

Part 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

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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.