

JAG INSTRUCTION 5890.1

From: Judge Advocate General

Subj: ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON
BEHALF OF AND AGAINST THE UNITED STATES

Ref: (a) JAGINST 5800.7C, Manual of the Judge Advocate General
(JAGMAN)

Encl: (1) Procedures for Processing Federal Tort Claims
Act Claims
(2) Procedures for Processing Military Claims Act Claims
(3) Procedures for Processing Claims Involving
Nonappropriated-Fund Activities and Their Employees
(4) Procedures for Processing Nonscope Claims
(5) Procedures for Processing Personnel Claims
(6) Procedures for Processing Affirmative Claims

1. Purpose

a. To provide general information about the supervision and management of the Navy's claims program and the processing of claims under various Federal claims statutes. This information is of general applicability and where it conflicts with materials contained in the enclosures concerning a specific claims statute, the latter control. For admiralty claims, see Chapter XII of reference (a).

b. To supplement the provisions of reference (a) concerning the investigation of incidents giving rise to claims for or against the United States.

c. To provide, in the enclosures, detailed explanations of the procedures for adjudicating claims filed under the various claims statutes.

2. Information

a. Responsibilities

(1) The Judge Advocate General is responsible for the administration and supervision of the resolution of claims arising under the Federal Tort Claims Act, the Military Claims Act, the Nonscope Claims Act, the Military and Civilian Employees' Personnel Claims Act (Personnel Claims Act), the Foreign Claims Act, the International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements, the Medical Care Recovery Act, the Federal Claims Collection Act of 1966, 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.

b. Investigations

(1) 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 as shown in Appendix 1-5 immediately by message, electronic mail, or telephone in any of the following circumstances:

(a) 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.

(b) Upon filing of a claim that could result in litigation that would involve a new precedent or point of law.

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

(2) 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.

(3) 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.

(4) 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.

(5) Contents of the Report of Investigation. The report should include the following items in addition to the requirements in section 0804 of reference (a):

(a) 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.

(b) 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.

(c) 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.

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

(e) 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.

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

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

(6) 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.

(7) Action by Command Initiating the Investigation and Subsequent Reviewing Authorities

(a) The command initiating the investigation in accordance with sections 0803 or 0806 of the JAGMAN 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 Appendix 1-5.

(b) A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such

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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.

(c) 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 SEC-NAVINST 5211.5C. 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 Appendix 1-5 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.

c. Claims--Generally

(1) 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.

(2) 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.

(3) 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 claims 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.

d. Claims--Proper Claimants

(1) 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.

(2) 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.

(3) 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, \$25,000.00) under the Federal Tort Claims Act. Where they exceed this amount, they shall be referred to the Claims and Tort Litigation Division.

(4) 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.

e. Claims--Presentment

(1) 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

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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.

(2) 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.

f. Claims--Action By Receiving Command

(1) 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.

(2) 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.

(3) Initiate an Investigation. An investigation under reference (a) and this instruction 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.

g. Claims--Action By Adjudicating Authority. The adjudicating authority is responsible for the following:

(1) 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.

(2) 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.

(3) Adjudicating the Claim

(a) 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 \$25,000.00 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.

(b) 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.

(c) 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.

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iii. The original investigative report and all allied papers; and

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) See Appendices 1-4 and 1-5 to determine appropriate adjudicating authorities and the monetary limits of their adjudicating authority.

(4) 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.

(a) 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.

(b) 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.

h. 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.

i. Claims--Settlement and Release

(1) 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

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be made until a signed settlement agreement has been received. See Appendices 1-2 and 1-3.

(2) Release

(a) 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.

(b) 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.

j. 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.

k. Claims--Action When Suit Filed

(1) 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.

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(2) 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.

1. Claims--Single Service Responsibility

(1) 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.

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

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

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

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

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

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

(g) 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

(h) P.L. 87-212 (10 U.S.C. § 2736), advance or emergency payments.

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

(a) Department of the Army: Austria, Belgium, El

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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.

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

(c) 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.

(3) 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.

m. Specific Claims Processing Procedures. The enclosures establish detailed procedures for processing claims filed under the various Federal claims statutes. In the event of a conflict between the information contained in paragraph 2 of this instruction and the enclosures, the latter control.

3. Action

The commanding officers and officers in charge of Naval Legal Service Command activities shall ensure compliance with this instruction.

J. E. GORDON

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PROCEDURES FOR PROCESSING
FEDERAL TORT CLAIMS ACT CLAIMS

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PROCEDURES FOR PROCESSING CLAIMS UNDER
THE FEDERAL TORT CLAIMS ACT

1. 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 C.F.R. Part 14.

If the provisions of this enclosure and the Attorney General's regulations conflict, the Attorney General's regulations prevail.

2. SCOPE

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

3. EXCLUSIVENESS OF REMEDY

a. The Federal Employees Liability Reform and Tort Compensation Act of 1988, P.L. 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.

4. DEFINITIONS

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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: (1) Where the thing or service contracted for is deemed to be an "inherently dangerous activity"; (2) where a nondelegable duty in the employer has been created by law, or; (3) 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

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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. See paragraph 14b(3) below.

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

5. 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:

(a) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(b) 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 Chapter XII of the Manual of the Judge Advocate General (JAGMAN);

(c) claims arising from intentional torts, except those referred to in paragraph 4b above;

(d) 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 ex-

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pressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(a) 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);

(b) 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 (enclosure (5) of this instruction);

(c) any claim by employees of nonappropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in enclosure (3);

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

(e) 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);

(f) 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 paragraph 4c(2) above);

(g) 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

(h) any claim for damage to a vehicle rented pursuant to travel orders. See Joint Federal Travel Regulations, Vols. 1 and 2.

6. THE ADMINISTRATIVE CLAIM

a. Proper Claimant. See paragraph 2d of this instruction.

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 sign-

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ing; 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 (see Appendix 1-1) 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. See paragraph 16a, below. 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 C.F.R. § 14.2.

7. INFORMATION AND SUPPORTING DOCUMENTATION

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

(1) Death

(a) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

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

(c) 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;

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(d) degree of support provided by decedent to each survivor at time of death;

(e) decedent's general physical and mental condition before death;

(f) itemized bills for medical and burial expenses;

(g) 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,

(h) any other evidence or information which may affect the liability of the United States.

(2) Personal Injury

(a) 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, and 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;

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

(c) a statement of expected expenses for future treatment;

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

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

(f) 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

(a) Proof of ownership;

(b) a detailed statement of the amount claimed for

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each item of property;

(c) an itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;

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

(e) 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 C.F.R. § 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.

8. 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 paragraph 11 of this enclosure may be amended.

9. INVESTIGATION AND EXAMINATION

Chapter VIII of the JAGMAN 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 Chapter VIII of the JAGMAN for specific action required by an adjudicating authority.

10. DENIAL OF THE CLAIM

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial shall include the reasons for the denial. The notification shall include a statement informing the claimant of his right to

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file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification. 28 C.F.R. § 14.9(a).

11. 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 C.F.R. § 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 paragraph 10, above. 28 C.F.R. § 14.9(b).

12. 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. See paragraph 14a(2) below.

d. Litigation support

(1) Who provides. The adjudicating authority holding a

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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. See paragraph 2g(4) of this instruction.

(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.

13. 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).

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

14. SETTLEMENT AND PAYMENT

a. Settlement. 28 U.S.C. § 2672, 28 C.F.R. §§ 14.2(b)(3), 14.10(b).

(1) Settlement Agreement

(a) When Required. A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either (1) settled for less than the full amount claimed or (2) the claim was not presented on a Standard Form 95. See Appendices 1-2 and 1-3 for sample settlement agreements.

(b) 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 C.F.R. § 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.

(2) 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.

b. Payment of the Claim

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(1) Statutory authority. Pursuant to 28 U.S.C. § 2672 and in accordance with 28 C.F.R. § 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 \$25,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title 28 C.F.R. § 14.6 requires consultation with the Department of Justice prior to compromise or settlement of a claim in any amount when:

(a) A new precedent or a new point of law is involved;

(b) a question of policy is or may be involved;

(c) 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;

(d) 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 \$25,000.00; or

(e) 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. See Appendix 1-4 for amount of payment authority and Appendix 1-5 for specific territorial responsibility.

(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 C.F.R. § 14.10(a). See Appendix 1-6. 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.

15. 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

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are to be paid out of the amount awarded and not in addition to the award. 28 U.S.C. § 2678.

16. TIME LIMITATIONS

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

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

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APPENDIX 1 STANDARD FORM 95, CLAIM FOR DAMAGE, INJURY, OR
DEATH

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SETTLEMENT AGREEMENT

[I] [We] _____ hereby agree to accept the sum of _____ DOLLARS AND [NO] CENTS (\$____, ____ . ____) in full satisfaction and final settlement of any and all claims [I] [we] now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, _____,] [an automobile accident at _____][_____] [on or about _____, 19____,] [from on or about _____, 19 ____, to _____,] , resulting in [injuries to _____] [the death of _____] [_____].

In consideration for the payment of the sum stated above, [I] [we] will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [(my) (our) interest in]* the matters alleged in the claim filed by [me][us].

**Pursuant to 28 U.S.C. § 2678 (1982) [I] [we], the undersigned, further agree that an attorney's fee in the amount of not more than twenty percent (20%) or _____

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DOLLARS AND [NO] CENTS

(\$ _____,_____.____) shall be paid to _____,
Esquire, [my] [our] attorney, which sum shall be paid out of the
proceeds of the settlement amount payable to [me] [us] and not in
addition thereto.

_____ ATTORNEY	_____ [CLAIMANT]

_____ DATE	_____ DATE

_____ _____	_____ WITNESS

_____	_____ ADDRESS OF WITNESS

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.
 **This sentence is not used in cases in which a claimant is not represented by legal counsel.
 **In Military Claims Act cases the appropriate citation of authority is 10 U.S.C. § 2733 (1988).

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SETTLEMENT AGREEMENT

(with minor children)

[I] [We] _____ individually and as the [father] [and] [mother] and legal guardian of [my] [our] minor [child] [children], _____ and [I][we]_____ hereby agree to accept the sum of _____ DOLLARS AND [NO] CENTS (\$____, _____. ____) in full satisfaction and final settlement of any and all claims [I] [we] now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, _____,] [an automobile accident at _____][_____] [on or about _____ 19____,] [from on or about _____ , 19 ____ , to _____,] , resulting in [injuries to _____] [the death of _____][_____].

In consideration for the payment of the sum stated above, [I] [we] will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [(my) (our) interest in]* the matters alleged in the claim filed by [me][us].

**Pursuant to 28 U.S.C. § 2678 (1982) [I] [we], the undersigned, further agree that an attorney's fee in the amount of not more than twenty percent (20%) or _____ DOLLARS AND [NO] CENTS (\$ _____,_____.____) shall be paid to _____, Esquire, [my] [our] attorney, which sum shall be paid out of the proceeds of the settlement amount payable to [me] [us] and not in addition thereto.

ATTORNEY

[CLAIMANT]

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DATE

DATE

WITNESS

ADDRESS OF WITNESS

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.

**This sentence is not used in cases in which a claimant is not respresented by legal counsel.

**In Military Claims Act cases the appropriate citation of authority is 10 U.S.C. § 2733 (1988).

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TABLE OF DELEGATED AND DESIGNATED AUTHORITY TO PAY A CLAIM

A. 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)	\$25,000.00
HEAD, FEDERAL TORT CLAIMS BRANCH, CLAIMS AND TORT DIVISION, OJAG	\$20,000.00
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	\$20,000.00

B. 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.

need approval of Dept. of Justice
over \$25,000.00

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TABLE OF TERRITORIAL RESPONSIBILITY FOR PAYMENT OF TORT CLAIMS

<u>RESPONSIBLE COMMAND</u>	<u>TERRITORY</u>
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	WEST VIRGINIA (LESS NORTHERN VIRGINIA AREA -- ZIP 220-223), AND 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, CARTERAT, ONSLOW), AND GEORGIA (LESS COUNTIES OF CHARLTON, CAMDEN, AND GLYNN)
NAVLEGSVCOFF JACKSONVILLE	THAT PORTION OF FLORIDA EAST OF THE WESTERN BOUNDARIES OF GADSDEN, LIBERTY, AND FRANKLIN COUNTIES AND GEORGIA (COUNTIES OF CHARLTON, CAMDEN, AND GLYNN)
NAVLEGSVCOFF PENSACOLA	FLORIDA [PENSACOLA/PANAMA CITY AREA (ZIP 324-325)], ALABAMA, LOUISIANA AND MISSISSIPPI (THAT PORTION SOUTH OF WASHINGTON, HUMPHREYS, HOLMES, ATTALA, WINSTON, AND NOXUBEE COUNTIES, AND THAT PORTION OF THE GULF OF MEXICO EAST OF LONGITUDE 90 W)
NAVLEGSVCOFF MEMPHIS	MISSOURI, TENNESSEE, KENTUCKY, ARKANSAS, AND THAT PORTION OF MISSISSIPPI NORTH OF THE SOUTHERN BOUNDARIES OF WASHINGTON, HUMPHREYS, HOLMES, ATTALA, WINSTON, AND NOXUBEE COUNTIES
NAVLEGSVCOFF GREAT LAKES	NORTH DAKOTA, SOUTH DAKOTA, NEBRASKA, MINNESOTA, MICHIGAN, IOWA, WISCONSIN, ILLINOIS, AND INDIANA
NAVLEGSVCOFF CORPUS CHRISTI	TEXAS
NAVLEGSVCOFF SAN DIEGO	CALIFORNIA (IMPERIAL COUNTY, SAN DIEGO COUNTY, AND THAT AREA INCLUDED IN MARINE CORPS BASE, CAMP PENDLETON EXTENDING INTO ORANGE COUNTY, ONLY), THAT PORTION OF MEXICO INCLUDING AND WEST OF THE STATES OF CHIHUAHUA, DURANGO, NAYARIT, JALISCO, AND COLIMA, PACIFIC OCEAN AREAS AND ISLANDS SOUTH OF LATITUDE 45N AND EAST OF LONGITUDE 135W, ECUADOR, PERU, CHILE, ARIZONA, NEW MEXICO, OKLAHOMA, AND NEVADA (CLARK COUNTY ONLY)

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NAVLEGSVCOFF LONG BEACH

THAT PORTION OF CALIFORNIA IN KERN, SANTA BARBARA, VETURA, LOS ANGELES AND ORANGE COUNTIES (EXCLUDING MARINE CORPS BASE, CAMP PENDLETON), RIVERSIDE, SAN BERNADINO, AND THE CHINA LAKE NAVAL WEAPONS 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 ISLANDS, THE FEDERATED STATES OF MICRONESIA AND THE COMMONWEALTH OF THE NORTHERN MARIANAS

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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 AREA

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

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APPENDIX 6 STANDARD FORM 1145, VOUCHER FOR PAYMENT UNDER FEDERAL
TORT CLAIMS ACT

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Appendix 6
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PROCEDURES FOR PROCESSING
MILITARY CLAIMS ACT CLAIMS

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PROCEDURES FOR PROCESSING
MILITARY CLAIMS ACT CLAIMS

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

2. SCOPE. This enclosure 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 enclosure, 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 Chapter VIII, Part B of the Manual of the Judge Advocate General (JAGMAN) and 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.

3. 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 employ-

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ment. 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 subparagraphs 3a(1) and 3a(2) above shall include, but not be limited to:

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

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

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

(4) Property of U.S. Military Personnel. Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in subparagraphs 3a(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

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assigned duties or employment are payable under the MCA. See paragraph 14 of this enclosure.

4. CLAIMS NOT PAYABLE. The following are not payable under the MCA:

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 that 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 Chapter XII of the JAGMAN.

(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 subparagraphs 3b(2) and 3b(3) above].

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

g. Any claim involving infringement of patents.

h. Any claim for damage, loss, or destruction of mail prior

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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.

5. FILING CLAIM

a. Who May File. See, generally, paragraph 2d of this instruction. 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

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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, Virginia 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 paragraph 7a of enclosure (1) to this instruction. A claim must be substantiated as required by this instruction 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 paragraph 3 of this enclosure, 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.

h. Settlement Agreement. See Appendices 1-2 and 1-3.

6. 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

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(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.

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

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

b. If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable

dealers or officials familiar with the type of property damaged, lost, or destroyed.

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

8. 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

(a) Allowable compensation includes that in subparagraph 8b(1) above, 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.

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

9. 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).

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(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 9b to act upon appeals. No appellate authority below the Secretary of the Navy may deny an appeal of a claim it had previously denied.

10. 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

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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

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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 (a) was caused by a member or employee of the DON acting within the scope of employment or (b) occurred "incident to noncombat activities" of the DON as defined above.

11. 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.

12. 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

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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.

13. CROSS-SERVICING

a. See paragraph 2.1 of this instruction for 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.

14. 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,

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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.

15. 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.

PROCEDURES FOR PROCESSING CLAIMS INVOLVING
NONAPPROPRIATED-FUND ACTIVITIES AND THEIR EMPLOYEES

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Enclosure (3)

PROCEDURES FOR PROCESSING CLAIMS INVOLVING
NONAPPROPRIATED-FUND ACTIVITIES AND THEIR EMPLOYEES

1. SCOPE

This enclosure 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.

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.

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 Commander, 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 poten-

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tial liability by the activity.

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.

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.

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 Appendix 1-5 of this instruction 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 author-

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ity 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.

7. PAYMENT

a. Claims that Can be Settled for Less than \$100.00. A claim not covered by insurance (or not paid by the insurer), that can be settled for \$100.00 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 \$100.00. A claim negotiated by the Navy, not covered by insurance, that cannot be settled for less than \$100.00, 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 (1982), 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.

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 enclosure (1) or (2) of this instruction, 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.

9. CLAIMS BY EMPLOYEES

a. Property. Claims by employees of NAFI's for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with

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enclosure (5) of this instruction. They will then be forwarded to the appropriate NAFI for payment from nonappropriated-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 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.

(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, 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.

PROCEDURES FOR PROCESSING
NONSCOPE CLAIMS

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Enclosure (4)

PROCEDURES FOR PROCESSING NONSCOPE CLAIMS

1. SCOPE

This enclosure 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.

2. 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.

3. 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.

4. CLAIM PROCEDURES

a. The general provisions of paragraph 2 of this instruction and Chapter VIII of the Manual of the Judge Advocate General (JAGMAN) 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 enclosure.

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.

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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 part 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 part 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 enclosure.

f. Nonscope claims for damages caused by local national DON employees overseas are also payable under this enclosure 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. See Appendices 1-2 and 1-3.

h. Payment for nonscope claims adjudicated by field commands will be effected 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 paragraph 11 of enclosure (2) also apply to denials of nonscope claims.

5. 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.

6. 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

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settle a nonscope claim.

7. SCOPE OF LIABILITY

a. Subject to the exceptions in paragraph 8 of specific claims not payable under this enclosure, 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 laws authorizing claims against the United States. Article 139 authorizes claims against servicemembers. See Chapter IV of the JAGMAN.

8. CLAIMS NOT PAYABLE. The following claims are 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; and

c. a subrogated claim.

9. 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 paragraphs 7 and 8 of enclosure (2) of this instruction, except damages for personal injury or death under this enclosure 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.

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PROCEDURES FOR PROCESSING PERSONNEL CLAIMS

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PROCEDURES FOR PROCESSING PERSONNEL CLAIMS

SCOPE

General. This enclosure is divided into two sections. Section A 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. Section B sets forth procedures for the administrative pursuit and recovery from carriers, contractors, or insurers responsible for loss, damage, or destruction of such personal property.

SECTION A: CLAIMS AGAINST THE UNITED STATES

1. CLAIMS AGAINST THE UNITED STATES--GENERALLY

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 enclosure.

c. Preemption. The provisions of this enclosure 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.

2. 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.

3. CONSTRUCTION

The provisions of this enclosure and the Personnel Claims Act provide limited compensation to servicemembers and civilian employees of the DON for loss and damage to personal property

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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.

4. 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

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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 video-cassette 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.

5. 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

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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 claimant 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 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. 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

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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

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to mobile homes and contents in shipment are payable unless the damage was caused by structural or mechanical defects. (See paragraph 11g 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 paragraph 4c above 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 certificates, 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 paragraph 6m). 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.

6. 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 Paragraph 19 of this Enclosure.

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 paragraph 5c(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.

7. 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:

(a) The Judge Advocate General;

(b) Deputy Judge Advocate General;

(c) any Assistant Judge Advocate General;

(d) the Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(e) 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:

(a) officers in charge of Naval Legal Service Office Detachments;

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(b) the Staff Judge Advocate attached to Naval Station, Keflavik; and

(c) 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:

(a) Commandant of the Marine Corps;

(b) Deputy Chief of Staff, Manpower and Reserve Affairs Department;

(c) Director, Human Resources Division;

(d) Head, Personal Affairs Branch;

(e) Deputy Head, Personal Affairs Branch;

(f) Head, Personnel Claims Section; and

(g) 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:

(a) Head, Adjudication Unit;

(b) Head, Carrier Recovery Unit; and

(c) Head, Administration Unit.

8. PRESENTMENT OF CLAIM

a. General. A claim shall be submitted in writing and, if practicable, be presented to 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. 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

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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

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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 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. 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.

9. FORM OF CLAIM

The claim should be submitted on DD Form 1842 (Claim for Personal Property) (see Appendix 5-1) accompanied by DD Form 1844 (List of Property) (see Appendix 5-2). If DD Forms 1842 and 1844 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 paragraph 4 above) 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.

10. 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

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with the claim and shall conduct such further investigation as may be necessary and appropriate.

11. 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)

(a) 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.

(b) 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.

(c) 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

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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.

(a) 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.

(b) 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

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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

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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:

(a) The item is obsolete and a simple deduction of a percentage for obsolescence is not appropriate.

(b) The claimant cannot replace the item in the local area.

(c) The claimant cannot replace the item at any cost.

(d) Repair costs or replacement costs are excessive for the item and an LOV is not appropriate.

(e) 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 subparagraph (3) below).

(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 Reupholstry. 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

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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

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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

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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 paragraph 11b(3) above.)

(10) LOV--Loss of Value. An LOV was awarded. (See paragraph 11a(1) above.)

(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.

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(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

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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 re-covering 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 authorize 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:

(a) 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.

(b) They are responsible for paying for necessary

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repairs enroute. 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.

(c) 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.

(d) 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.

(e) 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:

(a) 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.

(b) A mobile home should never be shipped with defects in the steel frame or tow hitch.

(c) The condition of all tires should be checked and recorded. Some carriers submit huge bills for "blown" tires during shipment.

(d) 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 manufactur-

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ing 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:

(a) 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.

(b) 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.

(c) 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:

(a) 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).

(b) 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.

(c) DD Form 1840/1840R. Beginning 1 November 1987, (See Appendix 5-3) 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

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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."

(d) 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.

(e) DD Form 1841. If a Government representative does not inspect the mobile home at delivery, an inspection should be requested.

(f) 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.

(g) 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.

(h) 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.

(i) 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 compensated for services the carrier failed to perform or performed improperly or for other incidental expenses. The claimant should be referred to the transportation

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office for these. Such services (listed on DD Form 1843 and the GBL correction notice) include:

- (a) Escort or pilot services, ferry fees, tolls, permits, overdimension charges, or taxes.
- (b) Storage costs or parking fees en route.
- (c) Expand charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.
- (d) Wrecker service.
- (e) Connecting or disconnecting utilities.
- (f) Blocking, unblocking, or removing or installing skirting.
- (g) 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 no authority to sign a waiver agreement or any other document purporting to exempt the carrier from the liability imposed under the GBL.

12. 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.

13. 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

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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 paragraph 13(a) above, 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.

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. 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 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 paragraph 14a above, 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 adjudicating authorities listed in paragraph 7b above 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.

SECTION B: DEMAND ON CARRIER, CONTRACTOR, OR INSURER

15. CARRIER RECOVERY--GENERALLY

a. Scope. This section 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.

b. 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.

c. 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.

16. 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. See Appendix 5-3.

b. Counselling 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.

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(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). See Appendix 5-2.

g. Demands on Third Parties. Claims personnel must ensure that written demands against appropriate third parties are prepared as described in paragraphs 19 and 20 below. 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.

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17. NOTICE OF LOSS OR DAMAGE

a. Exceptions. The claimant is required to take exceptions and note any loss or 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 of 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. The Memorandum of Understanding is attached as Appendix 5-4.

18. 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 Code 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 Code 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

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rates only apply to Code 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 any special language. For Code 1 and 2 shipments picked up after the effective dates mentioned above, the carrier's released valuation is \$1.25 multiplied by the net 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

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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.

(a) 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.

(b) 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

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1844.

(c) 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

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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)

(1) 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

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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 transportation 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 entire-

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ly 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.

(a) 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.

(b) 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.

(c) 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.

(d) 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

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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 paragraph 11g above.

(1) Carrier Liability

(a) 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.

(b) For Damage to Contents. The carrier's liability for loss or damage to household or personal effects inside the

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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.

(c) Agents of the Mobile Home Carrier. If the shipment is transferred to another 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.

(d) 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.

(e) 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.

(f) 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 paragraph 17.

(3) Preparation of Demands. The carrier is liable for the full amount of substantiated damage to the mobile home itself

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(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:

- (a) DD Form 1800, Mobile Home Inspection Record;
- (b) DD Form 1863, Assessorial Services, Mobile Home;
- (c) DD Form 1840/1840R, Joint Statement of Loss or Damage at Delivery/Notice of Loss;
- (d) DD Form 1412, Inventory of Items Shipped in House Trailer;
- (e) DD Form 1841, Government Inspection Report;
- (f) driver's statement, from the driver of the towing vehicle;
- (g) claimant's statement concerning previous moves;
- (h) estimates of repair, preferably two, from firms in the business of repairing mobile homes; and
- (i) engineer's statement, or statement by other qualified professionals.

(4) References. Chapter 3 and Appendix E of DOD 4500.34-R, pertains to mobile home shipment and contains much valuable information. Another source is NAVSUP 490, Chapter 10 "Mobile Homes of Military Personnel."

19. 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

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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.

20. 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.) See Appendix 5-5. 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);

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(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:

(a) The payment voucher;

(b) the completed personnel claim forms;

(c) the estimated or actual cost of repair;

(d) a document indicating the conditions of the items upon delivery to the carrier; and

(e) 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. (See Appendix 5-6 for a sample letter.)

21. 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.

22. 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

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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.

23. 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 paragraph 25 below.)

(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

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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 contractor's basis for denying liability in the light of all the evidence.

(a) Acceptable Third Party Reasons for Denial. Mark the front upper left-hand corner of such files as "CLOSED."

(b) 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.

24. 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

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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 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.

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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 Warp-age, 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.

25. 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

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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 Forwarded 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 no adequate settlement offered, or if settlement has been delayed beyond 120 days (see paragraph 22a above), 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.

26. UNEARNED FREIGHT PACKET

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a. Preparation. An unearned freight packet should be prepared when the 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.

27. 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. A sample administrative report is included as Appendix 5-7.

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

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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.

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APPENDIX 1 DD FORM 1842

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APPENDIX 2 DD FORM 1844, LIST OF PROPERTY AND CLAIMS ANALYSIS
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APPENDIX 3 DD FORM 1840/1840R, JOINT STATEMENT OF LOSS OR DAMAGE
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APPENDIX 4 MILITARY-INDUSTRY MEMORANDUM OF UNDERSTANDING

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APPENDIX 5 DD FORM 1843, DEMAND ON CARRIER/CONTRACTOR

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APPENDIX 6 LETTER TO MILITARY SEALIFT COMMAND
APPENDIX 7 SAMPLE GAO ADMINISTRATIVE REPORT

7 CONTINUED

PROCEDURES FOR PROCESSING
AFFIRMATIVE CLAIMS

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PROCEDURES FOR PROCESSING
AFFIRMATIVE CLAIMS

SCOPE: This enclosure is divided into two sections. Section A describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts. Section 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.

SECTION A: PROPERTY DAMAGE CLAIMS

1. 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 5515.11 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).

2. REGULATORY AUTHORITY

The regulations published in 4 C.F.R. Chapter II control the collection and settlement of affirmative claims. This enclosure supplements the material contained in those regulations. Where this enclosure conflicts with the materials and procedure published in 4 C.F.R. Chapter II, the latter controls.

3. 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 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.

4. ASSERTION OF CLAIMS AND COLLECTION PROCEDURES

a. General. The controlling procedures for administrative collection of claims are established in 4 C.F.R. § 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.

c. Dollar Limitations. All of the officers listed in paragraph b above 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:

(a) Reference to the statutory right to collect;

(b) a demand for payment or restoration;

(c) a description of damage;

(d) the date and place of the incident; and

(e) the name, phone number, and office address of the claims personnel to contact.

(2) See also 4 C.F.R. § 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

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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 C.F.R. § 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 of judgment note setting out a repayment schedule should be executed. See Appendix 6-1.

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 paragraph 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 (a) all repairs have been completed to the Government's satisfaction, and (b) 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.

5. WAIVER, COMPROMISE, AND REFERRAL OF CLAIMS

a. Officials Authorized to Compromise Claims. The officers identified in paragraph 4b above may collect the full amount on all claims, and may compromise, execute releases or terminate collection 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 \$20,000.00. Claims in excess of \$20,000.00 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 C.F.R. § 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.

SECTION B: MEDICAL CARE RECOVERY ACT (MCRA) CLAIMS

1. STATUTORY AUTHORITY

Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653 (1982)

2. 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:

(a) Commanding officers and officers in charge, Naval Legal Service Command (NLSC) activities, in their areas of geographic responsibility (see Appendix 6-2 for a listing of geographic areas of responsibility);

(b) 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 paragraph 7 below. See paragraph 8 below 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).

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(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.

(a) The MTF computes the value of the care it provided on NAVJAG Form 5890/12. (See Appendix 6-3 for sample form.) Rates used to compute this value are published in the Federal Register. Appendix 6-4 contains recent inpatient and outpatient rates.

(b) Block 4 of NAVJAG Form 5890/12 requires a statement from the patient describing the circumstances of the injury or disease.

(c) 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.

(d) 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.

3. 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 paragraph 3e below.

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 pertains 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. Liabile Parties. MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in the following section.

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 (see Appendix 6-4); 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 dependant 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.

4. 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

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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 Employees 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.

5. 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.

6. 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.

7. 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.

(a) 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.

(b) 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 5890/12 or equivalent forms from other agencies and departments;

(4) inpatient summaries and outpatient records of treatment of the involved injury in non-Federal facilities;

(5) documents reflecting Federal payment for non-Federal treatment of the injured person;

Enclosure (6)

(6) calculations of the reasonable value of the Government's MCRA claim;

(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:

(a) The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(b) 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;

(c) the injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;

(d) the injured person may seek legal guidance concerning any possible claim for personal injury;

(e) 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

(f) 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.

(a) 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.

(b) An agreement that the Government's claim will be made a part 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. See Appendix 6-5.

(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 paragraphs 7b and 7c above.

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 C.F.R. Part 725, and SECNAVINST 5820.8, 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.

8. 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 claim file will be forwarded to JAG in accordance with paragraphs 7b and 7c above.

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.

9. 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.

DEPARTMENT OF THE NAVY
PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

\$ _____, 19__

For value received, I (we jointly and severally) promise to pay to the order of the Treasurer of the United States the sum of _____ dollars, with interest at the rate of _____ per annum, in monthly installments of not less than _____ dollars each, payable at _____ on or before the first day of each calendar month until such obligation is fully paid. If any such installment shall remain unpaid for a period of 10 days, the entire amount of this obligation, with interest, less payments actually made, shall thereupon become immediately due and payable at the option of the United States Attorney for the District of _____ without demand or notice, said demand and notice being hereby expressly waived.

I (we) do hereby authorize and empower the said United States Attorney, any of his assistants, or any attorney of any court of record, State or Federal, to appear for me (us) and to enter and confess judgment against me (us) for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon me (us) in any suit on this obligation; to waive any venue requirement in such suit; to release all errors that may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

I (we) hereby ratify and confirm all that said attorney may do by virtue hereof.

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17 Jan 91

TABLE OF TERRITORIAL RESPONSIBILITY FOR ASSERTION OF MCRA CLAIMS

<u>RESPONSIBLE COMMAND</u>	<u>TERRITORY</u>
NAVLEGSVCOFF NEWPORT	MAINE, VERMONT, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, AND CONNECTICUT
NAVLEGSVCOFF PHILADELPHIA	PENNSYLVANIA, NEW JERSEY, DELAWARE, NEW YORK, AND OHIO
NAVLEGSVCOFF WASHINGTON, D.C.	MARYLAND, THE DISTRICT OF COLUMBIA, AND VIRGINIA COUNTIES IN NAVAL DISTRICT WASHINGTON
NAVLEGSVCOFF NORFOLK	VIRGINIA LESS COUNTIES IN NAVAL DISTRICT WASHINGTON, WEST VIRGINIA, AND PORTIONS OF NORTH CAROLINA IN THE FORMER FIFTH NAVAL DISTRICT
NAVLEGSVCOFF CHARLESTON	NORTH CAROLINA LESS PORTIONS IN THE FORMER FIFTH NAVAL DISTRICT, SOUTH CAROLINA, GEORGIA, AND ALL OF FLORIDA EXCEPT THAT PORTION HANDLED BY PENSACOLA
NAVLEGSVCOFF PENSACOLA	LOUISIANA, ALABAMA, PENSACOLA/PANAMA CITY AREA (ZIP 324-325) OF FLORIDA, THAT PORTION OF MISSISSIPPI SOUTH OF WASHINGTON, HUMPHRIES, HOLMES, ATTALA, WINSTON AND ROXUBEE COUNTIES AND THAT PORTION OF THE GULF OF MEXICO EAST OF LONGITUDE 90 N
NAVLEGSVCOFF MEMPHIS	MISSOURI, TENNESSEE, KENTUCKY, ARKANSAS, AND THE NORTHERN PORTION OF MISSISSIPPI
NAVLEGSVCOFF GREAT LAKES	NORTH DAKOTA, SOUTH DAKOTA, NEBRASKA, MINNESOTA, MICHIGAN, IOWA, WISCONSIN, ILLINOIS, INDIANA, AND CANADA
NAVLEGSVCOFF CORPUS CHRISTI	TEXAS
NAVLEGSVCOFF SAN DIEGO	OKLAHOMA, NEW MEXICO, ARIZONA, NEVADA, CLARK CO., IMPERIAL CO., CAMP PENDLETON, MEXICO, INCLUDING W. CHIHUAHUA, DURANGO, NAYARIT, JALISCO, COLIMA, ECUADOR, PERU, CHILE, PACIFIC OCEAN AREA AND ISLANDS SOUTH OF LATITUDE 45 N, EAST OF LONGITUDE 135 W
NAVLEGSVCOFF LONG BEACH	THAT PORTION OF CALIFORNIA IN KERN, SANTA BARBARA, VENTURA, LOS ANGELES, AND ORANGE COUNTIES, AND CHINA LAKE NAVAL WEAPONS CENTER
NAVLEGSVCOFF SAN FRANCISCO	THAT PORTION OF CALIFORNIA NORTH OF THE SOUTHERN BOUNDARIES OF SAN LUIS OBISPO, KINGS, TULARE, AND INYO COUNTIES, AND ALL OF NEVADA EXCEPT CLARK COUNTY, UTAH, COLORADO, AND KANSAS
NAVLEGSVCOFF PUGET SOUND	WASHINGTON, OREGON, IDAHO, MONTANA, WYOMING, AND ALASKA
NAVLEGSVCOFF PEARL HARBOR	HAWAII, INCLUDING MIDWAY AND PACIFIC ISLAND POSSESSIONS

SERVICES FROM HAWAII, ADAK, ANTARCTICA, AND NEW ZEALAND

NAVLEGSVCOFF GUAM

GUAM, THE TRUST TERRITORY OF THE PACIFIC ISLANDS, THE
REPUBLIC OF THE MARSHALL ISLANDS, THE FEDERATED STATES OF
MICRONESIA, AND THE COMMONWEALTH OF THE NORTHERN MARIANAS

NAVLEGSVCOFF SUBIC

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

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APPENDIX 3 NAVJAG FORM 5890/12, HOSPITAL AND MEDICAL CARE 3RD PARTY LIABILITY CASE

APPENDIX 3 CONTINUED

History of Office of Management and Budget Rates

Date	Per inpatient day DOD general and Tuberculosis hos- pitals	Per inpatient day Burn Center Brooke Army Medical Cen- ter	Outpatient medical and dental facil- ity visit	Citation
1 Jun 79- 6 Apr 80	226.66	-	23.00	44 Fed. Reg. 32490
7 Apr 80- 10 May 81	254.00	-	26.00	45 Fed. Reg. 242913
11 May 81-3 Jun 82	336.00	-	33.00	46 Fed. Reg. 25738
4 Jan 82- 14 Dec 82	406.00	-	40.00	46 Fed. Reg. 63157
15 Dec 82-31 Oct 83	430.00	1,393.00	40.00	46 Fed. Reg. 55744
1 Nov 83- 30 Oct 83	391.00	1,610.00	49.00	46 Fed. Reg. 50642
1 Nov 84- 30 Sep 85	452.00	1,368.00	56.00	46 Fed. Reg. 45280
1 Oct 85- 30 Sep 86	406.00	1,501.00	62.00	46 Fed. Reg. 46373
1 Oct 86- 30 Sep 87	441.00	1,635.00	58.00	51 Fed. Reg. 35710
1 Oct 87- 30 Sep 88	466.00	1,891.00	60.00	52 Fed. Reg. 36851
1 Oct 88- 30 Sep 89	494.00	2,020.00	67.00	53 Fed. Reg. 39001
1 Oct 89- 30 Sep 90	554.00	2,042.00	67.00	54 Fed. Reg.
1 Oct 90-	603.00	2,176.00	71.00	

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Reg.
40473

55 Fed.
Reg.
40963

Appendix 6 - 4

APPENDIX 5 SAMPLE REPRESENTATION AGREEMENT MEDICAL CARE RECOVERY ACT CLAIM

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APPENDIX 5 CONTINUED

