

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

(4) Individuals with settlement authority under paragraph (a)(3) of this section may delegate all or part of their settlement authority. Such delegation must be in writing.

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

■ 21. Section 750.50 is amended by revising paragraph (c)(3) to read as follows:

**§ 750.50 Advance payments.**

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

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

■ 22. Section 750.66 is revised to read as follows:

**§ 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); and Head, Tort Claims Branch (Claims and Tort Litigation) may settle a nonscope claim.

Dated: September 10, 2007.

**T.M. Cruz,**

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

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 751**

[USN-2006-0039]

RIN 0703-AA79

**Personnel 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 or RIN number 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 202-685-4600.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866, "Regulatory Planning and Review." It has been determined that the changes to 32 CFR part 751 are not considered a "significant regulatory action." The rule does not:

(1) Have an annual effect 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 751 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 751 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 751**

Claims; Government employees; Military personnel.

■ Accordingly, 32 CFR part 751 is amended to read as follows:

**PART 751—PERSONNEL CLAIMS REGULATIONS**

■ 1. The authority citation for part 751 is revised to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 5013 and 5148; E.O. 12473, 3 CFR, 1984 Comp., p. 201.

■ 2. Section 751.1 is revised to read as follows:

§ 751.1 Scope.

This part prescribes procedures and substantive bases for administrative settlement of claims against the United States submitted by Department of Navy (DoN) personnel and civilian employees of the naval establishment.

■ 3. Section 751.2 is amended by revising paragraph (a) to read as follows:

§ 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 (2004)), provides that the maximum amount payable for any loss or damage arising from a single incident is limited to \$40,000.00. Where the loss of or damage to personal property arose from emergency evacuations or other extraordinary circumstances, the maximum is \$100,000.00.

\* \* \* \* \*

■ 4. Section 751.3 is revised to read as follows:

§ 751.3 Authority.

The Personnel Claims Act provides the authority for maximum payment up to \$40,000, \$100,000 in extraordinary circumstances for loss, damage, or destruction of personal property of military personnel or civilian employees incident to their service. No claim may be paid unless it is presented in writing within 2 years of the incident that gave rise to the claim.

■ 5. Section 751.5 is amended by revising paragraph (a)(3), removing the word "officers" and replacing it with the word "personnel" in paragraph (a)(4), adding paragraph (a)(5), revising the first sentence in paragraph (c), and revising paragraph (f) to read as follows:

§ 751.5 Definitions.

(a) \* \* \*

(3) Claims by non-appropriated fund employees. Claims by employees of Navy and Marine Corps non-appropriated fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this part and forwarded to the appropriate local non-appropriated fund activity that employs the claimant for payment from non-appropriated funds.

\* \* \* \* \*

(5) Agent or legal representative. The authorized agent or legal representative of a proper claimant may file on behalf of the claimant if the agent provides a power of attorney that complies with local law. Certain relatives of a deceased proper claimant may file any claim the claimant could have filed. The PCA identifies these relatives in order of priority. If multiple persons who the statute lists as equals in priority file separate claims, the first claim settled extinguishes the rights of the other claimants. The estate of a deceased proper party claimant is not a proper claimant, nor is an executor or personal representative who cannot file as a survivor. The PCA ranks surviving relatives in the following order of priority:

- (i) Spouse;
- (ii) Child or children;
- (iii) Father, mother, or both;
- (iv) Brother, sister, or both.

\* \* \* \* \*

(c) Unusual occurrence. Serious events and natural disaster not expected to take place in the normal course of events and hazards outside the normal risks of day-to-day living and working.

\* \* \* \* \*

(f) Vehicles. Include automobiles, motorcycles, mopeds, jet skis, 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.

■ 6. Section 751.6 is amended by revising the introductory text and paragraph (a)(5), the first four sentences of paragraph (b), paragraph (c)(1), the first sentence of paragraph (c)(2), paragraph (c)(3), the first sentence of paragraph (c)(5), paragraph (d), and the first four sentences of paragraph (k)(2) to read as follows:

§ 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. The following are examples of more common claims. Not all situations that may result in a claim are covered, but the processes described in the examples on how to approach, investigate, and adjudicate claims are applicable to all claims filed.

(a) \* \* \*

(5) Shipment or storage at the claimant's expense. The Government

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, between the 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 is cognizable. Losses due to theft may only be paid if the claimant took reasonable measures to safeguard the property and 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 so that the thief must force an entry. If a police report states that there were no signs of forced entry and the claimant asserts with absolute certainty that the area was in fact secure, the claims examiner must consider whether forced entry would have left visible signs.

(c) Vehicle losses.

(1) Losses incurred while a vehicle is used in the performance of a 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 a 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 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 authorized mileage reimbursement for the travel. The issuance of written orders after the fact raises the presumption that travel was not authorized for the convenience of the Government. The maximum payment authorized by the Allowance List-Depreciation Guide (ALDG) still applies

to loss of or damage to vehicles and contents. This maximum does not apply to DITY moves.

(2) Losses incurred while a vehicle is shipped at Government expense are compensable provided the loss or damage did not arise from mechanical or structural defect of the vehicle during such shipment. \* \* \*

(3) Losses 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 the maximum payment authorized by the ALDG.

\* \* \* \* \*

(5) *Theft of property stored inside a vehicle.* A loss resulting from theft of property stored inside a vehicle is compensable if it was reasonable for the claimant to have the property in the vehicle and neither the claimant nor the claimant's agents were negligent in protecting the property. \* \* \*

\* \* \* \* \*

(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 or by the claimant's negligence in securing the mobile home or packing its contents.

\* \* \* \* \*

(k) \* \* \*

(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 \$75.00 should be examined with great care to determine whether it is reasonable. A person becomes obligated to pay an estimated fee when the estimate is prepared. An estimate fee should not be confused with an appraisal fee, which is not compensable (see § 751.7(m)). \* \* \*

■ 7. Section 751.7 is amended by revising paragraphs (b) and (e), and removing the parenthetical in the last sentence of paragraph (f) that states, "(NAVSUP Publication 490, Transportation of Personal Property)" to read as follows:

**§ 751.7 Claims not payable.**

\* \* \* \* \*

(b) *Currency or jewelry shipped or stored in baggage.* Claims for lost

currency, shipped or stored in baggage are not payable. Small, valuable, highly pilferable items should normally be hand-carried rather than shipped, however, if expensive or valuable jewelry or coin collections are shipped, a full description of each item of expensive jewelry and of any coin or money collection must be listed and described on the inventory for its loss to be payable. Each item must also be listed as missing at the time of delivery. If not noted at the time of delivery, the claimant must satisfactorily explain why.

\* \* \* \* \*

(e) *Loss or Damage to Property to the Extent of any Available Insurance Coverage.* Except for claims for loss or damage to household goods or privately-owned vehicles (POVS) while shipped or stored at Government expense, when the property lost, damaged, or destroyed is insured, the claimant must make a demand for payment against the insurance company under the terms of the policy.

\* \* \* \* \*

■ 8. Section 751.8 is revised to read as follows:

**§ 751.8 Adjudicating authorities.**

(a) *Claims by Navy personnel.* (1) The following officials are authorized to adjudicate and authorize payment of PCA claims up to \$100,000:

- (i) The Judge Advocate General;
- (ii) The Deputy Judge Advocate General;
- (iii) Any Assistant Judge Advocate General; and
- (iv) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation).

(2) Any individual, when designated by the Deputy Assistant Judge Advocate General (Claims and Tort Litigation Division), may adjudicate and authorize payment of PCA claims up to any designated amount.

(b) *Claims by Marine Corps personnel.*

- (1) The following officials are authorized to adjudicate and authorize payment of PCA claims up to \$40,000:
  - (i) Commandant of the Marine Corps;
  - (ii) Deputy Commandant, Manpower and Reserve Affairs Department;
  - (iii) Director, Personal and Family Readiness Division;
  - (iv) Head, Military Personnel Services Branch;
  - (v) Head, Personal Property Claims Section; and
  - (vi) Any individual personally designated by the Commandant of the Marine Corps may adjudicate and authorize payment of PCA claims up to any delegated amount not to exceed \$40,000.

(2) The Assistant Head, Personal Property Claims Section is authorized to adjudicate and authorize payment of PCA claims up to \$25,000.

(3) Any individual at Marine Corps Field Transportation Management Office/Claims Activities, when personally designated by the Director, Personal and Family Readiness Division, may be authorized to adjudicate and authorize payment of PCA claims up to any delegated amount not to exceed \$40,000.

■ 9. Section 751.9 is amended by revising paragraph (a), (c)(3), (c)(4), and (c)(5) to read as follows:

**§ 751.9 Presentment of claims.**

(a) *General.* A claim shall be submitted in writing and, if practicable, be presented to the Personnel Claims Unit or Marine Corps claims office serving the area where the claim accrued, such as where the House Hold Goods were delivered. If submission in accordance with the foregoing is impractical under the circumstance, 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, a claim must be presented in writing to one of the military departments.

\* \* \* \* \*

(c) \* \* \*

(3) *Damage to POVs in shipment.* Persons shipping POVs 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 or transportation office personnel within a short time, normally a few days after arriving at the installation.

(4) *Credibility.* 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 items closely to determine the nature of the damage. For furniture, undersurfaces and the edges

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.*

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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.