

of drawers and doors should be examined 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. Observations by repairmen and transportation inspectors are very valuable, but on occasion, claims examiners may request an inspection. 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.

■ 10. Section 751.10 is amended by revising footnote \1) to read as follows:

**§ 751.10 Form of claim.**

\* \* \* \* \*

<sup>1</sup> Copies of these forms may be obtained by contacting the legal office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred or on the Internet at <http://www.jag.navy.mil>.

■ 11. Section 751.11 is revised to read as follows:

**§ 751.11 Investigation of claim.**

Upon receipt of a claim, the claim shall be stamped with the date and receiving office, forwarded to the cognizant PCU and be referred to a claims examiner. The examiner shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate.

**§ 750.12 [Removed]**

■ 12. Section 750.12 is removed.

■ 13. Redesignate 750.13 as § 750.12 and revise newly redesignated § 751.12 to read as follows:

**§ 751.12 Payments.**

Payment of approved personnel claims 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.

■ 14. Section 751.14 is redesignated as § 751.13, and newly redesignated § 751.13 is revised to read as follows:

**§ 751.13 Partial payments.**

(a) *Partial payments when hardship exists.* When claimants suffer a significant, compensable loss of items that are needed for daily living, and can demonstrate a need for immediate funds to replace some of those items (e.g., food, clothes, baby items, etc.) 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 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 (MRP-2).

(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 properly recouped.

■ 15. Section 751.15 is redesignated as § 751.14 and newly redesignated § 751.14 is revised to read as follows:

**§ 751.14 Reconsideration and appeal.**

(a) *General.* When a claim is denied either in whole or in part, the claimant shall be given written notification of 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. For claims originally adjudicated by the Head, Personnel Claims Unit Norfolk, the files will be forwarded to the Judge Advocate General (Claims and Tort Litigation)(Code 15) for final action. 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 § 751.14(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.

**Subpart B—Demand on Carrier, Contractor, or Insurer [Removed and Reserved]**

■ 16. Remove and reserve subpart B consisting of §§ 751.21 through 751.35.

Dated: September 10, 2007.

**T.M. Cruz,**

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

[FR Doc. E7-18204 Filed 9-18-07; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 756**

[USN-2006-0040]

RIN 0703-AA80

**Nonappropriated-Fund Claims Regulations**

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule reflects administrative changes to the regulations concerning the administrative processing of non-appropriated funds. The revisions will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy (DoN) for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

**DATES:** This rule is effective September 19, 2007. Comments must be received by November 19, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

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

**SUPPLEMENTARY INFORMATION:** Executive Order 12866, "Regulatory Planning and Review." It has been determined that the changes to 32 CFR part 756 are not considered a "significant regulatory action." The rule does not:

(1) Have an annual affect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4). It has been certified that 32 CFR part 756 does not contain Federal Mandates that result in expenditures by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

Executive Order 13132, "Federalism". It has been certified that 32 CFR part 756 does not have federalism implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

#### List of Subjects in 32 CFR Part 756

Claims.

■ Accordingly, 32 CFR part 756 is amended to read as follows:

#### PART 756—PROCEDURES FOR PROCESSING CLAIMS INVOLVING NON-APPROPRIATED FUND ACTIVITIES AND THEIR EMPLOYEES

■ 1. The authority citation for part 756 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 5013 and 5148.

■ 2. The heading for part 756 is revised to read as set forth above.

■ 3. Section 756.1 is revised to read as follows:

##### § 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 non-appropriated fund activities (NAFI).<sup>1</sup>

■ 4. Section 756.2 is amended by revising paragraph (c) to read as follows:

##### § 756.2 Definitions.

\* \* \* \* \*

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

■ 5. Revise § 756.4 to read as follows:

##### § 756.4 Responsibility.

(a) All claims resulting from NAIs should be submitted to the command having cognizance over the NAFI involved. The claim will then be forwarded to the Tort Claims Unit (TCU) Norfolk located at the following address: Department of the Navy, Office of the Judge Advocate General, Tort Claims

Unit Norfolk, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989.

(b) The TCU Norfolk has cognizance over all DoN claims. Normally, the TCU Norfolk has primary responsibility for the negotiation and settlement of NAFI claims. This is because NAIs are Federal agencies within the meaning of the Federal Tort Claims Act (FTCA) if the NAFI is charged with an essential function of the DoN and if the degree of control and supervision by the Navy is more than casual or perfunctory. 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 FTCA, 28 U.S.C. 1346(b), 2671-2672, 2674-2680, the United States remains ultimately liable for payment of NAFI claims.

■ 6. Section 756.5 is revised to read as follows:

##### § 756.5 Investigation.

Claims arising out of the operation of NAIs, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities. The Manual of the Judge Advocate General (JAGMAN), Chapter II<sup>2</sup> provides guidance in conducting an investigation of an incident or event likely to result in claims or civil litigation against or for DoN or the United States.

■ 7. Section 756.6 is revised to read as follows:

##### § 756.6 Negotiation.

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

(b) *When the NAFI is insured.* When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The TCU Norfolk shall monitor the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining that someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the negotiations should be referred directly to the Judge Advocate General (Claims and Tort Litigation) for appropriate action. If requested by the insurer or

<sup>1</sup> DoD Directive 5515.6 establishes policy governing the administrative processing of claims arising out of the operation of non-appropriated fund activities.

<sup>2</sup> JAGMAN Chapter II (JAG Instruction 5800.7E) is available at the Web site of the Navy Judge Advocate General's Corps at <http://www.jag.navy.mil>.

TPA, the TCU Norfolk may conduct negotiations. If TCU Norfolk negotiates a final settlement, however, request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not necessary.

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

■ 8. Section 756.7 is revised to read as follows:

#### **§ 756.7 Payment.**

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

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

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

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

■ 9. Section 756.8 is revised to read as follows:

#### **§ 756.8 Denial.**

Claims resulting from non-appropriated fund activities may be denied only by the TCU Norfolk. The

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

■ 10. Section 756.9 is revised to read as follows:

#### **§ 756.9 Claims by employees.**

(a) *Property.* Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with subparts A or B of part 751 of this chapter, as appropriate. The claims will then be forwarded to the appropriate NAFI for payment from non-appropriated funds.

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

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

Dated: September 10, 2007.

**T.M. Cruz,**

*Lieutenant, Judge Advocate General's Corps,  
U.S. Navy, Federal Register Liaison Officer.*  
[FR Doc. E7–18205 Filed 9–18–07; 8:45 am]

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## **DEPARTMENT OF DEFENSE**

### **Department of the Navy**

#### **32 CFR Part 757**

**[USN–2006–0041]**

**RIN 0703–AA81**

#### **Affirmative Claims Regulations**

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule reflects administrative changes to the regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. The revisions will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

**DATES:** This rule is effective September 19, 2007. Comments must be received by November 19, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Enrique Mendez, Head, Affirmative and Personnel Claims Branch, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson, Avenue SE., Washington Navy Yard, DC 20374, telephone 202–685–4621.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866, “Regulatory Planning and