.70 Subpoenas.
- 762.72 Appeals.
- 762.74 New trial.

Subpart E—Warrants; Arrests; Special Procedures

- 762.80 Warrants.
- 762.82 Arrests.
- 762.84 Citation in place of arrest.
- 762.86 Abatement of nuisance.

Subpart F—Registration and Permit Regulations

- 762.90 Registration of certain property.
- 762.92 Permits.
- 762.94 Expiration of permits.
- 762.96 Revocation or suspension of permits.

Subpart G—Civil Small Claims Law

- 762.100 Applicable law and jurisdiction over small claims.
- 762.102 Small claims procedure; complaint and service.
- 762.104 Time limitations.
- 762.106 Costs and fees; waiver.
- 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.
- 762.109 Jury trial; demand.
- 762.110 Pre-trial settlement.
- 762.112 Trial.
- 762.114 Judgments.
- 762.116 Award of costs.
- 762.118 No appeal.
- 762.120 Judgment creditors and remedies.
- 762.126 Parties.
- 762.128 Forms and public information.

Subpart H—Savings Clause

- 762.130 Severability of subparts, sections, paragraphs, or provisions.

AUTHORITY: Sec. 48, Pub. L. 86-624, 74 Stat. 424; 3 U.S.C. 301; E.O. 11048, 3 CFR 1959-1963 Comp., p. 632 (1962).

SOURCE: 41 FR 29672, July 19, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 762 appear at 51 FR 22283, June 19, 1986.

Subpart A—General

§ 762.1 Applicability.

(a) The local criminal and civil laws of the Midway Islands consist of this part, the provisions of the laws of the State of Hawaii adopted pursuant to § 762.16(a) and § 762.112(a), applicable provisions of the laws of the United

States, and those laws made applicable under the special maritime jurisdiction contained in the Act of June 15, 1950 (ch. 253, 64 Stat. 217).

(b) For the purposes of this part, the Midway Islands include all public lands on, and all territorial waters and the contiguous zone adjacent to or surrounding, the Midway Islands, Hawaiian Group, between the parallels of 28°5' and 28°25' North Latitude, and between the meridians of 177°10' and 177°30' West Longitude, as were placed under the jurisdiction and control of the Navy Department by the provisions of Executive Order No. 199-A of January 20, 1903, as superseded by Executive Order No. 11048 of September 5, 1962.

§ 762.3 Purpose.

The purpose of this part 762 is to provide:

(a) For the civil administration of the Midway Islands;

(b) For vesting powers and duties in appropriate officers of the United States for the civil administration of the Midway Islands, including judicial and executive functions;

(c) Certain criminal provisions applicable to the Midway Islands not otherwise provided for, and penalties for their violations;

(d) A judicial system for the Midway Islands not otherwise provided for; and

(e) Certain civil laws for the Midway Islands not otherwise provided for.

§ 762.4 Scope.

(a) This part is applicable to all civilian and nonmilitary persons, and to all military personnel for matters involving civil administration, civil law, or criminal offenses not otherwise covered by the Uniform Code of Military Justice, while such persons are on the Midway Islands.

(b) In no event shall the provisions of this part supersede federal law, or the Uniform Code of Military Justice, nor shall the provisions of this part derogate the inherent or delegated authority, responsibility, and powers of the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, under U.S. Navy Regulations, 1973, the Uniform Code of

§ 762.6

Military Justice, other pertinent Navy directives, and federal law.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 762.6 Executive authority; duration.

The executive authority at the Midway Islands is vested in the Secretary of the Navy. The Officer-in-Charge, U.S. Naval Air Facility, Midway Island, is the agent of the Secretary or his designee in carrying out any function, power, or duty under this part 762. The Officer-in-Charge's authority commences upon his assumption of command of U.S. Naval Air Facility, Midway Island, and continues until he is relieved of that command by replacement. In the event of the absence, disability, or death of the Officer-in-Charge, the Acting Commanding Officer of U.S. Naval Air Facility, Midway Island, is vested with the authority prescribed in this part for the Officer-in-Charge and shall remain so vested until the return, recovery, or replacement of the Officer-in-Charge.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.8 Authorized functions, powers, and duties.

The Officer-in-Charge may, personally or through his staff:

- (a) Issue citations for violations of subpart C of this part;
- (b) Abate any public nuisance upon the failure of the person concerned to comply with a removal notice;
- (c) Make sanitation and fire-prevention inspections;
- (d) Perform marriages, and maintain records of vital statistics, including birth, marriage, and death certificates;
- (e) Inspect vehicles, including bicycles, for roadworthiness, and boats for seaworthiness;
- (f) Confiscate property used in committing a crime;
- (g) Investigate accidents and suspected crimes;
- (h) Move unlawfully parked vehicles, boats, or aircraft;

- (i) Take possession of lost or abandoned property and dispose of it under the provisions of 10 U.S.C. 2575 and applicable Navy directives;
- (j) Delay or restrict the departure of any aircraft for reasonable cause;
- (k) Impose quarantines;
- (l) Impound and destroy unsanitary food, fish, or beverages;
- (m) Evacuate any person from a hazardous area;
- (n) Establish and maintain a facility for the lawful restraint or confinement of persons and provide for their care;
- (o) Remove any person from the Midway Islands for cause;
- (p) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;
- (q) Perform any other acts, not inconsistent with this part or other applicable laws or regulations, that he considers necessary for protecting the health and safety of persons and property on the Midway Islands; and
- (r) Issue any order or notice necessary to implement this section.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.10 Emergency authority.

During the imminence and duration of any emergency, the Officer-in-Charge may perform any acts necessary to protect life and property.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

subpart C—Criminal Law; Petty Offenses; Penalties

§ 762.15 General.

In addition to any act made criminal in this part, any act committed on Midway Islands which would be a violation of the laws of the United States; or of the provisions of title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified; or any act committed on the Midway Islands that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States, is a criminal offense and shall be punished, respectively, according to this part; the laws of the United States; title 37, "Hawaii Revised Statutes," as it now appears or as it may be

amended or recodified; or according to the laws applicable on board United States vessels on the high seas. [The Act of June 15, 1950 (ch. 253, 64 Stat. 217).]

§762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.

(a) *Offenses adopted.* Whoever on the Midway Islands is guilty of any act or omission, which, although not made punishable by an enactment of Congress or under §§762.20 through 762.39, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b) *Jurisdiction over such offenses.* The United States District Court for the District of Hawaii shall have jurisdiction to try all such offenses except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500 or both. Those offenses falling within the above-stated exception shall be tried in the Midway Islands Court.

§762.17 Conflicts of laws.

In no event shall the provisions of this part supersede the Uniform Code of Military Justice when the latter is applicable. Any adopted provisions of title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, which duplicate or conflict with any other provisions of this part shall be of no effect.

§762.18 Time limitations.

(a) A prosecution for any petty offense under this part must be commenced within two years after it is committed.

(b) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(c) A prosecution is commenced either when an information is filed, or

when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(d) The period of limitation does not run:

(1) During any time when the accused is absent from the Midway Islands or has no reasonably ascertainable place of abode or work within the Midway Islands, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when a prosecution against the accused for the same conduct is pending in the Midway Islands Court.

(e) Except those offenses which are subject, under title 37 of the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, offenses charged and treated under §762.16 (a) and (b), shall be subject to the appropriate time-limitation rules set forth in section 108, title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified.

§762.19 Petty offenses; general.

All offenses contained in §§762.20 through 762.39 and those offenses adopted under §762.16(a), as they now appear or as they may be amended or recodified, which are subject, under title 37, "Hawaii Revised Statutes," to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, shall be termed "Petty Offenses" and subject to the penalties set forth in §§762.40 through 762.49.

§762.20 Breach of the peace offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, to engage in fighting, threatening, or other violent or tumultuous behavior; or to make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to

any person present; or to create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly to obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. "Obstruction" as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, to refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard. An order to move under this paragraph addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control;

(d) To be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs, or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual and considerable disturbance of mental or physical capacities;

(e) With intent to arouse or gratify sexual desire of any other person, to expose one's genitals to a person to whom one is not married under circumstances in which one's conduct is likely to cause affront or alarm; or

(f) Who is a minor under the age of 18 years, except a person in the military, to loiter about or otherwise be on any street, road, beach or other public place or in any theater, club, or other facility between the hours of 12:00 midnight and 5:30 a.m. unless accompanied by an adult over the age of 21 years and with the express permission of such minor's parent or legal guardian; and for

any parent, guardian, or other person having the legal care, custody, or control of any minor under the age of 18 years, except a person in the military, to allow or permit such minor to violate this ordinance.

§ 762.22 Offenses against property.

It shall be unlawful for any person, while on the Midway Islands:

(a) To loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, to peek in any door or window of any inhabited building or structure located thereon without lawful purpose;

(b) To enter upon any assigned residential quarter or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Who is a male to enter any area, building, or quarter reserved for women, except in accordance with established visiting procedures;

(d) Who is a female to enter any area, building, or quarter reserved for men, except in accordance with established visiting procedures;

(e) To enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building;

(f) To enter or remain in any area or building designated and posted as "restricted" unless authorized by proper authority to be there; or

(g) To steal any services or property of a value of less than \$50 belonging to or property of another.

§ 762.24 Moral offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in prostitution. "Prostitution" means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) To do any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed. "Lewd Act" includes any indecent or obscene act.

§ 762.26 Alcoholic beverages offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii. It shall not be unlawful, however, for persons authorized to sell alcoholic beverages to sell beer with an alcoholic content of not more than 3.2 percent by weight to military personnel regardless of age; or

(b) To present or have in his possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of § 762.26(a).

§ 762.28 Vehicle offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To operate or use intentionally any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, for any purpose, without consent of the owner thereof or his authorized agent;

(b) To operate any bicycle that has not been properly registered with the Security Department, U.S. Naval Air Facility, Midway Island, within one week after entering U.S. Naval Air Facility, Midway Island, with such bicycle, or within 72 hours after ownership or possession thereof has been obtained on the Midway Islands.

(c) To operate any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, without due regard for safety of others;

(d) To operate any automobile, truck, bicycle, motorcycle, or other vehicle and disregard or disobey any traffic regulation, sign, or marking erected, inscribed, or placed by competent authority on the Midway Islands, including, but not limited to, "Stop," "Yield," "Speed," and "No Parking" signs;

(e) To operate a United States Government vehicle without holding a current United States Government operator's license for that type of vehicle;

(f) To operate a privately owned automobile, truck, motorcycle, or like motor vehicle without holding a valid operator's license from some State or territory of the United States;

(g) To operate any automobile, truck, bicycle, motorcycle, or other vehicle, aircraft, or boat or other vessel, or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbiturates; or

(h) To exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Islands is 15 miles per hour.

§ 762.30 Weapons offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) Other than a security patrolman or shore patrolman or other duly appointed official in the performance of an official duty, to carry a concealed pistol or other concealed firearm, or a concealed knife with a blade more than four inches long or with a blade capable of being opened by a mechanical device, commonly known as a switch-blade knife; or

(b) Without proper authority, to keep or use in any place any dangerous weapons including rifles, shotguns, pistols, airguns, CO₂ guns, pellet guns, and BB guns.

§ 762.32 Offenses against the environment.

It shall be unlawful for any person, while on the Midway Islands:

(a) Knowingly to place, throw, drop, or allow to drop any litter on any property or in any waters or beach. "Litter" means rubbish, refuse, and debris of whatever kind or description, whether or not it is of value;

(b) To grossly waste potable water; or

(c) To remove, injure, or destroy any wild bird, egg, or seal, or for any owner of a dog or other pet to allow knowingly such dog or other pet to remove, injure, or destroy any wild bird, egg, or seal, or for the parent or legal guardian of any minor child to allow knowingly such minor child to remove, injure, or destroy any wild bird, egg, or seal.

§ 762.34 Miscellaneous offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in a trade, business, or other commercial activity on Midway Islands without first obtaining written permission from the Officer-in-Charge, U.S. Naval Air Facility, Midway Island;

(b) To smoke or ignite any fire in any designated and posted “No Smoking” area, or in the immediate proximity of any aircraft, fueling pit, or ordnance or pyrotechnic storage areas;

(c) Knowingly to report or cause to be reported to the Security Department, Fire Department, or any official thereof, or to any other public official, or willfully to activate, or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. “Emergency,” as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(d) Intentionally to report to any shore patrolman, security patrolman, fireman, officer of the day, junior officer of the day, or other public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.35 Attempt.

(a) A person is guilty of attempt to commit a crime if he commits an act, done with the specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission.

(b) It shall be unlawful for any person, while on the Midway Islands to attempt to violate any section of subpart C, including all offenses adopted from title 37, “Hawaii Revised Statutes,” as they now appear or as they may be amended or recodified. Any person convicted of an attempt to commit an of-

fense shall be subject to the same appropriate penalties authorized under §§ 762.40 through 762.49 for the commission of the offense attempted, except that attempts of all offenses adopted under § 762.16, except those which are subject, under title 37, “Hawaii Revised Statutes,” as it now appears or as it may be amended or recodified, to a penalty of imprisonment of six months or less or a fine of not more than \$500, shall be punished as directed by appropriate sections of title 37, “Hawaii Revised Statutes,” as they now appear or as they may be amended or recodified.

§ 762.40 Penalties for petty offenses.

Whoever is found guilty of a violation of any petty offense under this subpart, other than § 762.28 (b) through (h), is subject to a fine of not more than \$500 or imprisonment for not more than six months, or both.

§ 762.42 Penalties for motor vehicle violations.

Whoever is found guilty of a violation of any one of § 762.28 (b) through (h), is subject to a fine of not more than \$100, imprisonment of not more than 30 days, or suspension or revocation of his privilege to drive a motor vehicle aboard U.S. Naval Air Facility, Midway Island, or any combination of, or all of, these punishments.

§ 762.44 Contempt.

Judges of the Midway Islands Court may, in any criminal case or proceeding, punish any person for disobedience of any order of the court, or for any contempt committed in the presence of the court, by a fine of not more than \$100, or imprisonment of not more than 30 days, or both.

**Subpart D—Midway Islands Court;
Rules of Criminal Procedure**

§ 762.50 Establishment; members; sessions.

(a) There is created a “Midway Islands Court” which is vested with the judicial authority provided in this part 762. The court shall consist of such Navy judge advocates as are designated by the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or such other command as may be designated

by the Commander in Chief, U.S. Pacific Fleet. In the absence of an appointment to the contrary, the most senior in date of rank of those appointed shall act as senior judge.

(b) The Senior Judge shall appoint someone under his authority to act as Clerk of the Court who will be responsible for maintaining a public docket containing such information as the Senior Judge may prescribe.

(c) Sessions of the court are held on the Midway Islands at times and places designated by the Senior Judge.

(d) Normally, not more than one judge shall be required to hear any individual case.

[41 FR 29672, July 19, 1986, as amended at 51 FR 22283, June 19, 1986]

§ 762.52 Attorney for the United States.

The Senior Judge may appoint any judge advocate or attorney to represent the United States in any criminal case in the Midway Islands Court or on appeal to the Commander, U.S. Naval Base, Pearl Harbor or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet.

§ 762.54 Criminal jurisdiction.

The Midway Islands Court has jurisdiction over all petty offenses and other minor violations of this part. The United States District Court for the District of Hawaii shall have jurisdiction over all other offenses adopted under § 762.16, over offenses against the laws of the United States, and over those offenses committed within the special maritime jurisdiction contained in the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

§ 762.55 Venue.

Trial of all offenses under the jurisdiction of the Midway Islands Court shall be had at the U.S. Naval Air Facility, Midway Island; trial of all other offenses shall be in the United States District Court for the District of Hawaii.

§ 762.56 Rules of criminal procedure.

(a) Sections 762.56 through 762.79 govern the procedure in criminal proceedings in the Midway Islands Court. They

shall be construed to ensure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expenses and delay.

(b) The judge of the court who presides at any trial or other criminal proceeding is responsible for the making of an appropriate record of the proceeding.

§ 762.58 Release prior to trial and bail.

(a) The release of any person arrested on the Midway Islands for a violation of this part shall be in accordance with 18 U.S.C. 3146 as it now appears or as it may be amended or recodified.

(b) When an offense has been charged by a citation issued by a security patrolman, shore patrolman, or other duly designated peace officer or the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, bail shall be set in the amount prescribed by the Senior Judge for the violation. The bail shall be paid in cash to the Clerk of the Court. The bail may be forfeited by the accused and the proceedings thereby terminated in the case of a violation of § 762.28 that does not involve a moving vehicle collision or intoxication while driving, or with permission of the court in the case of any other offense charged by citation pursuant to § 762.84.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.62 Information.

(a) Any petty offense may be prosecuted by a written information signed by the attorney charged with prosecuting the case. If, however, the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as the information. Offenses against the laws of the United States, offenses committed against the laws made applicable by the Act of June 15, 1950 (chapter 253, 64 Stat. 217), and offenses adopted under § 762.16, except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, shall be referred to the United States Attorney, Hawaii, for appropriate disposition.

(b) A copy of the information shall be delivered to the accused or his counsel as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 762.64 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the court shall give him a reasonable opportunity to procure counsel. If he cannot afford counsel or is unable to procure counsel after reasonable efforts have been expended, the court shall advise him of his right to have counsel appointed, and shall appoint a judge advocate or other lawyer counsel for the accused unless the accused shall have made a voluntary and intelligent waiver of his right to counsel.

(c) When both sides are ready for arraignment, or when the court determines that both sides have had adequate opportunity to prepare for arraignment, the court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in court, ask the accused whether he pleads "guilty" or "not guilty." The court shall enter in

the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the court may at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily and with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the court, change a plea of not guilty to one of guilty. The court shall then proceed as if the accused had originally pleaded guilty.

(g) Nothing contained in this subpart shall be construed to diminish any additional rights afforded military personnel under the Uniform Code of Military Justice.

§ 762.66 Trial.

(a) If the accused pleads not guilty or if a plea of guilty is not accepted by the court and a consequent plea of not guilty entered, the accused is entitled to a trial on the charges in accordance with the procedures prescribed in the Rules of Criminal Procedure for the United States District Courts, 18 U.S.C., except as otherwise provided in this part. There is no trial by jury for petty offenses.

(b) All persons shall give their testimony under oath or affirmation. The Senior Judge shall prescribe the oath and affirmation that may be administered by any judge or the Clerk of the Court.

(c) Upon completion of the trial, the court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

§ 762.68 Sentence.

(a) If the court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge.

(b) After a finding of guilty is made, either by virtue of an accepted plea of

guilty or as the verdict of the court after trial, the court:

(1) May delay sentencing pending receipt of any presentencing report ordered by it;

(2) Shall, before imposing sentence, hear such statements, whether written or oral, by the prosecution and defense, if any, in regards to mitigation, extenuation, previous good character of the accused, matters in aggravation, and permissible evidence of bad character of the accused. In this regard, the accused or his counsel may introduce any reasonable statement he wishes in mitigation or extenuation or any evidence of previous good character. The prosecution may introduce evidence in aggravation including prior federal, state, or Midway Islands convictions. The prosecution may introduce evidence of previous bad character only if the accused has introduced evidence of previous good character; and

(3) Shall thereafter impose any lawful sentence, including, a suspended or partially suspended sentence; revocation or suspension of any Midway Islands automobile, truck, motorcycle, or other motor vehicle, or boat or other vessel permit in cases involving violations of § 762 28; or placement of accused on probation.

§ 762.70 Subpoenas.

(a) The Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) The clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court may direct that books, papers, and documents designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence. It may, upon their production, allow the books, papers, documents, or objects or portions

thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) This section shall in no way be construed to limit federal subpoena powers, laws, or rules.

§ 762.72 Appeals.

(a) The defendant in any criminal case may appeal from any judgment of the Midway Islands Court to the Commander, U.S. Naval Base, Pearl Harbor, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet, by filing a notice of appeal with the Senior Judge, and serving a copy on the attorney or judge advocate who represented the United States at trial.

(b) The notice must be served and filed within 15 days after the judgment of the Midway Islands Court.

(c) Upon receiving a notice of appeal, with proof of service on the attorney or judge advocate who represented the United States at trial, the Senior Judge shall forward the record of the case to the Commander, U.S. Naval Base, Pearl Harbor.

(d) The appellant must serve and file a memorandum with the Commander, U.S. Naval Base, Pearl Harbor, within 10 days after filing notice of appeal setting forth the grounds for appeal. The attorney or judge advocate who represented the United States at trial may file a reply memorandum within 10 days thereafter.

(e) The Commander, U.S. Naval Base, Pearl Harbor, may affirm, dismiss, or modify the order of the court, or exercise any of the other powers of the court. The judgment of the Commander, U.S. Naval Base, Pearl Harbor, is final.

(f) Cases tried in the United States District Court for the District of Hawaii shall be subject to federal laws and rules applicable to appeals.

§ 762.74 New trial.

A judge of the court may order a new trial as required in the interest of justice, or vacate any judgment and enter

a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for a new trial or vacation of judgment is made.

Subpart E—Warrants; Arrests; Special Procedures

§ 762.80 Warrants.

(a) *Arrest warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. Probable cause, as used herein, means that there exist facts which are sufficient to lead a reasonably prudent and cautious man to a natural conclusion that the person to be arrested committed the offense for which he is to be arrested. The issuing officer shall:

- (i) Place the name of the person charged with the offense in the warrant, or, if his name is not known, any name or description by which he can be identified with reasonable certainty;
- (ii) Sign the warrant;
- (iii) Describe in the warrant the offense charged;
- (iv) Issue the warrant to a security patrolman, shore patrolman, or other duly designated peace officer for execution; and
- (v) Place in the warrant a command that the person charged with the offense be arrested and brought before him.

(2) Each person making an arrest on the Midway Islands shall take the arrested person, without unnecessary delay, before the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or a judge of the Midway Islands Court, as appropriate.

(3) The official before whom an arrested person is brought shall inform him of the complaint against him. The official shall also advise the arrested person that he has the right to remain silent and make no statement; that any statement made, whether oral or written, may be used against him, that he has the right to consult with a lawyer and to have a lawyer with him during questioning and to seek advice be-

fore answering any questions; that he may employ civilian counsel of his own choice and at his own expense; that if he cannot afford a lawyer, or is a service member, the court will appoint one for him if he so desires; and that, if he decides to answer questions, he has the right to stop answering at any time and terminate the interrogation. Before any security patrolman, shore patrolman, or other duly designated peace officer questions any person arrested, he must advise the arrested person of his rights, as set forth above, whether such questioning occurs before or after the arrested person is brought before the appropriate official as designated above in this section. No warnings need be given, however, prior to general on-the-scene questioning or identification inquiries.

(b) *Search warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for search and seizure, if, after dispassionate and impartial consideration of all evidence, information, and circumstances involved, probable cause is deemed to exist. Probable cause, as used herein, means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

- (i) An offense probably is about to be, is being, or has been committed;
- (ii) Specific fruits or instrumentalities of the crime, contraband, or evidence exist; and
- (iii) Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

(2) If, after considering all information, the judge shall decide to issue a search warrant, such warrant shall specifically include the following information:

- (i) The time and date the warrant was requested;
- (ii) The name and capacity of the person, official, security patrolman, shore patrolman, or other duly designated peace officer requesting the warrant;
- (iii) The name and address of the person(s) suspected and the specific offense(s) of which he is suspected;
- (iv) The address, place, or structure which is to be searched;
- (v) The general nature of the items intended to be seized;

(vi) The information presented or reasons for suspecting the suspected person(s) in general; and

(vii) An authorization to search the described place for the property specified and, if the property is found there, to seize it, followed by the date, time, capacity, and signature of the judge issuing such warrant.

(3) A search warrant must be executed and returned to the issuing authority within five days after date of issuance. A search warrant executed within the five-day period shall be deemed to have been timely executed and no further showing of timeliness need be made.

(4) Security patrolmen, shore patrolmen, and other duly designated peace officers or other designated personnel conducting searches shall do so in accordance with the issued warrant.

(5) Any property seized as a result of a search or in connection with an alleged offense (unless property is highly perishable) is to be retained in a secure place pending trial in accordance with the orders of the court. All seized property shall be securely tagged with the following information:

(i) Date seized;

(ii) Property searched and location of seized article(s) when so seized;

(iii) Person ordering search and warrant number;

(iv) Signatures of person searching and witness; and

(v) Place where property is now located and names and addresses of any persons who have had custody thereof prior to deposit in the secure place required by this paragraph. A complete chain of custody record is to be kept.

(6) The property must be produced in court, if practicable. At the termination of the trial, the court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case.

(c) *Sanitation and fire prevention inspection.* (1) Any judge of the Midway Islands Court may issue a warrant to inspect property on the Midway Islands for purposes of maintaining sanitation and fire prevention.

(2) Such warrant shall indicate:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person requesting the warrant;

(iii) Property description or address of place or structure to be inspected;

(iv) General purpose of inspection;

(v) Date and time inspection intended to be made; and

(vi) An authorization to inspect the described place for the purpose specified, followed by the date, time, capacity, and signature of judge issuing the warrant.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.82 Arrests.

(a) Any person may make an arrest on the Midway Islands, without a warrant, for any crime (including a petty offense) that is committed in his presence.

(b) Any security patrolman, shore patrolman, or other duly designated peace officer may, without a warrant, arrest any person on the Midway Islands who violates any provision of this part 762 or commits a crime that is a violation of the laws of the United States or the laws made applicable to the Midway Islands under the Act of June 15, 1950 (chapter 253, 64 Stat. 217), in his presence, or that he has probable cause to believe that person to have committed.

(c) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer must display a warrant, if he has one, or otherwise clearly advise the person arrested of the violation alleged, and thereafter require him to submit and be taken before the appropriate official on the Midway Islands.

(d) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer may use only the degree of force needed to effect submission, and may remove any weapon in the possession of the person arrested.

(e) A security patrolman, shore patrolman, or other duly designated peace officer may, whenever necessary to enter any building, vehicle, aircraft, or vessel to execute a warrant of arrest, force an entry after verbal warning.

§ 762.84

(f) A security patrolman, shore patrolman, or other duly designated peace officer may force an entry into any building, vehicle, aircraft, or vessel whenever:

(1) It appears necessary to prevent serious injury to persons or damage to property, and time does not permit the obtaining of a warrant;

(2) To effect an arrest when in hot pursuit; or

(3) To prevent the commission of a crime which he reasonably believes is being committed or is about to be committed.

§ 762.84 Citation in place of arrest.

In any case in which a security patrolman, shore patrolman, or other duly designated peace officer may make an arrest without a warrant, he may, under such limitations as the Officer-in-Charge may impose, issue and serve a citation, or serve a citation issued by the Officer-in-Charge, on a person in place of arresting him if the officer considers that the public interest does not require an arrest. The citation must briefly describe the offense charged and direct the accused to appear before the Midway Islands Court at a designated time and place.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.86 Abatement of nuisance.

Whenever the Officer-in-Charge determines that, on any premises on the Midway Islands, a condition exists that is unsanitary or hazardous, that may be injurious to the public, or is otherwise a nuisance, he may order the condition abated. If the legal custodian of the premises concerned does not take action to abate the nuisance within 30 days after the order is issued, the Officer-in-Charge may enter on the premises and abate the nuisance for, and at the expense of, the custodian.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

32 CFR Ch. VI (7-1-97 Edition)

Subpart F—Registration and Permit Regulations

§ 762.90 Registration of certain property.

(a) Each person who has custody of any of the following on the Midway Islands shall register it with the Officer-in-Charge:

(1) A privately owned motor vehicle;

(2) A privately owned boat;

(3) An animal;

(4) Any device, weapon, or instrument designed for inflicting bodily injury, including a gun, pistol, or other firearm operated by air, gas, spring, or otherwise;

(5) Any narcotic or dangerous drug not obtained on prescription, and all poisons other than commonly used household poisons or toxic substances; or

(6) Any known explosive.

(b) Each person who obtains custody of an article described in paragraphs (a)(4), (5), or (6) of this section shall register it immediately upon obtaining custody. Each person who obtains custody of any other article described in paragraph (a) of this section shall register it within 10 days after obtaining custody.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.92 Permits.

Subject to reasonable restrictions and conditions that he considers appropriate, the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, may require a Midway Islands permit for the following:

(a) Any business, commercial, or recreational activity conducted for profit, including a trade, profession, calling, or occupation, or an establishment where food or beverage is prepared, offered, or sold for human consumption (except for personal or family use);

(b) The practice of any medical profession, including dentistry, surgery, osteopathy, and chiropractic;

(c) The erection of any structure or sign, including a major alteration or enlargement of an existing structure;

(d) The discharge of explosives or fireworks or of firearms, guns, or pistol operated by air, gas, spring, or otherwise, or any other weapon;

(e) The burial of any human or animal remains, except that fish and bait scrap may be buried at beaches where fishing is permitted without obtaining a permit;

(f) Keeping or maintaining any animal, including dogs;

(g) All vehicles (including bicycles), and operators thereof, except aircraft. The operator of a vehicle shall display his permit or permit number on the vehicle in a place and manner prescribed by the Officer-in-Charge;

(h) Boats and boat operators. The operator of a boat or other vessel shall display his permit or permit number on or in the vessel in a place and manner prescribed by the Officer-in-Charge;

(i) Food handlers;

(j) Drugs and narcotics not obtained on prescription, and poisons other than commonly used household poisons or toxic substances; or

(k) Building construction.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.94 Expiration of permits.

(a) Each Midway Islands permit expires on the earliest of the following dates:

(1) Two years after the date it is issued;

(2) The date specified on the permit;

(3) In the case of a motor vehicle, boat, or other vessel, or firearm, the date its custody is transferred to any person other than the holder of the permit therefor; or

(4) The date it is revoked by the Officer-in-Charge.

(b) Notwithstanding paragraph (a)(1) of this section, the Officer-in-Charge may issue a permit for a period longer than two years to coincide with the terms of any agreement between the Department of the Navy and the permit holder, applicable to the Midway Islands.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.96 Revocation or suspension of permits.

(a) The Officer-in-Charge may, after notifying the holder of a Midway Islands permit and giving him an opportunity to be heard, order the permit suspended or revoked for cause, including:

(1) Lack of physical fitness required to hold the permit;

(2) Lack of roadworthiness of a vehicle, or of seaworthiness of a boat or other vessel;

(3) Lack of need for the permit;

(4) Breach of any term or condition of the permit; or

(5) Conviction for violation of any regulation of this part where the violation is related to activities conducted under the permit.

(b) In any case in which he determines that an emergency exists requiring immediate action, the Officer-in-Charge may issue an order of suspension or revocation, effective immediately, without notice. However, the permit holder may, within 10 days after the suspension or revocation, request a hearing. If he so requests a hearing, he is entitled to it. The emergency order is not stayed pending hearing.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart G—Civil Small Claims Law

§ 762.100 Applicable law and jurisdiction over small claims.

(a) The Midway Islands Court shall have jurisdiction over civil cases for the recovery of money only where the amount claimed does not exceed \$500 exclusive of the interest and costs except as provided by § 762.108.

(b) The court's jurisdiction is further limited in that no such claim cognizable under paragraph (a) of this section shall be within the court's jurisdiction unless:

(1) The claim arises or has arisen on the Midway Islands;

(2) All plaintiffs and all defendants reside, at the time of trial, on the Midway Islands; and

(3) The claim does not fall within the special maritime jurisdiction under the Act of June 15, 1950 (Chapter 253, 64 Stat. 217).

§ 762.102

32 CFR Ch. VI (7-1-97 Edition)

(c) Actions shall be commenced and maintained in the Midway Islands Court under the procedures set out below and conducted in such a manner as to do substantial justice and equity between the parties. When acting on such actions, the court shall be termed the Small Claims Court.

§ 762.102 Small claims procedure; complaint and service.

(a) Actions shall be commenced in the court by the filing of a statement of claim, in concise form and free of technicalities. All claims shall be verified by the claimant, whether as a party plaintiff or counterclaimant, or by his agent, by oath or affirmation in the form herein provided, or its equivalent. The Clerk of the Court shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the court, but his services shall not be available to a corporation, partnership, or association, or to any individual proprietorship in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by personal service, by registered mail, or by certified mail with return receipt.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned with the signature thereon of the party to whom addressed, the clerk shall attach it to the original statement of claim, and it shall constitute prima facie evidence of personal service upon the defendant.

(c) When notice is served personally, the server shall make proof of service by affidavit sworn to before the Clerk of the Court or before any notary public, showing the time and place of the service.

(d) The actual cost of service shall be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

IN THE MIDWAY ISLANDS SMALL CLAIMS COURT

(Plaintiff)

(Address)

vs.

(Defendant)

STATEMENT OF CLAIMS

(Here the claimant, whether as party plaintiff or counterclaimant, or at his request the clerk, will insert a concise statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:

THE MIDWAY ISLANDS SS

----- being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to claimant, whether as party plaintiff or counterclaimant, exclusive of all set-offs and just grounds of defense.)

[Plaintiff (or agent)]

Subscribed and sworn to before me this
day of -----, 19-----.

Clerk (or notary public)

NOTICE

To: -----
Defendant

Home address

Business address

You are hereby notified that -----
has made a claim and is
requesting judgment against you in the sum
of ----- dollars (\$-----), as
shown by the foregoing statement. The court
will hold a hearing upon this claim on
----- at ----- m. in the Small
Claims Court at -----.

(Address of court)

You are required to be present at the hearing in order to avoid judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

Department of the Navy, DoD

§ 762.112

If you wish to have witnesses summoned, see clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

(Seal)

Clerk of the Court
Midway Islands Courts

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing. The hearing shall not be less than 15 days nor more than 30 days from the date of the filing of the action unless a continuance is granted by the judge for good cause shown. All actions filed in the court shall be made returnable therein.

§ 762.104 Time limitations.

All claims must be commenced as set out in § 762.102, within two years after the claim arises. A claim for money arises when it is due, owing, and unpaid.

§ 762.106 Costs and fees; waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims Court shall be not more than \$5. Other fees shall be as the court prescribes. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the court shall be "Prepayment of costs waived" or "Costs waived." The terms "pauper" or "in forma pauperis" may not be employed in the court. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the court while the costs remain unpaid, and likewise deny him

the right to proceed further in any case pending in the court.

§ 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant, in an action in the Small Claims Court, asserts a set-off or counterclaim, the judge may require a formal and concise plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims Court, as provided by § 762.100, but is for less than \$1000, the action shall remain in the Small Claims Court and be tried therein in its entirety. No set-off or counterclaim for an amount greater than \$1000 may be asserted in the Small Claims Court.

§ 762.109 Jury trial; demand.

In a case filed or pending in the Midway Islands Court under § 762.100 in which a party entitled to a trial by jury under amendment VII, United States Constitution, files a demand therefor, the case shall be assigned to and tried in the United States District Court for the District of Hawaii under the procedure provided for jury trials in that court.

§ 762.110 Pre-trial settlement.

On the return day specified by § 762.102(g), or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case, the judge shall make an earnest effort to settle the controversy by conciliation. If no settlement is effected, the judge shall proceed with the hearing on the merits pursuant to § 762.112.

§ 762.112 Trial.

(a) The parties and witnesses shall be sworn. In any case in which the civil rights, powers, and duties of any person on the Midway Islands are not otherwise prescribed by the laws of the United States or the laws made applicable under the Act of June 1950 (chapter 253, 64 Stat. 217), the judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law,

as contained in the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, and Hawaii case law. In this regard, the judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions related to privileged communications.

(b) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by § 762.102(f), or under rules of court, or on ex parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to trial on the merits, or have default judgment entered in his favor on any counterclaim filed in the manner provided herein for a plaintiff, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution or make any other disposition thereof as justice requires.

(c) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of himself or another in the Small Claims Court. The services of an unlicensed person appearing under this paragraph shall be without compensation, either by way of direct fee, contingent fee, or otherwise.

(d) The judge of the court who presides at any trial is responsible for the making of an appropriate record of the proceeding.

§ 762.114 Judgments.

After trial, the judge may immediately render his decision and enter judgment or take the case under submission. In all cases, the judge should render a decision and enter appropriate judgment within 20 days after the close of the trial.

§ 762.116 Award of costs.

In any action pursuant to this subpart the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, in-

curred by either party. No attorneys' fees or commissions shall be allowed or awarded by any judgment of the Small Claims Court.

§ 762.118 No appeal.

There shall be no appeal from a judgment of the court, but the court may alter or set aside any judgment upon application of either party after review of the record.

§ 762.120 Judgment creditors and remedies.

(a) After any final judgment is rendered by the court, the judgment debtor or concerned may deposit the sum adjudged owed with the court for payment of the claim, pay the judgment creditor directly, or make such other fair and reasonable agreement for payment or settlement of the claim with the judgment creditor. Payment, in full or by agreement or settlement between the parties after final judgment has been rendered, shall satisfy the judgment and extinguish the claim.

(b) If voluntary payment is not made by the judgment debtor after final judgment is rendered, in an action pursuant to §§ 762.100 through 762.113, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

(c) Any final judgment of the Small Claims Court shall upon order of the court become a statutory lien upon any and all personal property owned by the judgment debtor concerned and located on the Midway Islands. Such lien may be enforced by attachment, levy, judicial sale, or as the court may otherwise direct.

§ 762.126 Parties.

Wherever the term party or parties appears herein, or any reference is made to individuals desiring to present

a claim, then such term or terms of reference shall mean and include a party defendant having a counterclaim, offset, or crossclaim to present in the action.

§ 762.128 Forms and public information.

The Midway Islands Court shall cause to be published an information booklet or sheet describing, in language readily understandable by a layman, the procedures of the Small Claims Court, the remedies available upon judgment in the Small Claims Court, and such other information as will facilitate the utilization of the small claims procedure; and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon, and after judgment.

Subpart H—Savings Clause

§ 762.130 Severability of subparts, sections, paragraphs, or provisions.

In the event that any subpart, section, paragraph, or provision of this part shall be declared unconstitutional or superseded by applicable federal legislation, the remainder shall nevertheless remain valid and shall be applied so as to be consistent with such constitutional provisions or overriding legislation.

PART 763—RULES GOVERNING PUBLIC ACCESS

Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii

Sec.

- 763.1 Purpose.
- 763.2 Definition.
- 763.3 Background.
- 763.4 Entry restrictions.
- 763.5 Entry procedures.
- 763.6 Violations.

AUTHORITY: 50 U.S.C. 797; DOD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949-1953 Comp. p. 930, (1958).

SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.

Subpart A—Entry Regulations for Kaho’olawe Island, Hawaii

§ 763.1 Purpose.

The purpose of this subpart is to promulgate regulations for entry to Kaho’olawe Island, Hawaii, and its adjacent waters.

§ 763.2 Definition.

For the purpose of this subpart, Kaho’olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

§ 763.3 Background.

(a) Kaho’olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No. 10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho’olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho’olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho’olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho’olawe Island except under the controlled circumstances set forth in this subpart.

§ 763.4 Entry restrictions.

(a) Entry by any person upon Kaho’olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all areas of Kaho’olawe Island reserved for naval purposes by Executive Order 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho’olawe Island for any purpose is prohibited without advance authorization from

Commander Naval Base. This prohibition applies to all waters described in 33 CFR 204.223(4).

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987]

§ 763.5 Entry procedures.

(a) It is the policy of the Commander Naval Base to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho'olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the visitor(s) and the island's archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological resources, persons and organizations wishing access to Kaho'olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander Naval Base (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander Naval Base (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander Naval Base), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, special projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho'olawe Island

authorizes one visit only, and shall not be construed as authorization for more than one entry unless the authorization itself specifically states otherwise. Moreover, entry pursuant to advance consent, which is not in accordance with the terms and conditions permitted by Commander Naval Base, shall be deemed a violation of this subpart.

(c) For safety reasons, it is not Commander Naval Base policy to permit children below the age of 15 access to Kaho'olawe Island.

(d) The following safety regulations are applicable to visitors to Kaho'olawe Island:

(1) All visitors to the island are required to execute and submit a waiver of government liability form to a designated Navy representative prior to arrival at the island.

(2) Visitors to the island will be escorted by Navy designated Explosive Ordnance Disposal (EOD) technicians to ensure that they stay on cleared paths, avoid impact areas, and do not touch high explosives. For visitor safety, the directions of the military escorts must be followed.

(3) No person will interfere with any EOD escort in the performance of his duties.

(4) Any actual or suspected ordnance found by a visitor shall be reported to the Special Assistant for Kaho'olawe as soon as possible. If he is not in the vicinity, a description and location of the ordnance should be provided to the nearest EOD technician. Everyone, other than EOD personnel, shall remain clear of any ordnance found.

(5) Only the qualified EOD technicians shall touch, examine, remove, attempt to remove, handle either directly or indirectly, or detonate any ordnance, whether found on the surface, beneath the surface or in the waters surrounding Kaho'olawe.

(6) Any proposed hike and procession route shall be provided to the Special Assistant for Kaho'olawe (or his designated representative) for approval and escort coordination at least twenty-four hours in advance of the planned event. Deviation from approved routes will not be allowed. Proposed campsites for overnight hikes shall be similarly provided to, and approved by, the

Department of the Navy, DoD

§ 763.6

Special Assistant for Kaho'olawe or his designated representative.

(7) No person shall move about the island after sunset unless a bonafide emergency situation arises. The senior Naval officer present shall be immediately notified in case of such emergency.

(8) No person shall commit any offense proscribed by either Federal law or the State of Hawaii Penal Code, as incorporated under the Federal Assimilative Crimes Act, while on the island of Kaho'olawe. Any individual who violates any provisions of these penal codes may be prosecuted by the Federal Government and/or barred from any future access to Kaho'olawe.

(9) No person shall deface, alter, remove, spoil, or destroy any archeological object, feature, or site on the island.

(10) Children shall remain with their parents at all times while on the island.

(11) Visitors are responsible for removing their own trash from the island.

(12) Individuals failing to abide by these safety guidelines will be precluded from future visitations.

[47 FR 27553, June 25, 1982, as amended at 52 FR 20074, May 29, 1987; 52 FR 45455, Nov. 30, 1987]

§ 763.6 Violations.

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

Whoever * * * goes upon any * * * naval * * * reservation * * * for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of \$5,000 or both.

SUBCHAPTER G—MISCELLANEOUS RULES

PART 765—RULES APPLICABLE TO THE PUBLIC

Sec.

765.1—765.5 [Reserved]

765.6 Regulations for Pearl Harbor, Hawaii.

765.7—765.11 [Reserved]

765.12 Navy and Marine Corps absentees; rewards.

765.13 Insignia to be worn on uniform by persons not in the service.

765.14 Unofficial use of the seal, emblem, names, or initials of the Marine Corps.

AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 133, 76 Stat. 517, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133, 5031, 6011, 7881.

§§ 765.1—765.5 [Reserved]

§ 765.6 Regulations for Pearl Harbor, Hawaii.

The Commander, U.S. Naval Base, Pearl Harbor, Hawaii, is responsible for prescribing and enforcing such rules and regulations as may be necessary for insuring security and for governing the navigation, movements, and anchorage of vessels in the waters of Pearl Harbor and in the entrance channel thereto.

(Sec. 1, 37 Stat. 341, 62 Stat. 799; 18 U.S.C. 2152, 33 U.S.C. 475; E.O. 8143, 4 FR 2179, 3 CFR 1943 Cum. Supp. 504)

[31 FR 16620, Dec. 29, 1966]

§§ 765.9—765.11 [Reserved]

§ 765.12 Navy and Marine Corps absentees; rewards.

The following is set forth as it applies to Navy and Marine Corps absentees. The term "absentee," as used in this section, refers to a service member who commits the offense of absence without leave. Cf. article 86 of the Uniform Code of Military Justice (10 U.S.C. 886).

(a) *Payment of rewards*—(1) *Authority*. When authorized by military officials of the Armed Forces, any civil officer having authority to arrest offenders may apprehend an individual absent without leave from the military service of the United States and deliver him into custody of the military au-

thorities. The receipt of Absentee Wanted by the Armed Forces (DD Form 553) or oral or written notification from military officials or Federal law enforcement officials that the person is absent and that his return to military control is desired is authority for apprehension and will be considered as an offer of a reward. When such a reward has been offered, persons or agency representatives (except salaried officers or employees of the Federal Government, or service members) apprehending or delivering absentees or deserters to military control will be entitled to a payment of

(i) \$50 for the apprehension and detention until military authorities assume control, or

(ii) \$75 for the apprehension and delivery to military control.

Payment of reward will be made to the person or agency representative actually making the arrest and the turnover or delivery to military control. If two or more persons or agencies join in performing these services, payment may be made jointly or severally but the total payment or payments will not exceed \$50 or \$75 as applicable. Payment of a reward is authorized whether the absentee or deserter voluntarily surrenders to civil authorities or is apprehended. Payment is not authorized for information merely leading to the apprehension of an absentee or deserter.

(2) *Payment procedure*. The disbursing officer, special disbursing agent or agent officer of the military activity to which an absentee or deserter is first delivered will be responsible for payment of the reward. Payment of rewards will be made on NAVCOMPT Form 2277 supported by a copy of DD Form 553 or other form or notification that an individual is absent and that his return to military control is desired, and a statement signed by the claimant specifying that he apprehended (or accepted voluntary surrender) and detained the absentee or deserter until military authorities assumed control, or that he apprehended (or accepted voluntary surrender) and

delivered the absentee or deserter to military control. If oral notification was made in lieu of written notification, the claimant will so certify and provide the date of notification and the name, rank or rate, title, and organization of the person who made the authorized notice of reward for apprehension of the absentee or deserter.

(b) *Reimbursement for actual expenses*—

(1) *Authority*. When a reward has not been offered or when conditions for payment of a reward otherwise cannot be met, reimbursement, not to exceed \$75, may be made to any person or agency for actual expenses incurred in the apprehension and detention or delivery to military control of an absentee or deserter. If two or more persons or agencies join in performing these services, payment may be made jointly or severally, but the total payment or payments may not exceed \$25. Reimbursement may not be made for the same apprehension and detention or delivery for which a reward has been paid. Actual expenses for which reimbursement may be made include:

(i) Transportation costs, including mileage at the rate of 20.05 cents per mile for travel by privately owned vehicle, for a round trip from either the place of apprehension or civil police headquarters to place of return to military control;

(ii) Meals furnished the service member for which the cost was assumed by the apprehending person or agency representative;

(iii) Telephone or telegraph communication costs;

(iv) Damages to property of the apprehending person or agency if caused directly by the service member during the apprehension, detention, or delivery;

(v) Such other reasonable and necessary expenses incurred in the actual apprehension, detention, or delivery as may be considered justifiable and reimbursable by the commanding officer. Reimbursement will not be made for:

(a) Lodging at nonmilitary confinement facilities;

(b) Transportation performed by the use of official Federal, State, county, or municipal vehicles;

(c) Personal services of the apprehending, detaining, or delivering person or agency.

(2) *Payment procedure*. The disbursing officer or special disbursing agent of the military activity to which an absentee or deserter is first delivered will be responsible for making reimbursement for actual expenses. Reimbursement will be effected on NAVCOMPT Form 2277 supported by an itemized statement in triplicate signed by the claimant and approved by the commanding officer.

(c) *Reimbursement for subsistence furnished*—(1) *Authority*. Civil authorities may be reimbursed for the cost of subsistence furnished absentees or deserters placed in their custody for safekeeping at the request of military authorities. Such reimbursement will be in addition to rewards and reimbursement for actual expenses authorized in paragraphs (a) and (b) of this section.

(2) *Payment procedure*. The disbursing officer or special disbursing agent of the military activity requesting the safekeeping confinement will be responsible for making reimbursement for subsistence furnished by civil authorities. Reimbursement will be effected on NAVCOMPT Form 2277 supported by an itemized statement signed by the claimant and approved by the officer who requested the confinement.

(d) Nothing said in this section shall be construed to restrict or exclude authority to apprehend an offender in accordance with law.

(Sec. 807, 70A Stat. 39; 10 U.S.C. 807. Interpret or apply secs. 808, 7214, 70A Stat. 40, 445; 10 U.S.C. 808, 7214)

[25 FR 1075, Feb. 6, 1960, as amended at 51 FR 22283, June 19, 1986]

§ 765.13 Insignia to be worn on uniform by persons not in the service.

(a) Under title 10 U.S.C., section 773, members of military societies composed of persons discharged honorably or under honorable conditions from the United States Army, Navy, Air Force or Marine Corps, regular or reserve, may, when authorized by regulations prescribed by the President, wear the uniform duly prescribed by such societies to be worn by the members thereof.

(b) The law cited in paragraph (a) of this section further provides that instructors and members of duly organized cadet corps at certain institutions of learning may wear the uniform duly prescribed by the authorities of such institutions.

(c) The law cited in paragraph (a) of this section further provides that the uniform worn by members of the military societies or by members and instructors of the cadet corps referred to in paragraph (a) of this section shall include some distinctive mark or insignia prescribed by the Secretary of the military department concerned to distinguish such uniforms from the uniforms of the Army, Navy, Air Force, or Marine Corps.

(d) Accordingly, except as otherwise provided in this paragraph, the following mark is hereby designated to be worn by all persons wearing the Navy or Marine Corps uniform as provided in paragraphs (a), (b), and (c) of this section: A diamond, 3½ inches long in the vertical axis, and 2 inches wide in the horizontal axis, of any cloth material, white on blue clothing, forestry green on khaki clothing, and blue on white clothing. The figure shall be worn on all outer clothing on the right sleeve, at the point of the shoulder, the upper tip of the diamond to be one-fourth inch below the shoulder seam. For persons who are participating in United States Marine Corps Junior ROTC programs, the following mark is designated to be worn: A round patch, three inches in diameter, which contains a gold Marine Corps emblem centered on a scarlet field. The scarlet field is surrounded with a blue border containing the words "United States Marine Corps Junior ROTC" in white lettering. Surrounding the blue field will be a gold border. Unless otherwise directed, the patch will be worn in the manner described above in connection with the "diamond" insignia.

(e) Within the meaning of paragraph (a) of this section, the occasions when members of the military societies may wear the uniform of their respective society are official functions which such a member attends in his capacity as a war veteran or as a member of such military society.

(f) Marine Corps Uniform Regulations may be examined and individual copies of pertinent provisions thereof may be purchased in accordance with § 701.1 of this chapter.

(Sec. 773, 70A Stat. 35; 10 U.S.C. 773)

[13 FR 8971, Dec. 28, 1948, as amended at 26 FR 11794, Dec. 12, 1961; 37 FR 6472, Mar. 30, 1972; 44 FR 37610, June 28, 1979]

§ 765.14 Unofficial use of the seal, emblem, names, or initials of the Marine Corps.

(a) *Purpose.* To establish procedures to determine whether to grant permission to use or imitate the seal, emblem, names, or initials of the Marine Corps in connection with commercial and certain noncommercial activities pursuant to 10 U.S.C. 7881. The Secretary of the Navy, in Secretary of the Navy Instruction 5030.7, has provided the policy and delegated to the Commandant of the Marine Corps (CMC), power to subdelegate to certain subordinate officers in writing, the authority to grant permission required by section 7881(b) of 10 U.S.C. for such use or imitation.

(b) *Scope.* The provisions of this Order requiring prior approval of the Secretary of the Navy, CMC, or the designee apply only to the use or imitation of the seal, emblem, names, or initials of the Marine Corps that suggest official approval, endorsement, or authorization is in connection with a promotion, goods, services, or commercial activity.

(c) *Standards*—(1) *No unofficial use or imitation of the Marine Corps seal.* Reproduction and use of the Marine Corps seal, as designated in Executive Order No. 10538 of June 22, 1954, is restricted to materials emanating from Headquarters Marine Corps. Except for manufacture of official letterhead stationery and related items of official Marine Corps use, reproduction and use of the Marine Corps seal is prohibited.

(2) *Unofficial use or imitation of the Marine Corps emblem, names, or initials.* Requests from civilian enterprises to use or imitate the Marine Corps emblem, names, or initials will ordinarily be approved where use or imitation merely provides a Marine Corps accent or flavor to otherwise fungible goods. Disapproval, however, usually may be

expected where such use or imitation reasonably would:

(i) Imply any official or unofficial connection between the Marine Corps and the user;

(ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;

(iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing products and services such as insurance, real estate, or financial services; or

(iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps.

(3) *Acceptable use of imitation of the Marine Corps insignia.* No request for permission is required when a use or imitation of the Marine Corps emblem, names, or initials includes prominent display of the disclaimer, "Neither the United States Marine Corps nor any other component of the Department of Defense has approved, endorsed, or authorized this product (or promotion, or service, or activity)" as an integral part of the use of imitation. A "prominent display" is one located on the same page as the first use of the insignia, prominent in that use, and printed in letters at least one half the size and density of the insignia.

(d) *Action—(1) When permission required.* Commercial or noncommercial use or imitation of the Marine Corps emblem, names, or initials is prohibited unless permission is first obtained in writing from the CMC, except when such use does not suggest that the use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(2) *Redelegation of authority.* The CMC hereby redelegates, pursuant to the authorization in paragraph 4 of the Secretary of the Navy 5030.7, authority to grant written permission to use the

Marine Corps emblem, names, or initials to the Director of Headquarters Support (CMC (HQSP)). Prior to granting approval for commercial usage of the Marine Corps insignia, the CMC (HQSP) shall forward such requests to the Head, Marine Corps Exchange Service Branch, Facilities and Services Division, Installations and Logistics Department (CMC (LFE)) and to the Counsel for the Commandant (CMC (CL)) for comment and concurrence. All other requests shall be routed to the Director, Judge Advocate Division (CMC (JAR)) for comment and concurrence.

(3) *Procedures for obtaining written permission.* Requests for written permission to use or imitate the Marine Corps emblem, names, or initials shall be in writing and shall be directed to the CMC (HQSP). The request should, at a minimum, contain the following information:

(i) Name and address of the requester.

(ii) A description of the type of activity in which the requester is engaged or proposes to engage.

(iii) A statement of whether the requester considers the proposed use or imitation to be commercial or noncommercial, and why.

(iv) A brief description and illustration or sample of the proposed use or imitation, as well as a description of the product or service in connection with which it will be used. This description will provide sufficient detail to enable the Marine Corps to determine whether there is a reasonable tendency to suggest such use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(v) In the case of a noncommercial use of imitation, a copy of the charter, constitution, bylaws, and similar organizational documents of the requester, together with a detailed description of its function or purpose. Insufficiently specific requests will be returned for additional information.

(e) *Reserve applicability.* This Order is applicable to the Marine Corps Reserve.

[51 FR 45467, Dec. 19, 1986]

PART 766—USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY CIVIL AIRCRAFT

Sec.

- 766.1 Purpose.
- 766.2 Definition of terms.
- 766.3 Authority.
- 766.4 Policy.
- 766.5 Conditions governing use of aviation facilities by civil aircraft.
- 766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.
- 766.7 How to request use of naval aviation facilities.
- 766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.
- 766.9 Insurance requirements.
- 766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).
- 766.11 Fees for landing, parking and storage.
- 766.12 Unauthorized landings.
- 766.13 Sale of aviation fuel, oil, services and supplies.

AUTHORITY: 49 U.S.C. 1507.

SOURCE: 35 FR 14451, Sept. 15, 1970, unless otherwise noted.

NOTE: The provisions of this part 766 are SECNAV Instruction 3770.1B of 30 June 1970.

§ 766.1 Purpose.

This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than U.S. Department of Defense aircraft.

§ 766.2 Definition of terms.

For the purpose of this part certain terms are defined as follows:

(a) *Alternate use.* Use of the aviation facility, specified in the flight plan, to which an aircraft may divert when a landing at the point of first intended landing becomes impractical because of weather. (Aircraft may not be dispatched, prior to takeoff from the airport of origin, to a facility licensed for alternate use.)

(b) *Civil aircraft.* Domestic or foreign aircraft operated by private individuals or corporations, or foreign government-owned aircraft operated for commercial purposes. This includes:

(1) *Contract aircraft.* Civil aircraft operated under charter or other contract to any U.S. Government department or agency.

(2) *Leased aircraft.* U.S. Government-owned aircraft delivered by the Government to a lessee subject to terms prescribed in an agreement which does not limit the lessee's use of the aircraft to Government business.

(c) *Civil aviation.* All flying activity by civil aircraft including:

(1) *Commercial aviation.* Transportation by aircraft of passengers or cargo for hire and the ferrying of aircraft as a commercial venture.

(2) *General aviation.* All types of civil aviation other than commercial aviation as defined above.

(d) *Facility.* A separately located and officially defined area of real property in which the Navy exercises a real property interest and which has been designated as a Navy or Marine Corps aviation facility by cognizant authority; or where the Department of the Navy has jurisdiction over real property agreements, expressed or implied, with foreign governments, or by rights of occupation. (This definition does not include aircraft carriers nor any other type of naval vessel with a landing area for aircraft.)

(e) *Government aircraft.* Aircraft owned or operated by any department or agency of either the United States or a foreign government (except a foreign government-owned aircraft operated for commercial purposes). Also aircraft owned by any department, agency, or political subdivision of a State, territory, or possession of the United States when such local government has sole responsibility for operating the aircraft. Government aircraft includes:

(1) *Military aircraft.* Aircraft used in the military services of any government.

(2) *Bailed aircraft.* U.S. Government-owned aircraft delivered by the Government to a Government contractor for a specific purpose directly related to a Government contract.

(3) *Loaned aircraft.* U.S. Government-owned aircraft delivered gratuitously by any Department of Defense agency to another Government agency, to a U.S. Navy or Marine Corps Flying Club, or to a U.S. Army or Air Force Aero Club.

(f) *Joint-use facility.* A Navy or Marine Corps facility where a specific agreement between the Department of the Navy and a civilian community, or between the U.S. Government and a foreign government, provides for civil aircraft use of the runways and taxiways. Civil aircraft terminal, parking, and servicing facilities are established and controlled by civil authorities in an area separate from those of the Navy or Marine Corps.

(g) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government organizations or personnel at or near the naval aviation facility concerned. Use of a facility to solicit U.S. Government business is not "official business."

(h) *Provisional use.* Use of a naval aviation facility for the purpose of providing adequate service to a community where, because of repair, construction or the performance of other work, the regular civil airport servicing the community is not available for an extended period. (An aircraft may be dispatched prior to takeoff from the airport of origin to a naval aviation facility authorized for provisional use.)

(i) *Scheduled use.* Use of a facility on a scheduled or regularly recurring basis by an air carrier certified by the Civil Aeronautics Board to provide passenger and cargo service to a community or area.

(j) *Services in connection with Government contracts.* This type of operation, cited on the Aviation Facility License, indicates the use of a facility for transporting the contractor's supplies and personnel for the performance of work at the facility under the terms of a specific U.S. Government contract.

(k) *Technical stop.* An en route landing for the purpose of obtaining fuel, oil, minor repairs, or crew rest. This does not include passenger accommodations nor passenger/cargo enplaning or deplaning privileges unless specifically authorized by the Chief of Naval Operations.

(l) *User.* An individual, corporation, or company named in the Aviation Facility License and the Certificate of Insurance.

§ 766.3 Authority.

Section 1107(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1507, 1508) states that "Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other agency having jurisdiction thereof deems advisable and may by regulation prescribe." (See § 766.13 for restrictions imposed by the Federal Aviation Act of 1958.)

§ 766.4 Policy.

Navy and Marine Corps aviation facilities are established to support the operation of Navy and Marine Corps aircraft. Equipment, personnel and material are maintained only at a level necessitated by these requirements and shall not be used to support the operation or maintenance of civil aircraft or non U.S. Government aircraft, except as noted below. (Nothing in this part, however, should be interpreted to prohibit any aircraft from landing at any suitable Navy or Marine Corps aviation facility in case of a bona fide emergency.) (See § 766.5(i).)

(a) *General.* Subject to the procedures established elsewhere in this part, civil aircraft and government aircraft, other than those belonging to the U.S. Government may use Navy or Marine Corps facilities, if necessary, *Provided, That:*

(1) They do not interfere with military requirements, and the security of military operations, facilities, or equipment is not compromised.

(2) No adequate civil airport is available. (Exception to this provision may be made when the aircraft is operated in connection with official business as defined in this part.)

(3) Pilots comply with regulations promulgated by the cognizant military agency and the commanding officer of the facility.

(4) Civil aircraft users assume the risk in accordance with the provisions of the Aviation Facility License.

(5) Each aircraft is equipped with two-way radio which provides a capability for voice communications with the control tower on standard Navy/Marine Corps frequencies.

(6) The user, or requesting government, has obtained permission through diplomatic channels from the host country wherein the facility of intended landing is located, if applicable.

(b) *Civil Aircraft owned and operated by—*(1) *Military personnel.* Private aircraft owned and operated by active duty U.S. military personnel or by Navy/Marine Corps Reservists on inactive duty may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Under no conditions shall such aircraft be allowed to base or operate from a facility for personal convenience nor base at a facility under the guise of official business.

(2) *Civil employees of the U.S. Government.* Private aircraft owned and operated by civil employees of the U.S. Government may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Such aircraft shall not be allowed to base or operate from a facility for personal convenience. (Employees of U.S. Government contractors are not considered civil employees of the U.S. Government.)

(3) *Non-U.S. Government personnel.* An individual or corporation owned and/or operated aircraft may be authorized to land at a facility for:

(i) Sales or service representation to authorized military agents (e.g. the exchange, commissary, or contracting officer).

(ii) Services in connection with U.S. Government contracts. Contracting agency and contract number(s) must be cited in the application for an Aviation Facility License.

(c) *Department of defense charter or contract.* Aircraft operating under a Military Traffic Management and Terminal Service (MTMTS), Military Airlift Command (MAC), or Navy charter or contract for the movement of DOD passengers or cargo may be authorized to use Navy or Marine Corps aviation facilities when required for loading, en route or terminal stops.

(d) *Test and experimental use.* Aircraft being produced for a military agency under contract may use Navy/Marine Corps facilities for testing and experi-

mental purposes, if the contract so provides, or if it is determined to be in the best interests of the U.S. Government to do so. Unless otherwise provided in the contract, an Aviation Facility License is required, and the user shall furnish a Certificate of Insurance as provided in this part.

(e) *Aircraft demonstrations.* Manufacturers of aircraft or installed equipment may be authorized to use Navy/Marine Corps facilities in demonstrating and/or showing aircraft or installed equipment to officials of the U.S. Government when:

(1) It is determined to be in the best interest of the U.S. Government.

(2) The aircraft was produced in accordance with U.S. Government specifications either with or without the aid of Federal funds.

(3) There is an expressed interest on the part of the U.S. Government officials responsible for procurement, approval, or certification of the aircraft.

(f) *Joint use.* When a specific agreement is entered into by the Department of the Navy pertaining to joint civil/military use of a Navy or Marine Corps facility, the terms of that agreement shall take precedence over the provisions of this part.

(g) *Diplomatic agreements.* For diplomatic agreements and clearances to use U.S. Navy and Marine Corps aviation facilities in foreign countries, the provisions of this part are subject to the provisions of status of forces agreements, treaties of mutual cooperation or other international agreements. This part shall be used as a guide in negotiating agreements at the local level with representatives of a foreign military service, the U.S. Embassy, and the host government concerning the use of naval facilities by other than U.S. military aircraft. Approval shall be obtained from the Chief of Naval Operations for proposed terms which are in conflict with this part.

§ 766.5 Conditions governing use of aviation facilities by civil aircraft.

(a) *Risk.* The use of Navy or Marine Corps aviation facilities by civil aircraft shall be at the risk of the operator. Except as hereinafter provided for U.S. Government contractors, the Department of the Navy shall assume no

liability or responsibility by reason of the condition of the landing area, taxiways, radio and navigational aids, or other equipment or for notification of such condition; or by the acts of its agents in connection with the granting of the right to use such naval facility. No responsibility is assumed for the security of or damage to aircraft while on property owned or controlled by the U.S. Government.

(b) *Military rules.* Operators of civil aircraft utilizing a Navy or Marine Corps aviation facility shall be required to comply with the air and ground rules promulgated by the Department of the Navy and the commanding officer of the aviation facility. Such compliance shall pertain specifically to clearance authorization for the entry, departure, or movement of aircraft within the confines of the terminal area normally controlled by the commanding officer of the aviation facility.

(c) *Federal aviation regulations.* Operators of civil aircraft shall be required to comply with all Federal Aviation Administration (FAA) rules and regulations including filing of flight plans. When such flight plans are required, they shall be filed with the commanding officer or his authorized representative prior to the departure of the aircraft. When such a flight plan is not required, a list of passengers and crew members, the airport of first intended landing, the alternate airport, and fuel supply in hours shall be placed on file prior to takeoff, with the commanding officer or with the local company representative as appropriate.

(d) *Hours of operation.* The use of a Navy/Marine Corps aviation facility by civil aircraft shall be limited to the hours when the facility is normally in operation.

(e) *Weather minimums.* Civil aircraft shall comply with weather minimums as follows:

(1) Visual Flight Operations shall be conducted in accordance with Federal Aviation Regulations (FAR), §91.105 of this title. If more stringent visual flight rules minimums have been established for the point of departure or destination, as noted in the aerodrome remarks section of the Department of Defense Flight Information Publica-

tion (en Route) Instrument Flight Rules—Supplement, then the ceiling and visibility must be at or above these minimums in the applicable control zone.

(2) Instrument flight operations shall be conducted in accordance with FAR, §91.116 of this title.

(f) *Inspection.* The commanding officer may conduct such inspection of a transiting civil aircraft and its crew, passengers and cargo as he may consider appropriate or necessary to the carrying out of his duties and responsibilities.

(g) *Customs, immigration, agriculture, and public health inspection.* (1) The civil aircraft commander shall be responsible for compliance with all applicable customs, immigration, agriculture, and public health laws and regulations. He shall also be responsible for paying fees, charges for overtime services, and for all other costs connected with the administration of such laws and regulations.

(2) The commanding officer of the Navy/Marine Corps aviation facility will inform the appropriate public officials of the arrival of civil aircraft subject to such laws and regulations. He will not issue clearances for a civil aircraft to takeoff until such laws and regulations have been complied with. Procedures for insuring compliance with such laws and regulations shall be as mutually agreed to by the commanding officer of the aviation facility and the local public officials.

(h) *Weather alternate.* If a Navy/Marine Corps aviation facility has been approved for use as an alternate airport, radio clearance must be obtained from such facility as soon as the decision is made en route for such use.

(i) *Emergency landings.* Any aircraft may land at a Navy/Marine Corps aviation facility when necessary as a result of a bona fide emergency. However, whenever the nature of the emergency permits the pilot to select the time and place of landing, it is preferred that the pilot land his aircraft at a civil field.

(1) The commanding officer of the aviation facility will require that the pilot of the aircraft pay all fees and charges and execute the Aviation Facility License. A statement explaining the circumstances of the emergency

landing must be noted in § 766.5 of the license application. If a narrative report from the pilot is available, it may be attached to the application.

(2) *Clearance of runway.* The Department of the Navy reserves the right to use any method to clear a runway of aircraft or wreckage consistent with operational requirements. Care will be exercised to preclude unnecessary damage in removing wrecked aircraft; however, the Navy assumes no liability as a result of such removal.

(3) *Repairs.* (i) Aircraft requiring major repairs may be stored temporarily in damaged condition. If repairs cannot be completed within a reasonable time, the aircraft must be removed from the facility by the owner or operator of the aircraft without delay.

(ii) No aircraft will be given a major or minor overhaul.

(iii) Engine or air frame minor components may be furnished, when not available through commercial sources, provided such supplies can be spared and are not known to be in short supply. The issuance of such supplies must be approved by the commanding officer.

(iv) Minor components in short supply or major components for which there is a repeated demand can be furnished only on message authority obtained from the Aviation Supply Office, Philadelphia, PA (for continental facilities) or local fleet air command or major aviation supply depot (for extracontinental facilities). Complete engines, airplane wings, or other major items of equipment shall not be furnished under this authority.

(v) If the commanding officer believes it is desirable to furnish requested material or services in excess of the restrictions stated herein, he shall request instructions from the Chief of Naval Operations, giving a brief description of the material or services requested together with his recommendations.

(4) *Reimbursement for costs.* (i) The civil user making an emergency landing will be billed in accordance with paragraphs 032500-032503 of the NAVCOMPT Manual and paragraphs 25345-25363 of the NAVSUP Manual for payment of all costs incurred by the

Government as a direct result of the emergency landing. Such costs will include those associated with labor, material, rental of equipment, vehicles or tools, etc., for:

(a) Spreading foam on runway before the aircraft attempts emergency landing.

(b) Fire and crash control and rescue.

(c) Movement and storage of aircraft or wreckage.

(d) Damage to runway, lights, navigation aids, etc.

(ii) There will be no charge for naval meteorological services and naval communications facilities for the handling of arrival and departure reports, air traffic control messages, position reports and safety messages.

(iii) The determination as to whether landing fees shall be charged pursuant to an emergency landing for maintenance or repair shall be the prerogative of the commanding officer of the facility.

[35 FR 14451, Sept. 15, 1970, as amended at 51 FR 22804, June 23, 1986]

§ 766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.

(a) Except as indicated in paragraphs (b) and (c) of this section, the commanding officer of an active Navy/Marine Corps aviation facility may approve or disapprove landings of civil aircraft at his facility when such landing is:

(1) Directly connected with or in support of U.S. Government business (except those listed in paragraph (c) of this section).

(2) In connection with U.S. Government or community interests on an infrequent basis when no adequate civil airport is reasonably available.

(3) By aircraft owned and operated by Navy/Marine Corps Flying Clubs or U.S. Army or Air Force Aero Clubs which are operated as instrumentalities of the U.S. Government.

(4) By aircraft owned and operated by U.S. Government personnel when such use is in accordance with § 766.4(b) (1) and (2).

(5) By civil aircraft either owned or personally chartered by:

(i) The President or Vice President of the United States or a past President of the United States.

(ii) The head of any Federal department or agency.

(iii) A Member of Congress.

(6) By a bailed, leased, or loaned aircraft (as defined in § 766.2) when operated in connection with official business only.

(7) By aircraft owned and operated by States, counties, or municipalities of the United States when used for official business of the owner.

(b) Except as limited by paragraph (c) of this section, the Commander in Chief, U.S. Naval Forces, Europe; Chief of Naval Material; Commander in Chief, U.S. Atlantic Fleet; Commander in Chief, U.S. Pacific Fleet; Chief of Naval Air Training; Commander, Pacific Missile Range; Commander, Marine Corps Air Bases, Eastern Area; Commander, Marine Corps Air Bases, Western Area; and Commanding General, Fleet Marine Force, Pacific may approve civil aircraft use of any active aviation facility under their control. (At overseas locations, aircraft landing authorizations must be in consonance with the provisions of applicable international agreements.)

(c) The Chief of Naval Operations may approve any of the above requests, and is the only agency empowered to approve all other requests for use of naval facilities by civil and government aircraft, for example:

(1) Applications for use of more than one facility when the facilities are not under the control of one major command.

(2) Application for use of naval aviation facilities when participating in U.S. Government or Department of Defense single-manager contract and charter airlift operations; i.e., Military Airlift Command (MAC) or Military Traffic Management and Terminal Service (MTMTS).

(3) Application for a facility to be used as a regular civil airfield for a community, by either commercial or general aviation.

(4) Requests for use of a facility by foreign civil or government aircraft when:

(i) Such use is not covered by an agreement between the U.S. Govern-

ment and the government of the aircraft's registry, or

(ii) The facility is located in a country other than that in which the foreign aircraft is registered.

§ 766.7 How to request use of naval aviation facilities.

(a) *Forms required.* Each applicant desiring use of a Navy/Marine Corps aviation facility will be required to:

(1) Execute an application for an Aviation Facility License (OPNAV Form 3770/1 (Rev. 7-70)).

(2) Submit a Certificate of Insurance (NAVFAC 7-11011/36) showing coverage as provided by § 766.9 of this part.

(b) *Exceptions.* Exceptions to the foregoing requirements are:

(1) Aircraft owned and operated by departments or agencies of the U.S. Government for official business.

(2) Aircraft owned and operated or noncommercial purposes by agencies of a foreign government, except in cases where the foreign government charges fees for U.S. Government aircraft.

(3) Aircraft owned and operated by States, possessions, and territories of the United States and political subdivisions, thereof, when used for official business of the owner.

(4) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs of other military services which are operated as instrumentalities of the U.S. Government.

(5) Bailed aircraft, provided the bailment contract specifies that the U.S. Government is the insurer for liability.

(c) *Obtaining forms.* The applicant may obtain the required forms listed in paragraph (a) of this section, from the commanding officer of any Navy or Marine Corps aviation facility or from the Chief of Naval Operations (OP-53C). Navy units may obtain the forms through regular supply channels as a Cog "I" item.

(d) *Preparation of forms.* (1) The license application will be completed in quadruplicate by the applicant in accordance with detailed instructions set forth in Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)).

(2) The Certificate of Insurance will be completed by the insurer. Only the signed original certificate and one copy are required to be submitted.

(e) *Submission of forms.* (1) The forms executed by the applicant shall be submitted to the commanding officer of the aviation facility concerned, except that applications requiring approval by higher authority shall be submitted to the appropriate approving authority, as indicated in paragraph (b) or (c) of this section at least 30 days prior to the first intended landing.

(2) Once the NAVFAC 7-11011/36, Certificate of Insurance, is on file with an executing authority, it is valid until insurance expiration date and may be used by that executing authority as a basis for his action on any subsequent OPNAV Forms 3770/1 submitted for approval.

(f) *Security deposit.* All applications, other than those listed in §766.11(a) contemplating more than one landing per month, will be accompanied by a security deposit in the form of a certified check payable to the "Treasurer of the United States" in payment of the estimated costs of landing, hangar and outside parking fees, for 3 months in advance, calculated as provided in §766.11 (c) and (d). Security deposits will be handled as set forth in paragraph 032102 of the NAVCOMPT Manual.

(g) *Nonexclusive use airports.* When either the Chief of Naval Operations or Commandant of the U.S. Marine Corps does not have exclusive operational control over a landing area, the aircraft operator will obtain permission to land from the appropriate civil or military authority.

§766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.

(a) *Review of application by the commanding officer.* The commanding officer will review each application for Aviation Facility License and Certificate of Insurance received and determine whether such forms have been completed by the applicant in accordance with the instructions for their preparation as indicated in the Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)) and the Certificate of Insurance (NAVFAC 7-11011/36(7-70)). As appropriate, the commanding officer will require each applicant to fur-

nish a security deposit as stipulated in §766.7(f).

(b) *Processing application.* The commanding officer will approve/disapprove the application or forward it to higher authority for approval as required by §766.6(b) or (c). If the application is approved, the approving authority will then forward all copies of the license and Certificate of Insurance to the Commander, Naval Facilities Engineering Command or his designated representative for review and execution of the license.

(c) *Action by the Commander, Naval Facilities Engineering Command or his designated representative.* (1) Upon receipt, the Commander, Naval Facilities Engineering Command, or his designated representative, will review the license and Certificate of Insurance. He shall determine whether the insurance coverage conforms to the requirements prescribed by §766.9 of this part or to such requirements as may be promulgated from time to time by the Chief of Naval Material.

(2) Upon approval, he will then execute the license in triplicate, conform all additional copies, and make distribution as provided in paragraph (d) of this section. Applications which are not approved will be returned to the applicant with an explanation of deficiencies which must be corrected prior to execution.

(d) *Distribution.* (1) After execution of a license, distribution will be made as follows:

Original—To the licensee.

Executed copy—To the commanding officer.

Executed copy—To the Commander, Naval Facilities Engineering Command or his designated representative.

Conformed copy—To the Chief of Naval Operations (OP-53).

Conformed copy—To the cognizant commander under §766.6(b).

Conformed copy—To the disbursing officer serving the performing activity in the case of local deposits, and to the Office of the Navy Comptroller (NAFC3) in the case of central deposits held at the Washington, DC level.

Conformed copy—To the Military Airlift Command (MAC) for DOD contract or charter airlift operations.

Conformed copy—To the Military Traffic Management and Terminal Service (MTMTS)

for DOD contract or charter airlift operations.

(2) Licenses issued under this authority are to be disposed of under provisions of paragraph 4280 of SECNAVINST 5212.5B, Disposal of Navy and Marine Corps Records. In accordance therewith, official executed copies of licenses are to be retained for a period of 6 years after completion or termination of the agreement. They may be transferred to the nearest Federal records center when superseded, revoked, canceled, or expired for retention by the center until expiration of the 6-year retention period.

§ 766.9 Insurance requirements.

(a) *Control of insurance.* The Commander, Naval Facilities Engineering Command, or his designee, shall be responsible for requiring aircraft owners or operators to procure and maintain liability insurance conforming to the standards prescribed by the Chief of Naval Material. The insurance policy must be obtained at the expense of the civil aircraft owner or operator and with a company acceptable to the U.S. Navy.

(b) *Insurance coverage.* Except for those aircraft exempted by paragraph (c) below, each civil aircraft is required to be covered by insurance of the types and minimum limits established by the Chief of Naval Material. The Certificate of Insurance, must state all coverages in U.S. dollars. Current minimums are:

(1) Privately owned commercially-operated aircraft used for cargo carrying only and aircraft being flight-tested or ferried without passengers will be insured for:

(i) *Bodily injury liability.* At least \$100,000 for each person in any one accident with at least \$1 million for each accident.

(ii) *Property damage liability.* At least \$1 million for each accident.

(2) Privately owned commercially-operated aircraft used for passenger carrying and privately owned noncommercially-operated aircraft of 12,500 pounds or more certified maximum gross takeoff weight will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least \$100,000 for each

person in any one accident with at least \$1 million for each accident.

(ii) *Property damage liability.* At least \$1 million for each accident.

(iii) *Passenger liability.* At least \$100,000 for each passenger, with a minimum for each accident determined as follows: multiply the minimum for each passenger, \$100,000 by the next highest whole number resulting from taking 75 percent of the total number of passenger seats (exclusive of crew seats). For example: The minimum passenger coverage for each accident for an aircraft with 94 passenger seats is computed: $94 \times 0.75 = 70.5$ —next highest whole number resulting in 71. Therefore, $71 \times \$100,000 = \$7,100,000$.

(3) Privately owned noncommercially-operated aircraft of less than 12,500 pounds will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least \$100,000 for each person in any one accident with at least \$500,000 for each accident.

(ii) *Property damage liability.* At least \$500,000 for each accident.

(iii) *Passenger liability.* At least \$100,000 for each passenger, with a minimum for each accident determined by multiplying the minimum for each passenger, \$100,000 by the total number of passenger seats (exclusive of crew seats).

(4) Aircraft insured for a single limit of liability must have coverage equal to or greater than the combined required minimums for bodily injury, property damage, and passenger liability for the type of use requested and for the passenger capacity and gross takeoff weight of the aircraft being operated. For example: the minimum single limit of liability acceptable for an aircraft operating as described in paragraph (b)(2) of this section is $\$1,000,000 + \$1,000,000 + \$7,100,000 = \$9,100,000$.

(5) Aircraft insured by a combination of primary and excess policies must have combined coverage equal to or greater than the required minimums for bodily injury, property damage, and passenger liability, for the type of use, and for the passenger capacity and gross takeoff weight of the aircraft.

(6) Each policy must specifically provide that:

(i) The insurer waives any right to subrogation the insurer may have

against the United States by reason of any payment under the policy for damage or injury which might arise out of or in connection with the insured's use of any Navy installation or facility.

(ii) The insurance afforded by the policy applies to the liability assumed by the insured under OPNAV Form 3770/1, Aviation Facility License.

(iii) If the insurer cancels or reduces the amount of insurance afforded under the listed policy, the insurer shall send written notice of the cancellation or reduction to Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, DC 20390 by registered mail at least 30 days in advance of the effective date of the cancellation; the policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent, regardless of the effective date specified therein.

(iv) If the insured requests cancellation or reduction, the insurer shall notify the Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, DC 20390 immediately upon receipt of such request.

(c) *Exemption.* Government aircraft, as defined in §766.2(e) are exempt from the insurance requirements specified above. However, this exemption applies to bailed aircraft only if the contract under which the aircraft is bailed specifies that insurance is not required.

§ 766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).

(a) *Cancellation.* (1) If the user fails to comply with the terms of the Aviation Facility License (OPNAV Form 3770/1) or of any applicable regulations, all current Aviation Facility Licenses for that user will be canceled. A canceled Aviation Facility License cannot be reinstated; a new application must be submitted for approval as explained in §766.7.

(2) If the commanding officer of a naval aviation facility has reason to believe that the use of an Aviation Facility License is not in accordance with the terms of the license he should immediately notify the Chief of Naval Operations, giving the name of the user, the Aviation Facility License number,

and citing the circumstances of the misuse.

(b) *Suspension.* The approving authority, or the commanding officer of the facility, may suspend an approved Aviation Facility License when such licensed use would be inconsistent with Navy/Marine Corps or national defense interests. Whenever possible, the Department of the Navy will avoid suspension of licenses which have been issued for official business or scheduled air carrier use. In all cases, suspensions will be lifted as quickly as possible. A suspension will not have the effect of extending the expiration date of an approved Aviation Facility License.

§ 766.11 Fees for landing, parking and storage.

(a) The commanding officer of a facility will collect landing, parking, and storage fees, as applicable, from all users required to have an Aviation Facility License by §766.7 except for the following:

(1) Government aircraft (see definition §766.2(g)) except that foreign government aircraft will be charged fees if their government charges similar fees for U.S. Government aircraft.

(2) Aircraft being produced under a contract of the U.S. Government.

(3) Any contract aircraft (see definition §766.2(b)(1)) or other civil aircraft which is authorized to use the facility on official business.

(4) Aircraft employed to train operators in the use of precision approach systems (GCA, ILS, et al.) provided full-stop or touch-and-go landings are not performed.

(5) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs or other military services which are operated as instrumentalities of the U.S. Government.

(6) Aircraft owned and operated by military personnel on active duty (Regular and Reserve) or retired, provided the aircraft is not used for commercial purposes.

(7) Landing fees incident to emergency landings for which the landing fee has been waived by the commanding officer in accordance with §766.5(i)(5)(i).

(b) *Fee for unauthorized landing.* If an aircraft lands at a Navy/Marine Corps

aviation facility without obtaining prior permission (except for a bona fide emergency landing), a landing fee in excess of the normal landing fee will be charged to cover the additional expenses incurred due to special handling and processing. The fee for an unauthorized landing will be as follows:

- (1) For aircraft weighing less than 12,500 pounds: \$100.
- (2) For aircraft weighing 12,500 pounds but less than 40,000 pounds: \$250.
- (3) For aircraft weighing 40,000 pounds but less than 100,000 pounds: \$500.
- (4) For aircraft weighing above 100,000 pounds: \$600.

(c) *Normal landing fee.* The normal landing fee is based on the aircraft maximum authorized gross takeoff weight, to the nearest 1,000 pounds. The maximum gross takeoff weight may be determined either from item 7F of OPNAV Form 3770/1 or from the "Airplane Flight Manual" carried aboard each aircraft. If the weight cannot be determined, it should be estimated.

CHARGE PER LANDING

Inside CONUS—0.20/1,000 pounds or any portion thereof with a minimum of \$5.

Outside CONUS—0.30/1,000 pounds or any portion thereof with a minimum of \$7.50.

(d) *Parking and storage fees.* Fixed and rotary wing aircraft parking and storage fees are based upon the gross takeoff weight of the aircraft as follows:

(1) *Outside a hangar.* Charges begin 6 hours after the aircraft lands. The rate is 10 cents per thousand pounds for each 24-hour period or fraction thereof, with a minimum charge of \$1.50 per aircraft.

(2) *Inside a hangar.* Charges begin as soon as the aircraft is placed inside the hangar. The rate is 20 cents per 1,000 pounds for each 24-hour period or fraction thereof, with a minimum charge of \$5 per aircraft.

(e) *Reimbursement.* Collections incident to direct (out of pocket) costs will be credited to local operating and maintenance funds. All other collections, such as for landing, parking, and storage fees will be credited to Navy General Fund Receipt Account 172426. Accumulation of costs and preparation of billing documents are prescribed in

paragraphs 032500-032503 of the NAVCOMPT Manual.

§ 766.12 Unauthorized landings.

An aircraft that lands at a Navy/Marine Corps aviation facility without obtaining prior permission from an approving authority, except in a bona fide emergency, is in violation of this part. Civil aircraft landing in violation of this regulation will have to pay the fee prescribed in § 766.11(b). In those cases where an unauthorized landing is made at a facility within a Naval Defense Area, proclaimed as such by Executive order of the President, civil aircraft may be impounded and the operator prosecuted as indicated in OPNAVINST 5500.11C of November 12, 1963. In any event, before the aircraft is authorized to depart, the commanding officer of the facility will:

(a) Inform the aircraft operator of the provisions of this part and the OPNAVINST 5500.11C of November 12, 1963, if applicable.

(b) Require the aircraft operator (or owner), before takeoff, to pay all fees and charges and to comply with the following procedure:

(1) Execute OPNAV Form 3770/1, explaining in item 6 of that form the reason for the landing.

(2) In lieu of submitting a Certificate of Insurance (NAVFAC 7-11011/36), the insurer must furnish evidence of sufficient insurance to include waiver of any right of subrogation against the United States, and that such insurance applies to the liability assumed by the insured under OPNAV Form 3770/1.

(3) When it appears that the violation may have been deliberate, or is a repeated violation, departure authorization must be obtained from the Chief of Naval Operations.

(4) Waiver of the requirements in paragraphs (b)(1) and (2) of this section may be obtained from the Chief of Naval Operations to expedite removal of these aircraft when such waiver is considered appropriate.

[35 FR 14451, Sept. 15, 1970, as amended at 51 FR 22804, June 23, 1986]

§ 766.13 Sale of aviation fuel, oil, services and supplies.

(a) *General policy.* In accordance with sections 1107 and 1108 of the Federal

Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), Navy/Marine Corps Aviation fuel, oil, services, and supplies are not sold to civil aircraft in competition with private enterprise. Sections 1107 and 1108 of Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), however, does authorize the sales of fuel, oil, equipment, supplies, mechanical service, and other assistance by reason of an emergency. Such sales will be made only where there is no commercial source and only in the amount necessary for the aircraft to continue on its course to the nearest airport operated by private enterprise.

(b) *Contract aircraft.* The sale of aviation fuel, oil, supplies, etc. to aircraft under U.S. Government contract or charter is permitted at, and limited to, points where passengers or cargo are loaded into or discharged from the aircraft under terms of the contract or charter. Sales are not authorized at naval aviation facilities where commercial supplies and service are available.

PARTS 767-769—[RESERVED]

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Virginia

Sec.

- 770.1 Purpose.
- 770.2 Licenses.
- 770.3 Fishing regulations.
- 770.4 Hunting regulations.
- 770.5 Safety regulations.
- 770.6 Restrictions.
- 770.7 Violations.
- 770.8 Reports.
- 770.9 Miscellaneous.

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Bremerton, Washington

- 770.15 Purpose.
- 770.16 Definition.
- 770.17 Background.
- 770.18 Entry restrictions.
- 770.19 Entry procedures.
- 770.20 Violations.

Subpart C—Base Entry Regulations for Naval Installations in the State of Hawaii

- 770.25 Purpose.
- 770.26 Definitions.
- 770.27 Background.
- 770.28 Entry restrictions.
- 770.29 Entry procedures.
- 770.30 Violations.
- 770.31 List of major naval installations in the State of Hawaii and cognizant commanders authorized to grant access under these regulations.

Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

- 770.35 Purpose.
- 770.36 Definitions.
- 770.37 Background.
- 770.38 Entry restrictions.
- 770.39 Entry procedures.
- 770.40 Violations.

Subpart E—Base Entry Regulations for Naval Submarine Base New London, Groton, Connecticut

- 770.41 Purpose.
- 770.42 Background.
- 770.43 Responsibility.
- 770.44 Entry restrictions.
- 770.45 Entry procedures.
- 770.46 Violations.

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington

- 770.47 Purpose.
- 770.48 Definition.
- 770.49 Background.
- 770.50 Entry restrictions.
- 770.51 Entry procedures.
- 770.52 Violations.

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire

- 770.53 Purpose.
- 770.54 Background.
- 770.55 Responsibility.
- 770.56 Entry restrictions.
- 770.57 Entry procedures.
- 770.58 Violations.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714, unless otherwise noted.

Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Virginia

SOURCE: 41 FR 22345, June 3, 1976, unless otherwise noted.

§ 770.1 Purpose.

This subpart provides regulations and related information governing hunting and fishing on the Marine Corps Base Reservation, Quantico, VA.

§ 770.2 Licenses.

(a) Every person who hunts or fishes on Marine Corps Base, Quantico, VA, must possess appropriate valid licenses in compliance with the Laws of the United States and the State of Virginia.

(b) In addition, hunting and fishing privilege cards, issued by the authorities at Marine Corps Base, Quantico, VA, are required for all persons between the ages sixteen and sixty-four, inclusive.

(1) The privilege card may be purchased from the Game Warden at the Natural Resources Management Division Headquarters, Building 5-9, Marine Corps Base, Quantico, VA.

(2) The privilege cards are effective for the same period as the Virginia hunting and fishing licenses.

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Warden for each day of hunting. The hunting permit must be carried by the hunter and the parking permit must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned within one hour after either sunset or the hour hunting is secured on holidays or during special season.

(d) Eligibility for a Base hunting permit is predicated on:

(1) Possession of required Federal and State licenses for the game to be hunted including Marine Corps Base hunting privilege card;

(2) Attendance at a safety lecture given daily except Sunday during the hunting season given at the Game Checking Station located at the intersection of Russell Road and MCB-1. The lectures commence an hour before sunrise, 0800, and 1200;

(3) Understanding of Federal, State and Base hunting regulations;

(4) And, if civilian, an executed release of U.S. Government responsibility in case of accident or injury.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.3 Fishing regulations.

(a) All persons possessing the proper state license and Base permit are permitted to fish in the areas designated by the Base Game Warden on Marine Corps Base, Quantico, VA, on any authorized fishing day. A Base Fishing Privilege Card is required for all persons aged 16 to 65.

(b) Fishing is permitted on all waters within the boundaries of Marine Corps Base, Quantico, VA, unless otherwise posted, during the periods provided and under the conditions and restrictions, by the Marine Corps Base, Quantico, VA, Game Warden. Information regarding specific regulations for each fishing area must be procured from the Game Warden located in Natural Resources Management Division Headquarters Building 5-9 prior to utilization of Base fishing facilities.

(c) In addition to the requirements of the Laws of Virginia, the following additional prohibitions and requirements are in effect at Marine Corps Base, Quantico, VA.

(1) Live minnows will not be used as bait in any impounded waters on the Marine Corps Base, Quantico, VA;

(2) No trot lines are permitted in Marine Corps Base waters;

(3) No Large Mouth Bass will be taken, creeled or possessed under the size of twelve (12) inches in length. All Large Mouth Bass under this size will be immediately returned to the water;

(4) No Striped Bass will be taken, creeled or possessed under the size of twenty (20) inches in length. All Striped Bass under this size will be immediately returned to the water;

(5) All persons fishing in the waters of Marine Corps Base, Quantico, VA, will possess and utilize a creel card. The card may be obtained from the report boxes located in the vicinity of all fishing areas. The creel report must be completed at the conclusion of the

§ 770.4

day's fishing and returned to any fishing report box.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.4 Hunting regulations.

All persons possessing the proper State, Federal and Base licenses and permits are permitted to hunt in the areas designated daily by the Game Warden on Marine Corps Base, Quantico, VA, on any authorized hunting day. In addition, a minimum of ten percent of the daily hunting spaces will be reserved to civilians on a first come, first served basis until 0600 on each hunting day, at which time, the Game Warden may fill vacancies from any authorized persons waiting to hunt.

§ 770.5 Safety regulations.

(a) Hunting is not permitted within 200 yards of the following: Ammunition dumps, built-up areas, rifle or pistol ranges, dwelling or other occupied structures, and areas designated by the Game Warden as recreation areas.

(b) From the end of the special archery season until the end of the regular winter hunting season, except for duck hunters in approved blinds, hunters will wear an outer garment with at least one square foot of blaze orange visible both front and back above the waist and a blaze orange cap while hunting, or while in the woods for any reason, during the hours that hunting is authorized. Any person traveling on foot in or adjacent to an area open for hunting will comply with the above requirement.

(c) Weapons will be unloaded while being transported in vehicles, and will be left in vehicles by personnel checking in or out at the Game Warden's Office. Weapons will not be discharged from vehicles, or within 200 yards of hard surfaced roads.

(d) Certain hunting areas contain numerous unexploded munitions (duds) which are dangerous and must not be removed or disturbed. Hunters should mark such duds with stakes or other means and report their location to the Game Warden.

(e) Hunters must stay in their assigned areas when hunting.

32 CFR Ch. VI (7-1-97 Edition)

§ 770.6 Restrictions.

(a) There will be no hunting on Christmas Day; New Year's Day, or after 1200 on Thanksgiving Day and Christmas Eve.

(b) Hunters under 16 years of age must be accompanied by an adult (18 years of age or older) while hunting or in a hunting area. The adult is limited to a maximum of two underage hunters, and must stay within sight and voice contact and no more than 100 yards away from the underage hunters.

(c) The following practices or actions are expressly forbidden: Use of rifles, except muzzleloaders of .40 caliber or larger as specified below, revolvers or pistols; use of shotguns larger than 10 gauge or crossbows (this prohibition extends to carrying such weapons on the person or in a vehicle while hunting); use of buckshot to hunt any game; use of a light, attached to a vehicle or otherwise, for the purpose of spotting game; use of dogs for hunting or tracking deer; training deer dogs on the Reservation; training or running dogs in hunting areas between 1 March and 1 September; driving deer; baiting or salting traps or blinds; hunting on Sunday; molesting beaver or bald eagles. Those personnel who are authorized to hunt on Base, desiring to train or exercise dogs other than deer dogs between 2 September and 28 February, may do so by obtaining clearance to enter training areas at the Range Control Office. This clearance is not permission to hunt, and carrying weapons under these conditions is prohibited.

(d) Hunting will not commence before one half hour before sunrise, and will end not later than sunset. The hours of sunrise and sunset are posted daily at the Game Checking Station.

(e) Weapons will not be loaded outside of hunting hours.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.7 Violations.

Violations of hunting regulations, fishing regulations, safety regulations, or principles of good sportsmanship are subject to administrative restriction of hunting or fishing privileges and possible judicial proceedings in State or Federal courts.

Department of the Navy, DoD

§ 770.17

(a) The Marine Corps Base Game Warden and Wildlife Manager are commissioned as Virginia and Federal game wardens and they can issue summons to appear in civil court for violations of Federal and State game laws.

(b) Offenders in violation of a Federal or State hunting or fishing law will be referred to a civil court.

(c) Offenders in violation of a Federal, State or Base hunting or fishing law or regulation will receive the following administrative actions.

(1) The Base Game Warden or the Wildlife manager shall have the authority to temporarily suspend hunting and fishing privileges.

(2) And for the first minor offense a letter of warning will be issued.

(3) For the second minor offense hunting or fishing privileges will be revoked for one year.

(4) For the first serious offense hunting or fishing privileges will be revoked for a minimum of one year.

(5) For the second serious offense hunting or fishing privileges will be permanently revoked.

(d) Civilians found in violation of a hunting or fishing regulation or law may be permanently restricted from entering the base.

(e) Serious hunting and fishing offenses include, but are not limited to: spotlighting, false statement on a license, hunting under the influence, employment of a light in an area that deer frequent, and taking game or fish during closed seasons.

§ 770.8 Reports.

Upon killing a deer or turkey, a hunter must attach the appropriate tab from his big game license to the carcass before moving the game from the place of kill. The game will then be taken to the Game Checking Station where the tab will be exchanged for an official game tag. All other game, not requiring a tag, killed on the Reservation will be reported to the Game Warden when checking out at the end of a hunt.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23206, May 24, 1983]

§ 770.9 Miscellaneous.

Hunters are encouraged to build and use tree blinds for hunting deer. Duck

blinds may be placed on waters within the bounds of the Reservation when specifically authorized by the Wildlife Manager. Muzzleloading rifles .40 caliber and larger will be permitted for deer hunting during the established seasons in those numbered hunting areas located entirely in Fauquier and Stafford Counties within the boundaries of the Marine Corps Base. Deer will only be hunted with the bow and arrow, and shotguns loaded with slugs, with exception of the preceding sentence.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23206, May 24, 1983]

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Bremerton, Washington

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 770.15 Purpose.

The purpose of this subpart is to promulgate regulations governing entry upon Naval Submarine Base (SUBASE), Bangor.

§ 770.16 Definition.

For the purpose of this subpart, SUBASE Bangor shall include that area of land in Kitsap and Jefferson Counties, State of Washington which has been set aside for use of the Federal Government by an Act of the legislature of the State of Washington, approved March 15, 1939 (Session laws of 1939, chapter 126).

§ 770.17 Background.

(a) SUBASE Bangor has been designated as the West Coast home port of the Trident Submarine. Facilities for the repair or overhaul of naval vessels are located at SUBASE Bangor. It is vital to national defense that the operation and use of SUBASE Bangor be continued without undue and unnecessary interruption. Many areas of SUBASE Bangor are of an industrial nature, including construction sites,

§ 770.18

where inherently dangerous conditions exist.

(b) For prevention of the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of SUBASE Bangor, and prevention of injury to any such person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon SUBASE Bangor to authorized persons only.

§ 770.18 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Naval Submarine Base, Bangor, or remaining thereon by any person whatsoever for any purpose without the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative is prohibited. See 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Department of Defense Directive 5200.8 of 20 August 1954; Chief of Naval Operations Instruction 5510.45B of 19 April 1971; Chief of Naval Operations Instruction 5511.9A of 1 October 1954.

§ 770.19 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative shall, in writing, submit a request to the Commanding Officer, SUBASE Bangor, at the following address: Commanding Officer, Naval Submarine Base, Bangor, Bremerton, WA 98315.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of SUBASE Bangor with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.20 Violations.

(a) Any person entering or remaining on SUBASE Bangor, without the consent of the Commanding Officer, SUBASE Bangor or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

32 CFR Ch. VI (7-1-97 Edition)

Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed \$500 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart C—Base Entry Regulations for Naval Installations in the State of Hawaii

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702, 770.714.

SOURCE: 44 FR 76279, Dec. 26, 1979, unless otherwise noted.

§ 770.25 Purpose.

The purpose of this subpart is to promulgate regulations governing entry to naval installations in the State of Hawaii.

§ 770.26 Definitions.

For the purpose of this subpart the following definitions apply:

(a) *Naval installations.* A naval installation is a shore activity and is any area of land, whether or not fenced or covered by water, that is administered by the Department of the Navy or by any subordinate naval command. The term "naval installation" applies to all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command. Section 770.31 contains a list of the major naval installations in Hawaii. This list is not considered to be all inclusive and is included only as a representative guide. For the purposes of this subpart the area of water within Pearl Harbor is considered to be within a naval installation.

(b) *Outleased areas.* Certain portions of naval installations in Hawaii which are not for the time needed for public use or for which a dual use is feasible have been outleased to private interests. Examples of such outleased areas are the Moanalua Shopping Center and lands such as Waipio Peninsula, which

has been outleased for agricultural purposes. For the purpose of this Subpart, outleased areas which are not within fenced portions of naval installations are not considered to be a part of naval installations. Rules for entry onto the outleased areas are made by the lessees, except in the case of Waipio Peninsula where the lessee (Oahu Sugar Company) is not authorized to allow anyone to enter Waipio Peninsula for any purpose not connected with sugar cane production.

§ 770.27 Background.

(a) Naval installations in Hawaii constitute a significant element of the national defense establishment. It is vital to the national defense that the use of such areas be at all times under the positive control of the Department of the Navy. Strict control must be exercised over access to naval installations in order to preclude damage accidental and intentional to Government property, injury to military personnel, and interference in the orderly accomplishment of the mission of command.

(b) There are several industrial areas within naval installations in Hawaii wherein construction activities and the use of heavy machinery pose grave risk of danger to visitors.

(c) Various types of flammable or incendiary materials and ordnance are stored at a number of locations within naval installations in Hawaii.

(d) Classified documents and equipment requiring protection from unauthorized disclosure by Executive order 12065 for reasons of national security are located at various locations within naval installations in Hawaii.

(e) In order to effect the positive control of the Navy over its installations in Hawaii, it is essential that entry onto those installations be restricted to authorized persons only.

(f) These entry regulations are being promulgated under the authority of Commander, Naval Base, Pearl Harbor, who has been assigned as immediate area coordinator for all naval installations in the State of Hawaii by Commander-in-Chief, U.S. Pacific Fleet.

§ 770.28 Entry restrictions.

Each commander is responsible for the security of his/her command.

Therefore, entry onto a command or into part of a command may be controlled by the commander through the imposition of such restrictions as may be required by attendant circumstances. Within the State of Hawaii, entry into a naval installation is not permitted without the permission of the responsible commander.

§ 770.29 Entry procedures.

(a) Operational, security, and safety considerations take priority over requests by individuals to visit a naval installation. Consistent with such considerations, visits by members of the general public may be authorized at the discretion of the commander. The commitment of resources which would be required to safeguard the persons and property of visitors as well as military property and personnel must of necessity preclude or severely restrict such visiting. The purpose and duration of the visit and the size of the party and areas to be visited are other considerations which may affect the commander's decision whether to permit visiting by members of the public.

(b) Any person or group desiring to enter a particular naval installation or portion thereof, shall submit a written request to the commander of the installation well enough in advance to allow a reasonable time for reply by mail. Mailing addresses for commanders of major installations covered by this subpart are listed in § 770.31. Full compliance with a naval installation's local visitor registration and entry control procedures shall be deemed the equivalent of obtaining the advance consent of the commander for entrance upon the installation for the purpose of this subpart. Authorization to enter one naval installation or a portion of one installation does not necessarily include the authorization to enter any other naval installation or all portions of an installation.

§ 770.30 Violations.

(a) Any person entering or remaining on a naval installation in the State of Hawaii, without consent of the commander or his authorized representative, shall be subject to the penalties of

§ 770.31

32 CFR Ch. VI (7-1-97 Edition)

a fine of not more than \$500 or imprisonment for not more than six months, or both. See 18 U.S.C. 1382.

(b) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed \$5,000 or imprisonment for one year, or both. See 50 U.S.C. 797.

§ 770.31 List of major naval installations in the State of Hawaii and cognizant commanders authorized to grant access under these regulations.

(a) *On Oahu.* (1) Naval Base, Pearl Harbor (including the Naval Station, Naval Submarine Base, Naval Shipyard, Naval Supply Center, Naval Public Works Center, Marine Barracks, Ford Island, Bishop Point Dock Area, Commander-in-Chief Pacific Fleet and Commander Naval Logistics Command Headquarters Areas, Johnson Circle Navy Exchange/Commissary Store Area, Navy-Marine Golf Course, miscellaneous other commands, and areas within the Naval Base, Pearl Harbor complex, and the waters of Pearl Harbor). Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(2) Naval Western Oceanography Center, Pearl Harbor. Contact:

Commanding Officer, Naval Western Oceanography Center, Box 113, Pearl Harbor, HI 96860.

(3) Naval Air Station, Barbers Point. Contact:

Commanding Officer, Naval Air Station, Barbers Point, HI 96862.

(4) Naval Communication Area Master Station, Eastern Pacific, Wahiawa. Contact:

Commanding Officer, Naval Communication Area Master Station, Eastern Pacific, Wahiawa, HI 96786.

(5) Naval Magazine (Lualualei, Waikale, and West Loch). Contact:

Commanding Officer, Naval Magazine, Lualualei, HI 96792.

(6) Naval Radio Transmitting Facility, Lualualei. Contact:

Commanding Officer, Naval Base, Pearl Harbor, HI 96860.

(7) Naval and Marine Corps Reserve Training Center, Honolulu. Contact:

Commanding Officer, Naval and Marine Corps Reserve Training Center, Honolulu, 530 Peltier Avenue, Honolulu, HI 96818.

(8) Military Sealift Command Office. Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(9) Mauna Kapu (Pacific Missile Range Facility). Contact:

Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, Kauai, HI 96752.

(10) Kunia Facility; FORACS III Sites; Degaussing Station, Waipio Peninsula; Damon Tract (Remnant) Opana Communciations Site. Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(11) Outlying areas of the Naval Supply Center, Pearl Harbor (including the Ewa Junction Storage Area, Ewa Drum Storage Area, Manana Supply Area, Pearl City Supply Area, and the Red Hill Fuel Storage Area). Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(12) Pump Stations (Halawa, Waiawa, Red Hill, and Barbers Point). Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(13) Halawa Water Storage Area; Barbers Point, Independent Water Supply Reservoir Site; Sewage Treatment Plant; Fort Kam (tri-service); Utility Corridors, Lynch Park (Ohana Nui). Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(14) Navy housing areas (including Moanalua Terrace, Radford Terrace, Makalapa, Maloelap, Halsey Terrace, Catlin Park, Hale Moku, Pearl Harbor, Naval Shipyard, McGrew Point, Halawa, Hokulani, Manana, Pearl City Peninsula, Red Hill, Iroquois Point, Puuloa, and Camp Stover). Contact:

Commander, Naval Base, Pearl Harbor, HI 96860.

(b) *On Kauai.*

(1) Pacific Missile Range Facility, Barking Sands, Kekaha.

Department of the Navy, DoD

§ 770.40

Contact: Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, HI 96752.

(c) *Other areas.*

(1) Kaho'olawe Island. Contact:

Commander Naval Base, Pearl Harbor, HI 96860. Also see 32 CFR Part 763.

(2) Kaula. Contact:

Commander Naval Base, Pearl Harbor, HI 96860.

[44 FR 76279, Dec. 26, 1979, as amended at 52 FR 20074, May 29, 1987]

Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

SOURCE: 46 FR 22756, Apr. 21, 1981, unless otherwise noted.

§ 770.35 Purpose.

The purpose of this subpart is to promulgate standard regulations and procedures governing entry upon U.S. Naval installations and properties in Puerto Rico.

§ 770.36 Definitions.

For purposes of these regulations, U.S. Naval installations and properties in Puerto Rico include, but are not limited to, the U.S. Naval Station, Roosevelt Roads (including the Vieques Island Eastern Annexes, consisting of Camp Garcia, the Eastern Maneuver Area, and the Inner Range); the Naval Ammunition Facility, Vieques Island; and the Naval Security Group Activity, Sabana Seca.

§ 770.37 Background.

In accordance with 32 CFR 765.4, Naval installations and properties in Puerto Rico are not open to the general public, *i.e.*, they are "closed" military bases. Therefore admission to the general public is only by the permission of the respective Commanding Officers in accordance with their respective installation instructions.

§ 770.38 Entry restrictions.

Except for duly authorized military personnel and civilian employees, including contract employees, of the United States in the performance of their official duties, entry upon any

U.S. Navy installation or property in Puerto Rico at anytime, by any person for any purpose whatsoever without the advance consent of the Commanding Officer of the installation or property concerned, or an authorized representative of that Commanding Officer, is prohibited.

§ 770.39 Entry procedures.

(a) Any person or group of persons desiring to obtain advance consent for entry upon any U.S. Naval installation or property in Puerto Rico from the Commanding Officer of the Naval installation or property, or an authorized representative of that Commanding Officer, shall present themselves at an authorized entry gate at the installation or property concerned or, in the alternative, submit a request in writing to the following respective addresses:

(1) Commanding Officer, U.S. Naval Station, Roosevelt Roads, Box 3001, Ceiba, PR 00635.

(2) Officer in Charge, Naval Ammunition Facility, Box 3027, Ceiba, PR 00635.

(3) Commanding Officer, U.S. Naval Security Group Activity, Sabana Seca, PR 00749.

(b) The above Commanding Officers are authorized to provide advance consent only for installations and properties under their command. Requests for entry authorization to any other facility or property shall be addressed to the following:

Commander, U.S. Naval Forces, Caribbean, Box 3037, Ceiba, PR 00635.

(c) Each request for entry will be considered on an individual basis and consent will be determined by applicable installation entry instructions. Factors that will be considered include the purpose of visit, the size of party, duration of visit, destination, security safeguards, safety aspects, and the military resources necessary if the request is granted.

§ 770.40 Violations.

Any person entering or remaining on U.S. Naval installations and properties in Puerto Rico, without the advance consent of those officials hereinabove enumerated, or their authorized representatives, shall be considered to be in violation of these regulations and

therefore subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500.00 or imprisoned not more than six months, or both," or any other applicable laws or regulations.

Subpart E—Base Entry Regulations for Naval Submarine Base New London, Groton, Connecticut

AUTHORITY: 50 U.S.C. 797; DoD Directive 5200.8 of July 29, 1980; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5510.45 of April 19, 1971; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 48 FR 5555, Feb. 7, 1983, unless otherwise noted.

§ 770.41 Purpose.

The purpose of this subpart is to promulgate regulations and procedures governing entry upon Naval Submarine Base New London, and to prevent the interruption of the stated functions and operations of Naval Submarine Base New London, by the presence of any unauthorized person within the boundaries of Naval Submarine Base New London.

§ 770.42 Background.

Naval Submarine Base New London maintains and operates facilities to support training and experimental operations of the submarine force including providing support to submarines, submarine rescue vessels, and assigned service and small craft; within capabilities, to provide support to other activities of the Navy and other governmental activities in the area; and to perform such other functions as may be directed by competent authority.

§ 770.43 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Naval Submarine Base New London is vested with the Security Officer.

§ 770.44 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and employees of the United States in the performance of their official duties, entry upon Naval Submarine Base New London, or remaining thereon by any person for any purpose without the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative is prohibited. See 18 U.S.C. 1382j, the Internal Security Act of 1950 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; and Secretary of the Navy Instruction 5511.36 of December 20, 1980.

§ 770.45 Entry procedures.

(a) Any individual person or group of persons desiring the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative shall, in writing, submit a request to the Commanding Officer, Naval Submarine Base New London, at the following address: Commanding Officer (Attn: Security Officer), Box 38, Naval Submarine Base New London, Groton, CT 06349.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of Naval Submarine Base New London with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.46 Violations.

(a) Any person entering or remaining on Naval Submarine Base New London, without the consent of the Commanding Officer, Naval Submarine Base New London or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . shall be fined not more than \$500 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to

a fine not to exceed \$5000 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington

AUTHORITY: 50 U.S.C. 797; DoD Directive 5200.8 of July 29, 1980; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5510.45B of April 19, 1971; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 48 FR 9858, Mar. 9, 1983, unless otherwise noted.

§ 770.47 Purpose.

The purpose of this subpart is to promulgate policy governing entry upon Puget Sound Naval Shipyard.

§ 770.48 Definition.

For the purpose of this subpart, Puget Sound Naval Shipyard is defined as follows:

(a) Beginning at a point, latitude 122°39'37"W, longitude 47°33'05"N, a point on the MHHW line of Sinclair Inlet on an East-West line approximately 100 yards clear off the Southerly end of the Naval Shipyard shoreline, piers or drydock facilities; thence Northeasterly to the South margin of Primary State Highway No. 21, thence Northeasterly on the Southeasterly margin of Primary State Highway No. 21 to the Easterly margin of Cambrian Avenue; thence Northerly to the Southerly margin of Farragut Street; thence Easterly to the line common to Sections 22 and 23, Township 24 North, Range 1 East, W.M. which is approximately 100 feet East of the East margin of Montgomery Street; thence Northerly to the corner common to Sections 14, 15, 22, and 23, Township 24 North, Range 1 East, W.M., which is the South margin of First Street; thence Easterly on the line common to Sections 14 and 23 to the Easterly margin of Chester Avenue; thence Northerly approximately 335 feet on the Easterly margin of Chester Avenue to the Southerly margin of the East-West alley in Block 21, Original Town of Bremerton as recorded in Volume 2 of Plats, page 30, Records of Kitsap County, Washington; thence Easterly to the Easterly margin of Warren Avenue; thence Northerly to

the Southerly margin of Burwell Avenue; thence Easterly approximately 1315 feet to a point approximately 90 feet West of the West margin of Pacific Avenue, to the line common to Lots 22 and 23, Block 13, said Original Town of Bremerton; thence Southerly to the Northerly margin of the East-West alley in said Block 13; thence Easterly to the Northerly extension of the Westerly margin of the North-South alley in Block 12, said Original Town of Bremerton; thence Southerly to the Southerly margin of First Street; thence Easterly to the Westerly margin of First Street; thence Easterly to the Westerly margin of the North-South alley in Block 10, said Original Town of Bremerton; thence Southerly to the Northwesterly margin of Washington Avenue; thence Southeasterly to the Northwesterly corner of Lot 9, Block 1, said Original Town of Bremerton; thence Southeasterly on the line common to Lots 8 and 9, Block 1, and its Southeasterly extension to a point near the Washington State Ferry Terminal at the MHHW line of Sinclair Inlet located at Latitude 122°37'27"W, longitude 47°33'44"N.

§ 770.49 Background.

(a) Puget Sound Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Puget Sound Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(b) For prevention of the interruption of the stated use of Puget Sound Naval Shipyard by the presence of any unauthorized person within the boundaries of Puget Sound Naval Shipyard and prevention of injury to any such unsupervised person as a consequence to the hazardous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Puget Sound Naval Shipyard to authorized persons only.

§ 770.50 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Puget Sound Naval Shipyard, or remaining thereon by any person whoever for any purpose without the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, is prohibited. See 18 U.S.C. 1382; the Internal Security Act of 1950, section 21 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; Secretary of the Navy Instruction 551.36 of December 20, 1980; and Department of Defense Directive 5200.8 of July 29, 1980.

§ 770.51 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Puget Sound Naval Shipyard, at the following address: Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314.

(b) Each request for entry will be considered on an individual basis weighing the operational, security and safety requirements of Puget Sound Naval Shipyard with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of this request.

§ 770.52 Violations.

(a) Any person entering or remaining on Puget Sound Naval Shipyard, without the consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500.00 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed \$5000.00 or impris-

onment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011, 18 U.S.C. 1382; 50 U.S.C. 797; DOD Directive 5200.8 of July 29, 1980; 32 CFR 700.702; 32 CFR 700.714; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5530.14 of June 10, 1983; COMNAVSEASYS COMINST 5510.2A of June 19, 1981.

SOURCE: 49 FR 34003, Aug. 28, 1984, unless otherwise noted.

§ 770.53 Purpose.

To promulgate regulations and procedures governing entry upon Portsmouth Naval Shipyard, and to prevent the interruption of the functions and operations of Portsmouth Naval Shipyard by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard.

§ 770.54 Background.

(a) Portsmouth Naval Shipyard maintains and operates facilities "to provide logistic support for assigned ships and service craft; to perform authorized work in connection with construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of ships and craft, as assigned; to perform manufacturing, research, development, and test work, as assigned; and to provide services and material to other activities and units, as directed by competent authority."

(b) Portsmouth Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(c) For prevention of interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard, and prevention of injury to

Department of the Navy, DoD

any such unsupervised person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Portsmouth Naval Shipyard to authorized persons only.

§ 770.55 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Portsmouth Naval Shipyard is vested with the Shipyard Security Manager (Code 830).

§ 770.56 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and civilian employees of the United States in the performance of their official duties, entry upon Portsmouth Naval Shipyard, or remaining thereon by any person for any purpose without the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, is prohibited. In many instances, Commander, Naval Sea Systems Command, approval is required.

§ 770.57 Entry procedures.

(a) Any person or group desiring the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Portsmouth Naval Shipyard, at the following address: Commander, Portsmouth Naval Shipyard, Portsmouth, NH 03801, Attention: Security Manager (Code 830). For groups, foreign citizens, and news media, the request must be forwarded to the Commander, Naval Sea Systems Command, for approval.

(b) Each request for entry will be considered on an individual basis, weighing the operational, security, and safety requirements of Portsmouth Naval Shipyard, with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.58 Violations.

(a) Any person entering or remaining on Portsmouth Naval Shipyard without the consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall be sub-

§ 775.2

ject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . Shall be fined not more than \$500 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this instruction is subject to a fine not to exceed \$5000 or imprisonment for not more than one (1) year, or both, as provided by 50 U.S.C. 797.

PARTS 771-774—[RESERVED]

PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

775.1 Purpose.

775.2 Scope.

775.3 Policy.

775.4 Responsibilities.

775.5 Classified actions.

775.6 Planning considerations.

775.7 Time limits for environmental documents.

775.8 Scoping.

775.9 Documentation and analysis.

775.10 Relations with state, local and regional agencies.

775.11 Public participation.

775.12 Action.

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 4321-4361; 40 CFR parts 1500-1508.

SOURCE: 55 FR 33899, Aug. 20, 1990, unless otherwise noted.

§ 775.1 Purpose.

To supplement Department of Defense (DOD) regulations (32 CFR part 214) by providing policy and assigning responsibilities to the Navy and Marine Corps for implementing the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act (NEPA).

§ 775.2 Scope.

The policies and responsibility assignments of this part apply to the Office of the Secretary of the Navy, the Department of the Navy (DON), and

the Navy and Marine Corps operating forces and shore establishments. This part is limited to the actions of these elements with environmental effects in the United States, its territories, and possessions.

§ 775.3 Policy.

(a) The Department of the Navy will act with care to ensure that, in conducting its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This ensures that planning and decisionmaking reflect environmental values, avoid delays, and avoid potential conflicts. Care will be taken to ensure that, consistent with other national policies and national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DON shall:

(1) Assess environmental consequences of proposed actions that could affect the quality of the human environment in the United States, its

territories, and possessions in accordance with DOD and CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Use ecological information in planning and developing resource-oriented projects.

§ 775.4 Responsibilities.

(a) The Assistant Secretary of the Navy for Installations and Environment (ASN(I&E)) shall:

(1) Advise the Secretary of the Navy on DON policy regarding NEPA compliance.

(2) Be the principal point-of-contact with the CEQ, Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense for Environment (DASD(E)), other DOD components and federal agencies concerned with NEPA matters, and with private environmental groups as applicable.

(3) Direct and/or, upon recommendation, approve the preparation of Environmental Impact Statements (EIS); and, after preparation, approve and forward said statements to the EPA and DASD(E) for review and comment.

(4) Approve and forward to the Navy Judge Advocate General (JAG) Findings of No Significant Impact (FONSI) for publication in the FEDERAL REGISTER for those actions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the quality of the human environment and for which an EIS will not be prepared.

(5) Approve and forward to the Navy JAG, for publishing in the FEDERAL REGISTER, a Record of Decision (ROD) which will summarize for the public record the decision made by the Navy/Marine Corps among the alternatives presented in a Final EIS.

(6) Maintain liaison with the Chief of Information who will coordinate with the Assistant Secretary of Defense (Public Affairs) those environmental matters which have significant public affairs implications.

(7) Maintain liaison with the Office of Legislative Affairs who will coordinate with the Assistant Secretary of Defense (Legislative Affairs) and the Congress those environmental matters which have significant legislative implications.

(b) The Chief of Naval Operations, or his designee(s), and the Commandant of the Marine Corps, or his designee(s), are responsible, within their respective services, for NEPA compliance, which includes:

(1) Implementing DON policy regarding protection of the environment to include NEPA compliance.

(2) Advising commands of the requirement for submitting environmental assessments or impact statements and identifying major decision points in the chain of command where environmental effects shall be considered.

(3) Making decisions on environmental assessments as to whether a Finding of No Significant Impact is appropriate or preparation of an environmental impact statement is required.

(4) Coordinating, as appropriate, with CEQ, EPA, DASD(E), ASN(I&E), other DOD components and federal agencies concerned with environmental matters.

(5) Serving as the point of contact for DON environmental matters.

(6) Coordinating, as appropriate, with the Chief of Information for the release to the public of environmental assessments, impact statements, Findings of No Significant Impact, and other environmental documents, according to the Freedom of Information Act and other applicable federal laws.

(7) Providing assistance for actions initiated by private persons, state or local agencies and other non-DON/DOD

entities for which DON involvement may be reasonably foreseen.

(8) Ensuring that relevant environmental documentation accompanies all proposals for action through the appropriate review process so that such information is available to the decision maker.

(c) The Chief of Naval Operations and the Commandant of the Marine Corps are to comply with these procedures by subsequently directing subordinates to:

(1) Ensure all appropriate instructions, directives, and orders include the requirement for funding and planning for environmental documentation, as required.

(2) Conduct analyses of the environmental effects of current and proposed actions in accordance with DOD regulations, CEQ regulations (40 CFR parts 1500-1508), and other applicable regulations.

(3) Encourage, to the extent practicable, citizen participation in environmental evaluations of projects or programs.

(4) Evaluate environmental impacts at initial planning stages and at each following significant step or decision milestone in the development of a project or program, as warranted.

§ 775.5 Classified actions.

(a) The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with NEPA and the CEQ regulations. Therefore, environmental documents shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as appendices so that unclassified portions can be made available to the public. Review of classified NEPA documentation will be coordinated with the Environmental Protection Agency (EPA) to fulfill requirements of section 309 of the Clean Air Act (42 U.S.C. 7609 *et seq.*).

(b) It should be noted that a classified EA/EIS serves the same "informed decisionmaking" purpose as does a published unclassified EA/EIS. Even though the classified EA/EIS does not undergo general public review and

comment, it must still be part of the information package to be considered by the decisionmaker for the proposed action. The content of a classified EA/EIS (or the classified portion of a public EA/EIS) will therefore meet the same content requirements applicable to a published unclassified EA/EIS.

§ 775.6 Planning considerations.

(a) When integrating the NEPA process into early stages of proposed actions, action proponents will determine as early as possible the appropriate level of documentation required under NEPA, i.e., is the action a major federal action significantly affecting the human environment requiring an environmental impact statement (EIS), is the action one for which the impacts are not known or which may not be significant and, therefore, an environmental assessment (EA), is appropriate, or is the action one that has no potential for significant impacts and can be categorically excluded from further NEPA documentation. In addition, CEQ regulations (40 CFR 1501.5 and 1501.6) require early identification of lead and cooperative agencies for preparation of an EIS for which more than one agency is involved or has special expertise in environmental issues to be addressed in the EIS.

(b) The command responsible for preparation of the appropriate documentation may prepare an EA on any action at any time in order to assist in planning and decisionmaking, including the decision whether or not to prepare an EIS. If a determination is made based on information presented in an environmental assessment that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared and made available to the public in accordance with CEQ regulations (40 CFR 1506.6).

(c) CEQ regulations (40 CFR 1508.18(a)) define major federal actions subject to evaluation under NEPA to include, among other things, "new and continuing activities". The term *new activities* is intended to encompass future actions, i.e., those which are not ongoing at the time of the proposal. The term *continuing activities* which may necessitate the preparation of a NEPA document will be applied by the

Department of Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing training functions, where:

(1) The currently occurring environmental effects of which have not been previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, as a result of ongoing operations (*e.g.*, a discovery that significant beach erosion is occurring as a result of continuing amphibious exercises, new designation of wetland habitat, or discovery of an endangered species residing in the area of the activity), or

(2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use, or in methodology/equipment) which has the potential for significant environmental impacts should be considered a proposal for a new action and be documented accordingly. Preparation of a NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

(d) Where emergency circumstances require immediate action, for the protection of lives and for public health and safety, which could result in significant harm to the environment, the activity Commanding Officer or his designee shall report the emergency action to CNO (OP-44E)/CMC (LFL) who will facilitate the appropriate consultation with CEQ as soon as practicable.

(e) CEQ regulations provide for the establishment of categorical exclusions (40 CFR 1508.4) for those actions which, after consideration by the Department of the Navy, have been found not to have a significant effect on the human environment, individually or cumulatively, under normal circumstances, and for which, therefore, neither an EA nor an EIS is required. Categorical exclusions are applicable to those kinds

of Navy actions which do not significantly affect the quality of the human environment, which do not result in any significant change from existing conditions at the site of the proposed action, and whose effect is primarily economic or social. "Normal circumstances" means that the proposal, when analyzed with respect to context and intensity, can reasonably be expected to not cause significant impacts. Even though a proposal generally fits the description set out below for categorical exclusions, the categorical exclusion should not be used if the proposed action:

(1) Would affect public health or safety;

(2) Involves a site that includes wetlands, endangered or threatened species, historical or archaeological resources, or hazardous wastes;

(3) Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(4) Establishes precedents or makes decisions in principle for future actions with significant effects, or;

(5) Threatens a violation of federal, state or local law or requirements imposed for protection of the environment.

(f) A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions shall be documented, including the exclusions found applicable, the facts supporting their use and specific consideration of whether the exceptions to the use of categorical exclusions, set out above, were applicable. The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA:

(1) Routine personnel, fiscal, and administrative activities involving military and civilian personnel, e.g., recruiting, processing, paying, and records keeping.

(2) Reductions in force wherein impacts are limited to socioeconomic factors.

(3) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new support facilities are required) to per-

form as operational groups, and/or repair and overhaul.

(4) Relocation of personnel into existing federally-owned or commercially-leased space which does not involve a substantial change in the supporting infrastructure (e.g., an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) Studies, data and information-gathering that involve no physical change to the environment, e.g., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising.

(6) Routine repair and maintenance of facilities and equipment in order to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

(7) Alteration of and additions to existing structures to conform or provide conforming use specifically required by new or existing applicable legislation or regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(8) Routine actions normally conducted to operate, protect, and maintain Navy-owned and/or controlled properties, e.g., maintaining law and order, physical plant protection by military police and security personnel, and localized pest management activities on improved and semi-improved lands conducted in accordance with applicable federal and state directives.

(9) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements and constraints, e.g., a building on a parking lot with associated discharges/runoff within existing handling capacities, a bus stop along a roadway, and a foundation pad for portable buildings within a building complex.

(10) Procurement activities that provide goods and support for routine operations.

(11) Day-to-day manpower resource management and research activities that are in accordance with approved plans and inter-agency agreements and which are designed to improve and/or

upgrade Navy ability to manage those resources.

(12) Decisions to close facilities, de-commission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). This paragraph (f)(12) does not apply to permanent closure of public roads.

(13) Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(14) Routine movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations.

(15) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations, including those regulations applying to removal of asbestos, PCBs, and other hazardous materials.

(16) Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distribution systems, and/or facilities.

(17) Renewals and/or initial real estate ingrats and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

(18) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater,

stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(19) Transfer of real property from the Navy to another military department or to another federal agency, and the granting of leases (including leases granted pursuant to the agricultural outleasing program where soil conservation plans are incorporated), permits and easements where there is no substantial change in land use or where subsequent land use would otherwise be categorically excluded.

(20) Disposal of excess easement interests to the underlying fee owner.

(21) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated.

(22) Pre-lease exploration activities for oil, gas or geothermal reserves, e.g., geophysical surveys.

(23) Return of public domain lands to the Department of the Interior.

(24) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use.

(25) Temporary closure of public access to Navy property in order to protect human or animal life.

(26) Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

(27) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

(28) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(29) Installation of devices to protect human or animal life, e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(30) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to

regulation by federal, state, or local organizations having management responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by state authorities pursuant to their state fish and game management laws. With regard to natural resources regulated by another federal agency, the responsible command may cooperate in any environmental analysis that may be required by the other agency's regulations.

(31) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

(32) Routine maintenance of timber stands, including issuance of down-wood firewood permits, hazardous tree removal, and sanitation salvage.

(33) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved.

[55 FR 33899, Aug. 20, 1990, as amended at 55 FR 39960, Oct. 1, 1990]

§ 775.7 Time limits for environmental documents.

(a) The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of NEPA. Therefore, the NEPA process shall begin as early as possible in the decisionmaking process.

(b) The EPA publishes a weekly notice in the FEDERAL REGISTER of environmental impact statements filed during the preceding week. The minimum time periods set forth below shall be calculated from the date of publication of notices in the FEDERAL REGISTER. No decision on the proposed action may take place until the later of the following dates:

(1) Ninety days after publication of the notice of availability for a draft environmental impact statement (DEIS). Draft statements shall be available to the public for 15 days prior to any pub-

lic hearing on the DEIS (40 CFR 1506.6(c)(2)).

(2) Thirty days after publication of the notice of availability for a final environmental impact statement (FEIS). If the FEIS is available to the public within ninety days from the availability of the DEIS, the minimum thirty day period and the minimum ninety day period may run concurrently. However, not less than 45 days from publication of notice of filing shall be allowed for public comment on draft statements prior to filing of the FEIS (40 CFR 1506.10(c)).

§ 775.8 Scoping.

As soon as practicable after the decision to prepare an EIS is made, an early and open process called "scoping" shall be used to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

(a) Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

(b) CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for discussion at each level of environmental review (40 CFR 1502.20). Tiering is accomplished

through the preparation of a broad programmatic environmental impact statement discussing the impacts of a wide ranging or long term stepped program followed by narrower statements or environmental assessments concentrating solely on issues specific to the analysis subsequently prepared (40 CFR 1508.28).

(1) *Appropriate use of tiering.* Tiering is appropriate when it helps the lead agency to focus on issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28(b).) The sequence of statements or analyses is:

(i) From a broad program, plan, or policy environmental impact statement (not necessarily site specific) to a subordinate/smaller scope program, plan, or policy statement or analysis (usually site specific) (40 CFR 1508.28(a)).

(ii) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation) (40 CFR 1508.28(b)).

(iii) In addition to the discussion required by these regulations for inclusion in environmental impact statements, the programmatic environmental impact statement shall also discuss:

(A) A description of the subsequent stages or sites that may ultimately be proposed in as much detail as presently possible;

(B) All of the implementing factors of the program that can be ascertained at the time of impact statement preparation;

(C) All of the environmental impacts that will result from establishment of the overall program itself that will be similar for subsequent stages or sites as further implementation plans are proposed; and

(D) All of the appropriate mitigation measures that will be similarly proposed for subsequent stages or sites.

(iv) The analytical document used for stage or site specific analysis subsequent to the programmatic environmental impact statement shall also be an environmental impact statement

when the subsequent tier itself may have a significant impact on the quality of the human environment or when an impact statement is otherwise required. Otherwise, it is appropriate to document the tiered analysis with an environmental assessment to fully assess the need for further documentation or whether a FONSI would be appropriate.

§ 775.10 Relations with state, local and regional agencies.

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development "clearinghouses". These are agencies which have been established pursuant to Executive Order 12372 of July 14, 1982 (3 CFR, 1982 Comp., p. 197). The clearinghouses serve a review and coordination function for Federal activities and the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. The clearinghouses would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 775.11 Public participation.

The importance of public participation (40 CFR 1501.4(b)) in preparing environmental assessments is clearly recognized and it is recommended that commands proposing an action develop a plan to ensure appropriate communication with affected and interested parties. The command Public Affairs Office can provide assistance with developing and implementing this plan. In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command:

(a) The magnitude of the environmental considerations associated with the proposed action;

(b) The extent of anticipated public interest; and

(c) Any relevant questions of national security and classification.

Pt. 776 Action.

The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

- (a) Provide guidelines and procedures for administrative direction and implementation of this part and CEQ regulations; and
- (b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE SUPERVISION OF THE JUDGE ADVOCATE GENERAL

Subpart A—General, Preamble and Premises

- Sec.
- 776.1 Purpose.
- 776.2 Applicability.
- 776.3 Policy.
- 776.4 Attorney-client relationships.
- 776.5 Judicial conduct.
- 776.6 Conflict.
- 776.7 Reporting requirements.
- 776.8 Professional Responsibility Committee.
- 776.9 Rules Counsel.
- 776.10 Informal ethics advice.
- 776.11 Outside part-time practice of law.
- 776.12 Maintenance of files.
- 776.13 Preamble.
- 776.14 Premises.

Subpart B—Rules

- 776.20 Competence.
- 776.21 Establishment and scope of representation.
- 776.22 Diligence.
- 776.23 Communication.
- 776.24 Fees.
- 776.25 Confidentiality of information.
- 776.26 Conflict of interests: General rule.
- 776.27 Conflict of interests: Prohibited transactions.
- 776.28 Conflict of interests: Former client.
- 776.29 Imputed disqualification: General rule.
- 776.30 Successive government and private employment.
- 776.31 Former judge or arbitrator.
- 776.32 Department of the Navy as client.
- 776.33 Client under a disability.
- 776.34 Safekeeping property.
- 776.35 Declining or terminating representation.
- 776.36 Advisor.
- 776.37 Mediation.

- 776.38 Evaluation for use by third persons.
- 776.39 Meritorious claims and contentions.
- 776.40 Expediting litigation.
- 776.41 Candor and obligations toward the tribunal.
- 776.42 Fairness to opposing party and counsel.
- 776.43 Impartiality and decorum of tribunal.
- 776.44 Extra-tribunal statements.
- 776.45 Judge advocate as witness.
- 776.46 Special responsibilities of a trial counsel.
- 776.47 Advocate in nonadjudicative proceedings.
- 776.48 Truthfulness in statements to others.
- 776.49 Communication with person represented by counsel.
- 776.50 Dealing with an unrepresented person.
- 776.51 Respect for rights of third persons.
- 776.52 Responsibilities of the judge advocate general and supervisory judge advocates.
- 776.53 Responsibilities of a subordinate judge advocate.
- 776.54 Responsibilities regarding nonlawyer assistants.
- 776.55 Professional independence of a judge advocate.
- 776.56 Unauthorized practice of law.
- 776.57–776.65 [Reserved]
- 776.66 Bar admission and disciplinary matters.
- 776.67 Judicial and legal officials.
- 776.68 Reporting professional misconduct.
- 776.69 Misconduct.
- 776.70 Jurisdiction.
- 776.71–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

- 776.76 Policy.
- 776.77 Related investigations and actions.
- 776.78 Informal complaints.
- 776.79 The complaint.
- 776.80 Initial screening and Rules Counsel.
- 776.81 Charges.
- 776.82 Preliminary inquiry.
- 776.83 Ethics investigation.
- 776.84 Action by JAG.
- 776.85 Finality.
- 776.86 Report to bar.
- 776.87–776.89 [Reserved]

Subpart D—Outside Part-Time Law Practice of Naval Service Attorneys

- 776.90 Background.
- 776.91 Definition.
- 776.92 Policy.
- 776.93 Action.
- 776.94 Revalidation.
- 776.95 Relations with non-DON civilian counsel.

§ 776.1

32 CFR Ch. VI (7-1-97 Edition)

AUTHORITY: 10 U.S.C. 826, 827; Manual for Courts-Martial, United States, 1984; Secretary of the Navy Instruction 5430.27A, Responsibility of the Judge Advocate General for Supervision of Certain Legal Services; U.S. Navy Regulations, 1990.

SOURCE: 59 FR 45214, Sept. 1, 1994, unless otherwise noted.

Subpart A—General, Preamble and Premises

§ 776.1 Purpose.

In furtherance of the authority citations [which, if not found in local libraries, are available from the Office of the Judge Advocate General (Administrative Law Division), 200 Stovall Street, Alexandria, VA 22332-2400], which require the Judge Advocate General (JAG) to supervise the performance of legal services under his cognizance throughout the Department of the Navy (DON), this part is promulgated—

(a) To establish Rules of Professional Conduct for DON civilian and military attorneys practicing under the supervision of JAG;

(b) To promulgate procedures for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, or certified by JAG under articles 26(b) or 27(b) of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 826(b), 827(b)); and

(c) To prescribe limitations on, and procedures for, processing requests to engage in the part-time outside practice of law by DON judge advocates or civilian attorneys under the supervision of JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to:

(1) Attorneys:

(i) Certified by JAG under the provisions of article 27(b), UCMJ, 10 U.S.C. 827(b);

(ii) Designated by JAG as legal assistance attorneys;

(iii) Who practice within DON and who are certified under article 27(b), UCMJ, 10 U.S.C. 827(b), or who are designated as a legal assistance attorney by the Judge Advocate General/Chief

Counsel of another armed force, or both; and

(2) Who are not certified in accordance with article 27(b), UCMJ, 10 U.S.C. 827(b), or designated as a legal assistance attorney, but who practice under the supervision of JAG.

(3) Military trial and appellate judges who practice or perform legal services under the cognizance of JAG.

(4) Reserve judge advocates of the Navy or Marine Corps on active duty, extended active duty, active duty for training, inactive duty for training, or when performing duties subject to the supervision of JAG. Subpart D of this part, however, does not apply to Reserve judge advocates unless they serve on active duty for more than 30 consecutive days.

(5) DON civilian counsel practicing under the supervision of JAG.

(6) Civilian counsel representing individual members of the naval service in any matter for which JAG is charged with supervising the provision of legal services including, but not limited to, courts-martial, administrative boards, and disability evaluation proceedings. Subpart D of this part, however, does not apply to such counsel.

(b) Although subpart B of this part does not apply to nonlawyers, the rules in that subpart do define the type of ethical conduct that the public and the military community have a right to expect not only of lawyers but also of their nonlawyer employees and associates in all matters pertaining to professional conduct. Accordingly, subpart B shall serve as models of ethical conduct for the following personnel when involved with the delivery of legal services under the purview of JAG—

(1) Navy legalmen and Marine Corps legal administrative officers and legal service specialists;

(2) Limited duty officers (law);

(3) Legal interns; and

(4) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court-reporters, and others holding similar positions. Attorneys who supervise nonlawyer employees are responsible for their ethical conduct to the extent provided for in § 776.54.

§ 776.3 Policy.

(a) DON judge advocates and civilian attorneys to whom this part applies shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Subpart B and related procedures set forth herein concern matters solely under the purview of JAG. Whether conduct or failure to act constitutes a violation of the duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. The subpart B rules are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Government rules of ethical conduct, the Code of Conduct, the Uniform Code of Military Justice, and the general precepts of ethical conduct to which all officers of the Navy and Marine Corps are expected to adhere. Similarly, action taken pursuant to this part is not supplanted or barred by, and does not supplant or bar, the following action from being taken by authorized officials, even if the underlying misconduct is the same—

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual For Courts-Martial or U.S. Navy Regulations, 1990, or under other applicable authority.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each DON civilian attorney or judge advocate unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) DON judge advocates and civilian attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority.

(c) Employment of non-DON civilian counsel by an individual client does not alter the responsibilities of a DON

judge advocate or civilian attorney to that client. Specific guidance is set forth in § 776.95.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, subpart B of this part, or regulations of the sort mentioned in § 776.3(b), the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all judge advocates and other attorneys performing judicial functions under JAG supervision within the Department of the Navy.

§ 776.6 Conflict.

To the extent that a conflict exists between subpart B of this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, subpart B of this part will govern the conduct of attorneys engaged in legal functions under JAG supervision.

§ 776.7 Reporting requirements.

Individuals subject to this part shall promptly report to the Rules Counsel (see § 776.9) discipline by another jurisdiction upon himself, herself, or another individual subject to this part.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Principal Deputy Assistant Judge Advocate General (PDAJAG) (Operations & Management); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, Judge Advocate Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be PDAJAG (Operations & Management). The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternative members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory

opinions to JAG regarding application of subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to individuals subject to this part about the propriety of proposed courses of action under subpart B of this part. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B of this part, then no adverse action under this part may be taken against an individual who acts consistent with the Committee's advice.

(4) The Committee Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

§ 776.9 Rules Counsel.

Appointed by JAG to act as a special assistant for the administration of subpart B of this part, the Rules Counsel derives authority from JAG and, with respect to administrative matters under this part, has "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel—

(a) In cases involving Marine Corps judge advocates, Director, Judge Advocate Division; and

(b) In all other cases, Assistant Judge Advocate General (Civil Law).

§ 776.10 Informal ethics advice.

(a) *Advisors.* Judge advocates may seek informal ethics advice either from the OJAG officers named below or from their supervisory judge advocates in the field. Within the Office of the JAG, the following officials are designated to respond to informal, oral inquiries concerning this part in the areas of practice indicated—

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Deputy Director, Legal Assistance Division: legal assistance matters; and

(4) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: all others.

(b) *Informal advice.* Informal ethics advice will not be provided by OJAG advisors concerning matters currently in litigation.

(c) *Written advice.* A request for informal advice does not relieve the requestor of the obligation to comply with subpart B of this part. Although DON judge advocates and civilian attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally responsible for their professional conduct. If, however, a subordinate judge advocate acts in accordance with a supervisory judge advocate's written and reasonable resolution of an arguable question, then no adverse action under this part may be taken against the subordinate judge advocate. JAG is not bound by unwritten advice or by advice provided by nonsupervisors.

§ 776.11 Outside part-time practice of law.

A DON attorney's primary professional responsibility is to the executive agency to which assigned, and he or she is expected to devote the required amount of effort and time to satisfactorily accomplish assigned duties. The outside practice of law, therefore, must be carefully monitored. Attorneys to whom this section applies who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Details are contained in Subpart D of this part.

§ 776.12 Maintenance of files.

Ethics complaint records and outside, part-time law practice request files shall be maintained by the Administrative Law Division, Office of the Judge Advocate General.

(a) Files shall be labeled with the name of the individual against whom complaints are made, or who request

permission to engage in the part-time outside practice of law, and will contain the request, complaint, reports of investigation, related correspondence, and allied papers.

(b) Requests for access to such records should be referred to DAJAG (Administrative Law Division), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, Virginia 22332-2400.

(c) Local command files regarding complaints will not be maintained. Commanding officers and other supervisory personnel may, however, maintain their own personal files but must not share their contents with others.

§ 776.13 Preamble.

(a) *Rules of Professional Conduct.* (1) A judge advocate in the naval service is a representative of clients, an officer of the legal system, a commissioned officer, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the Department of the Navy and to individual clients. The Rules of Professional Conduct set out in subpart B of this part govern the ethical conduct of naval judge advocates practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the Department of the Navy.

(2) The rules in subpart B of this part are specifically addressed to the conduct of judge advocates but apply to all other lawyers who practice under the supervision of the Judge Advocate General of the Navy. (Use of the term “judge advocate” in subpart B applies to all lawyers unless otherwise indicated.)

(b) [Reserved]

§ 776.14 Premises.

(a) The rules in subpart B of this part are based on the premises that follow. The interpretation of subpart B of this part should flow from their common meaning and the comments. To the extent that any ambiguity or conflict exists, subpart B of this part should be interpreted consistent with this hierarchy of premises.

(1) Judge advocates must obey the law and military regulations, and counsel clients to do so.

(2) Ethical rules must be followed.

(3) Ethical rules should be consistent with law. If law and ethics conflict, the law prevails unless an ethical rule is constitutionally based.

(4) A judge advocate must protect the legal rights and interests of clients, organizational and individual.

(5) The military criminal justice system is a truth-finding process consistent with constitutional law.

(6) A judge advocate must be honest and truthful in all dealings.

(7) A judge advocate shall not derive personal gain, other than from the U.S. Government, from the performance of official duties.

(8) A judge advocate shall maintain the integrity of the legal and military professions.

(b) [Reserved]

Subpart B—Rules

§ 776.20 Competence.

(a) *Competence.* A judge advocate shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a judge advocate for a particular assignment shall be made by a supervising judge advocate before case or issue assignments; however, assigned judge advocates may consult with supervisors concerning competence in a particular case.

(b) [Reserved]

§ 776.21 Establishment and scope of representation.

(a) *Establishment and scope of representation.* (1) Formation of attorney-client relationships by judge advocates with, and representation of, clients is permissible only when the judge advocate is authorized to do so by competent authority.

(2) The subject matter scope of a judge advocate’s representation will be

consistent with the terms of the assignment to perform specific representational or advisory duties. A judge advocate shall inform clients at the earliest opportunity of any limitations of representation and professional responsibilities of the judge advocate towards the client.

(3) A judge advocate shall follow the client's well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

(4) A judge advocate's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(5) A judge advocate shall not counsel or assist a client to engage in conduct that the judge advocate knows is criminal or fraudulent, but a judge advocate may discuss the legal and moral consequences of any proposed course of conduct with a client, and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(b) [Reserved]

§ 776.22 Diligence.

(a) *Diligence.* A judge advocate shall act with reasonable diligence and promptness in representing a client, and in every case shall consult with a client as soon as practicable and as often as necessary upon being assigned to the case or issue.

(b) [Reserved]

§ 776.23 Communication.

(a) *Communication.* (1) A judge advocate shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(2) A judge advocate shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(b) [Reserved]

§ 776.24 Fees.

In this section, the term "judge advocate" refers only to judge advocates and other attorneys employed by the Department of the Navy. The term

"lawyer" refers to all other lawyers subject to this subpart B.

(a) *Fees.* (1) A judge advocate shall not accept any salary, fee, compensation, or other payments or benefits, directly or indirectly, other than government compensation, for services provided in the course of the judge advocate's government duties or employment.

(2) A judge advocate shall not accept any salary or other payments as compensation for legal services rendered, by that judge advocate in a private capacity, to a client who is eligible for assistance under the Department of the Navy Legal Assistance Program, unless so authorized by the Judge Advocate General. This paragraph (a)(2) does not apply to Reserve judge advocates not serving on extended active duty.

(3) A Reserve judge advocate, whether or not serving on extended active duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the judge advocate's official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless authorized by the Judge Advocate General to do so.

(4) A judge advocate shall not accept any payments or benefits, actual or constructive, directly or indirectly, for making a referral of a client.

(5) Lawyers not employed by the Federal Government may charge fees. Fees shall be reasonable. Factors considered in determining the reasonableness of a fee include the following:

(i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(iii) The fee customarily charged in the locality for similar legal services;

(iv) The amount involved and the results obtained;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client;

(vii) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(viii) Whether the fee is fixed or contingent.

(6) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing in representation.

(7) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (a)(8) of this section or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(8) A lawyer shall not enter into an arrangement for, charge, or collect:

(i) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, or

(ii) A contingent fee for representing an accused in a criminal case.

(9) A division of fee between lawyers who are not in the same firm may be made only if:

(i) The division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(ii) The client is advised of and does not object to the participation of all the lawyers involved; and

(iii) The total fee is reasonable.

(b) [Reserved]

§ 776.25 Confidentiality of information.

(a) *Confidentiality of information.* (1) A judge advocate shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A judge advocate shall reveal such information to the extent the judge advocate reasonably believes necessary to prevent the client from committing a criminal act that the judge advocate believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(3) A judge advocate may reveal such information to the extent the judge advocate reasonably believes necessary to establish a claim or defense on behalf of the judge advocate in a controversy between the judge advocate and the client, to establish a defense to a criminal charge or civil claim against the judge advocate based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the judge advocate's representation of the client.

(b) [Reserved]

§ 776.26 Conflict of interests: General rule.

(a) *Conflict of Interests: General rule.*

(1) A judge advocate shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The judge advocate reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A judge advocate shall not represent a client if the representation of that client may be materially limited by the judge advocate's responsibilities to another client or to a third person, or by the judge advocate's own interests, unless:

(i) The judge advocate reasonably believes the representation will not be adversely affected; and,