32
Parts 700 to 799
Revised as of July 1, 2002

National Defense

Containing a codification of documents of general applicability and future effect

As of July 1, 2002

With Ancillaries

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A Special Edition of the Federal Register
# Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>v</td>
<td></td>
</tr>
</tbody>
</table>

**Title 32:**

Subtitle A—Department of Defense (Continued)

Chapter VI—Department of the Navy ............................................. 5

**Finding Aids:**

Table of CFR Titles and Chapters ................................................... 537

Alphabetical List of Agencies Appearing in the CFR ......................... 555

List of CFR Sections Affected ............................................................. 565
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 32 CFR 700.101 refers to title 32, part 700, section 101.
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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..............................................................as of January 1
Title 17 through Title 27 .................................................................as of April 1
Title 28 through Title 41 .................................................................as of July 1
Title 42 through Title 50 .............................................................as of October 1

The appropriate revision date is printed on the cover of each volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 2002.
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The current regulations issued by the Department of Defense appear in the volumes containing parts 1–189 and parts 190–399; those issued by the Department of the Army appear in the volumes containing parts 400–629 and parts 630–699; those issued by the Department of the Navy appear in the volume containing parts 700–799, and those issued by the Department of the Air Force, Defense Logistics Agency, Selective Service System, National Counterintelligence Center, Central Intelligence Agency, Information Security Oversight Office, National Security Council, Office of Science and Technology Policy, Office for Micronesian Status Negotiations, and Office of the Vice President of the United States appear in the volume containing parts 800 to end.
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Title 32—National Defense

(This book contains parts 700 to 799)

SUBTITLE A—DEPARTMENT OF DEFENSE (CONTINUED)

CHAPTER VI—Department of the Navy .................................. 700
Subtitle A—Department of Defense (Continued)
CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER A—UNITED STATES NAVY REGULATIONS AND OFFICIAL RECORDS

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>700</td>
<td>United States Navy regulations and official records</td>
</tr>
<tr>
<td>701</td>
<td>Availability of Department of the Navy records and publication of Department of the Navy documents affecting the public</td>
</tr>
<tr>
<td>705</td>
<td>Public affairs regulations</td>
</tr>
</tbody>
</table>

SUBCHAPTER B—NAVIGATION

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>706</td>
<td>Certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972</td>
</tr>
<tr>
<td>707</td>
<td>Special rules with respect to additional station and signal lights</td>
</tr>
</tbody>
</table>

SUBCHAPTER C—PERSONNEL

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>716</td>
<td>Death gratuity</td>
</tr>
<tr>
<td>718</td>
<td>Missing Persons Act</td>
</tr>
<tr>
<td>719</td>
<td>Regulations supplementing the manual for courts-martial</td>
</tr>
<tr>
<td>720</td>
<td>Delivery of personnel; service of process and subpoenas; production of official records</td>
</tr>
<tr>
<td>721–722</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>723</td>
<td>Board for Correction of Naval Records</td>
</tr>
<tr>
<td>724</td>
<td>Naval Discharge Review Board</td>
</tr>
<tr>
<td>725</td>
<td>Release of official information for litigation purposes and testimony by Department of the Navy personnel</td>
</tr>
<tr>
<td>726</td>
<td>Payments of amounts due mentally incompetent members of the Naval service</td>
</tr>
<tr>
<td>727</td>
<td>Legal assistance</td>
</tr>
<tr>
<td>728</td>
<td>Medical and dental care for eligible persons at Navy medical department facilities</td>
</tr>
<tr>
<td>732</td>
<td>Nonnaval medical and dental care</td>
</tr>
</tbody>
</table>
32 CFR Ch. VI (7–1–02 Edition)

Part | Page
--- | ---
733 | Assistance to and support of dependents; paternity complaints ............................................................ 362
734 | Garnishment of pay of Naval military and civilian personnel for collection of child support and alimony .................................................................... 368
735 | Reporting births and deaths in cooperation with other agencies .............................................................. 370

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

736 | Disposition of property ........................................... 372
744 | Policies and procedures for the protection of proprietary rights in technical information proposed for release to foreign governments .................................................. 376
746 | Licensing of government inventions in the custody of the Department of the Navy ........................................... 377

SUBCHAPTER E—CLAIMS

750 | General claims regulations ..................................... 382
751 | Personnel claims regulations .................................. 407
752 | Admiralty claims .................................................... 436
755 | Claims for injuries to property under Article 139 of the Uniform Code of Military Justice ................................. 439
756 | Nonappropriated-fund claims regulations .................. 441
757 | Affirmative claims regulations .................................. 444

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

761 | Naval Defensive Sea Areas; Naval Airspace Reservations, areas under Navy administration, and the Trust Territory of the Pacific Islands .......... 452
762 | [Reserved]
763 | Rules governing public access .................................. 464

SUBCHAPTER G—MISCELLANEOUS RULES

765 | Rules applicable to the public ..................................... 467
766 | Use of Department of the Navy aviation facilities by civil aircraft .......................................................... 471
767 | Application guidelines for archeological research permits on ship and aircraft wrecks under the jurisdiction of the Department of the Navy .......... 481
768–769 | [Reserved]
770 | Rules limiting public access to particular installations ................................................................. 485
771–774 | [Reserved]
775 | Procedures for implementing the National Environmental Policy Act .................................................. 496
### Department of the Navy, DoD

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>776</td>
<td>Professional conduct of attorneys practicing under the cognizance and supervision of the Judge Advocate General</td>
</tr>
<tr>
<td>777–799</td>
<td>[Reserved]</td>
</tr>
</tbody>
</table>

**CROSS REFERENCES:**
- Panama Canal: See 35 CFR chapter I.
- National Oceanic and Atmospheric Administration, Department of Commerce: See 15 CFR chapter IX.
- Coast Guard, Department of Transportation: See 33 CFR chapter I; 46 CFR chapter I.
- Office of the Secretary of Defense: See 32 CFR chapter I.
- Department of the Army: See 32 CFR chapter V.
- Navigation and Navigable Waters (Anchorage Bridge, Danger Zone, Navigation, and Oil Pollution Regulations, etc.): See 33 CFR chapters I and II.
- Selective Service System: See 32 CFR chapter XVI.
- Department of Veterans Affairs: See 38 CFR chapter I.
SUBCHAPTER A—UNITED STATES NAVY REGULATIONS AND OFFICIAL RECORDS

PART 700—UNITED STATES NAVY REGULATIONS AND OFFICIAL RECORDS

SUBPART A—NAVY REGULATIONS

Sec. 700.101 Origin and history of United States Navy Regulations.
700.102 Statutory authority for issuance of United States Navy Regulations.
700.103 Purpose and effect of United States Navy Regulations.
700.104 Statutory authority for prescription of other regulations.
700.105 Issuance of directives by other officers and officials.
700.106 Control of administrative requirements.
700.107 Maintenance of Navy Regulations.

SUBPART B—THE DEPARTMENT OF THE NAVY

700.201 Origin and authority of the Department of the Navy.
700.202 Mission of the Department of the Navy.
700.203 Composition.
700.204 The principal elements of the Department of the Navy.

SUBPART C—THE SECRETARY OF THE NAVY

700.301 Responsibilities of the Secretary of the Navy.
700.302 Responsibilities within the Department of the Navy.
700.303 Succession.
700.304 Recommendations to Congress.
700.305 Assignment of functions.
700.306 Assignment of duty and titles.
700.307 Powers with respect to the Coast Guard.

THE OFFICE OF THE SECRETARY OF THE NAVY

700.310 Composition.
700.311 Sole responsibilities.
700.312 Authority over organizational matters.

THE OFFICE OF THE SECRETARY OF THE NAVY/ THE CIVILIAN EXECUTIVE ASSISTANTS

700.320 The Civilian Executive Assistants.
700.321 The Under Secretary of the Navy.
700.322 Assistant Secretaries of the Navy; statutory authorization.
700.323 The Assistant Secretary of the Navy (Financial Management).
700.324 The Assistant Secretary of the Navy (Manpower and Reserve Affairs).
700.325 The Assistant Secretary of the Navy (Installations and Environment).
700.326 The Assistant Secretary of the Navy (Research, Development and Acquisition).
700.327 The General Counsel of the Navy.

THE OFFICE THE SECRETARY OF THE NAVY/ THE STAFF ASSISTANTS

700.330 The Staff Assistants.
700.331 The Judge Advocate General.
700.332 The Naval Inspector General.
700.333 The Chief of Naval Research.
700.334 The Chief of Information.
700.335 The Chief of Legislative Affairs.
700.336 The Director, Office of Program Appraisal.
700.337 The Auditor General.

SUBPART D—THE CHIEF OF NAVAL OPERATIONS

700.401 Precedence.
700.402 Succession.
700.403 Statutory authority and responsibility of the Chief of Naval Operations.
700.404 Statutory authority and responsibility of the Office of the Chief of Naval Operations.
700.405 Delegated authority and responsibility.
700.406 Naval Vessel Register, classification of naval craft, and status of ships and service craft.

SUBPART E—THE COMMANDANT OF THE MARINE CORPS

700.501 Precedence.
700.502 Succession.
700.503 Statutory authority and responsibility of the Commandant of the Marine Corps.
700.504 Statutory authority and responsibility of the Headquarters, Marine Corps.
700.505 Delegated authority and responsibility.

SUBPART F—THE UNITED STATES COAST GUARD (WHEN OPERATING AS A SERVICE OF THE NAVY)

700.601 Relationship and operation as a service in the Navy.
700.602 The Commandant of the Coast Guard.
700.603 Duties and responsibilities.
Pt. 700

SUBPART G—COMMANDERS IN CHIEF AND OTHER COMMANDERS

TITLES AND DUTIES OF COMMANDERS

700.701 Titles of commanders.
700.702 Responsibility and authority of commanders.
700.703 To announce assumption of command.
700.704 Readiness.
700.705 Observance of international law.
700.706 Keeping immediate superiors informed.

STAFFS OF COMMANDERS

700.710 Organization of a staff.
700.711 Authority and responsibilities of officers of a staff.

ADMINISTRATION AND DISCIPLINE

700.720 Administration and discipline: Staff embarked.
700.721 Administration and discipline: Staff based ashore.
700.722 Administration and discipline: Staff unassigned to an administrative command.
700.723 Administration and discipline: Separate and detached command.

SUBPART H—THE COMMANDING OFFICER

COMMANDING OFFICERS IN GENERAL

700.801 Applicability.
700.802 Responsibility.
700.803 Organization of commands.
700.804 Persons found under incriminating circumstances.
700.810 Rules for visits.
700.811 Dealers, tradesmen, and agents.
700.812 Postal matters.
700.815 Deaths.
700.816 The American National Red Cross.
700.819 Records.
700.822 Delivery of personnel to civil authorities and service of subpoena or other process.
700.826 Physical security.
700.827 Effectiveness for service.
700.828 Search by foreign authorities.
700.829 Environment pollution.
700.834 Care of ships, aircraft, vehicles and their equipment.
700.835 Work, facilities, supplies, or services for other Government departments, State or local governments, foreign governments, private parties and morale, welfare, and recreational activities.

COMMANDING OFFICERS Afloat

700.840 Unauthorized persons on board.
700.841 Control of passengers.
700.842 Authority over passengers.
700.844 Marriages on board.

32 CFR Ch. VI (7–1–02 Edition)

700.845 Maintenance of logs.
700.846 Status of logs.
700.847 Responsibility of a master of an in-service ship of the Military Sealift Command.
700.848 Relations with merchant seamen.
700.855 Status of boats.
700.856 Pilotage.
700.857 Safe navigation and regulations governing operation of ships and aircraft.
700.859 Quarantine.
700.860 Customs and immigration inspections.

SPECIAL CIRCUMSTANCES/Ships in Naval Stations and Shipyards

700.871 Responsibility for safety of ships and craft at a naval station or shipyard.
700.872 Ships and craft in drydock.
700.873 Inspection incident to commissioning of ships.

SPECIAL CIRCUMSTANCES/Prospective Commanding Officers

700.880 Duties of the prospective commanding officer of a ship.

SUBPART I—THE SENIOR OFFICER PRESENT

CONTENTS

700.901 The senior officer present.
700.902 Eligibility for command at sea.
700.903 Authority and responsibility.
700.904 Authority of senior officer of the Marine Corps present.
700.922 Shore patrol.
700.923 Precautions for health.
700.924 Medical or dental aid to persons not in the naval service.
700.934 Exercise of power of consul.
700.939 Granting of asylum and temporary refuge.

SUBPART J—PRECEDENCE, AUTHORITY AND COMMAND AUTHORITY

700.1020 Exercise of authority.
700.1026 Authority of an officer who succeeds to command.
700.1038 Authority of a sentry.

DETAIL TO DUTY

700.1032 Orders to active service.
700.1033 Commander of a task force.
700.1034 Command of a naval base.
700.1055 Command of a naval shipyard.
700.1056 Command of a ship.
700.1057 Command of an air activity.
700.1058 Command of a submarine.
700.1059 Command of a staff corps activity.

SUBPART K—GENERAL REGULATIONS

STANDARDS OF CONDUCT

700.1101 Demand for court-martial.
700.1113 Endorsement of commercial product or process.

700.1120 Personal privacy and rights of individuals regarding their personal records.

700.1121 Disclosure, publication and security of official information.

700.1126 Correction of naval records.

700.1127 Control of official records.

700.1128 Official records in civil courts.

700.1129 Rules for preventing collisions, afloat and in the air.

700.1138 Responsibilities concerning marijuana, narcotics, and other controlled substances.

700.1139 Rules for preventing collisions, afloat and in the air.

700.1162 Alcoholic beverages.

700.1165 Fraternization prohibited.

700.1166 Sexual harassment.

700.1167 Supremacist activity.

700.1168 Alcoholic beverages.

700.1169 Fraternization prohibited.

700.1170 Sexual harassment.

700.1171 Supremacist activity.

700.1172 Alcoholic beverages.

700.1173 Fraternization prohibited.

700.1174 Sexual harassment.

700.1175 Supremacist activity.

700.1176 Alcoholic beverages.

700.1177 Fraternization prohibited.

700.1178 Sexual harassment.

700.1179 Supremacist activity.

700.1180 Alcoholic beverages.

700.1181 Fraternization prohibited.

700.1182 Sexual harassment.

700.1183 Supremacist activity.
§ 700.105 Issuance of directives by other officers and officials.

Responsible officers and officials of the Department of the Navy may issue, or cause to be issued, directives concerning matters over which they exercise command, control or supervision, which do not conflict with, alter or amend these regulations.

§ 700.106 Control of administrative requirements.

(a) Directives will be issued with due regard for the imposition of workload resulting therefrom and benefits or advantages to be gained. Issuance of new directives will be in accordance with the following:

1. Directives which implement or amplify directives from higher authority will not be issued unless absolutely essential.

2. Administrative reporting requirements will not be imposed unless the expected value of the information to be gained is significantly greater than the cumulative burden imposed.

(b) Each officer or official issuing a directive or imposing a reporting requirement will periodically, in accordance with instructions to be issued by appropriate authority, review such directive or report with a view toward the following:

1. Reduction of directives by cancellation or consolidation; or

2. Reduction of reporting requirements by elimination of the report, reduction in the frequency of the report, or combination with other reports.

(c) When issuance of a directive or a tasking will result in imposition of additional administrative requirements on commands not within the chain of command or the issuing authority, the first common superior of the commands affected by the requirement must concur in the issuance.

§ 700.107 Maintenance of Navy Regulations.

(a) The Chief of Naval Operations is responsible for maintaining Navy Regulations, and for ensuring that Navy Regulations conforms to the current needs of the Department of the Navy. When any person in the Department of the Navy deems it advisable that additions, changes or deletions should be made to Navy Regulations, he or she shall forward a draft of the proposed addition, change or deletion, with a statement of the reasons therefor, to the Chief of Naval Operations via the chain of command. The Chief of Naval Operations shall endeavor to obtain the concurrence of the Commandant of the Marine Corps, the Judge Advocate General and appropriate offices and commands. Unresolved issues concerning such additions, changes or deletions shall be forwarded to the Secretary of the Navy for appropriate action. Any additions, changes or deletions to the U.S. Navy Regulations must be approved by the Secretary of the Navy.

(b) Changes to Navy Regulations will be numbered consecutively and issued as page changes. Advance changes may be used when required; these will be numbered consecutively and incorporated in page changes at frequent intervals.

SUBPART B—THE DEPARTMENT OF THE NAVY

§ 700.201 Origin and authority of the Department of the Navy.

(a) The naval affairs of the country began with the war for independence, the American Revolution. On 13 October 1775, Congress passed legislation for ships. This, in effect, created the continental Navy. Two battalions of Marines were authorized on 10 November 1775. Under the Constitution, the First Congress on 7 August 1789 assigned responsibility for the conduct of naval affairs to the War Department. On 30 April 1798, the Congress established a separate Department of the Navy with the Secretary of the Navy as its chief officer. On 11 July 1798, the United States Marine Corps was established as a separate service, and in 1834 was made a part of the Department of the Navy.

(b) The National Security Act of 1947, as amended, is the fundamental law governing the position of the Department of the Navy in the organization for national defense. In 1949, the Act was amended to establish the Department of Defense as an Executive Department, and to establish the Departments of the Army, Navy and Air
Force (formerly established as Executive Departments by the 1947 Act) as military departments within the Department of Defense.

(c) The Goldwater-Nichols Department of Defense Reorganization Act of 1986 further defined the roles of the military departments within the Department of Defense. In addition to establishing the office of Vice Chairman of the Joint Chiefs of Staff, and further emphasizing the operational chain of command, the Act provided detailed statements of the roles of the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, and their respective principal assistants.

(d) The responsibilities and authority of the Department of the Navy are vested in the Secretary of the Navy, and are subject to reassignment and delegation by the Secretary. The Secretary is bound by the provisions of law, the direction of the President and the Secretary of Defense and, along with all persons in charge of Government agencies, the regulations of certain non-defense agencies addressing their respective areas of functional responsibility.

§ 700.202 Mission of the Department of the Navy.

(a) The Navy, within the Department of the Navy, shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned, and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) The Navy shall develop aircraft, weapons, tactics, technique, organization and equipment of naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force and the Navy.

(c) The Marine Corps, within the Department of the Navy, shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct. However, these additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

(d) The Marine Corps shall develop, in coordination with the Army and the Air Force, those phases of amphibious operations that pertain to the tactics, technique and equipment used by landing forces.

(e) The Marine Corps is responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

§ 700.203 Composition.

(a) The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction and control of the Secretary of Defense.

(b) The Department of the Navy is composed of the following:

1. The Office of the Secretary of the Navy;
2. The Office of the Chief of Naval Operations;
3. The Headquarters, Marine Corps;
4. The entire operating forces, including naval aviation, of the Navy and of the Marine Corps, and the reserve components of those operating forces;
5. All field activities, headquarters, forces, bases, installations, activities and functions under the control or supervision of the Secretary of the Navy; and
6. The Coast Guard when it is operating as a service in the Navy.

§ 700.204 The principal elements of the Department of the Navy.

(a) The Department of the Navy consists of three elements; the Navy Department, the Operating Forces of the Navy and the Marine Corps, and the Shore Establishment.
§ 700.301 Responsibilities of the Secretary of the Navy.

The Secretary of the Navy is responsible to the Secretary of Defense for:
(a) The functioning and efficiency of the Department of the Navy;
(b) The formulation of policies and programs by the Department of the Navy that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;
(c) The effective and timely implementation of policy, program and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Navy;
(d) Carrying out the functions of the Department of the Navy so as to fulfill (to the maximum extent practicable) the current and future operational requirement of the unified and specified combatant commands;
(e) Effective cooperation and coordination between the Department of the Navy and the other military departments and agencies of the Department of Defense to provide for more effective, efficient and economical administration and eliminate duplication;
(f) The presentation and justification of the position of the Department of the Navy on the plans, programs and policies of the Department of Defense;
(g) The effective supervision and control of the intelligence activities of the Department of the Navy; and
(h) Such other activities as may be prescribed by law or by the President or Secretary of Defense.

§ 700.302 Responsibilities within the Department of the Navy.

The Secretary is the head of the Department of the Navy. The Secretary is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Navy, including the following functions:
(a) Recruiting;
(b) Organizing;
(c) Supplying;
(d) Equipping (including research and development);
(e) Training;
(f) Servicing;
(g) Mobilizing;
(h) Demobilizing;
(i) Administering (including the morale and welfare of personnel);
(j) Maintaining;
(k) The construction, outfitting and repair of military equipment; and
(l) The construction, maintenance and repair of buildings, and interests in real property necessary to carry out the responsibilities specified in this article.

§ 700.303 Succession.

If the Secretary of the Navy dies, resigns, is removed from office, is absent or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President directs another person to perform those duties or until the absence or disability ceases:
(a) The Under Secretary of the Navy;
(b) The Assistant Secretaries of the Navy, in the order prescribed by the President;
(c) The Chief of Naval Operations;
§ 700.304 Recommendations to Congress.

After first informing the Secretary of Defense, the Secretary of the Navy may make such recommendations to Congress relating to the Department of Defense as he or she considers appropriate.

§ 700.305 Assignment of functions.

The Secretary of the Navy may assign such functions, powers, and duties as he or she considers appropriate to the Under Secretary of the Navy and to the Assistant Secretaries of the Navy. Officers of the Navy and the Marine Corps shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary or any Assistant Secretary.

§ 700.306 Assignment of duty and titles.

The Secretary of the Navy may:
(a) Assign, detail and prescribe the duties of members of the Navy and Marine Corps and civilian personnel of the Department of the Navy; and
(b) Change the title of any officer or activity of the Department of the Navy not prescribed by law.

§ 700.307 Powers with respect to the Coast Guard.

Whenever the Coast Guard operates as a service in the Navy under Section 3 of Title 14, United States Code, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of Transportation has when the Coast Guard is not so operating.

§ 700.310 Composition.

The function of the Office of the Secretary of the Navy is to assist the Secretary in carrying out his or her responsibilities. The Office of the Secretary of the Navy is composed of the following:
(a) The Civilian Executive Assistants:
(1) The Under Secretary of the Navy;
(2) The Assistant Secretary of the Navy (Financial Management);
(b) The Staff Assistants:
(1) The Judge Advocate General of the Navy;
(2) The Naval Inspector General;
(3) The Chief of Naval Research;
(4) The Chief of Information;
(5) The Chief of Legislative Affairs;
(6) The Auditor General of the Navy;
(7) The Director, Office of Program Appraisal; and
(8) Such other officers and officials as may be established by law or as the Secretary of the Navy may establish or designate.

§ 700.311 Sole responsibilities.

(a) The Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations and the Headquarters, Marine Corps, for the following functions:
(1) Acquisition;
(2) Auditing;
(3) Comptroller (including financial management);
(4) Information management;
(5) Inspector general;
(6) Legislative affairs;
(7) Public affairs;
(8) Research and development, except for military requirements and operational test and evaluation, which are the responsibilities of the Office of the Chief of Naval Operations and the Headquarters Marine Corps.
(b) The following offices within the Office of the Secretary of the Navy are designated to conduct the functions specified in paragraph (a) of this section. No office or other entity may be established or designated within the Office of the Chief of Naval Operations or the Headquarters, Marine Corps, to conduct any of the functions specified in paragraph (a) of this section, except...
§ 700.312 Authority over organizational matters.

Subject to the approval or guidance of the Secretary of the Navy, the Civilian Executive Assistants, the Chief of Naval Operations, the Commandant of the Marine Corps and the Staff Assistants are individually authorized to organize, assign and reassign responsibilities within their respective commands or offices, including the establishment and disestablishment of such component organizations as may be necessary, subject to the following:

(a) The authority to disestablish may not be exercised with respect to any organizational component of the Department established by law.

(b) The Secretary retains the authority to approve the establishment and disestablishment of shore activities.

§ 700.320 The Civilian Executive Assistants.

(a) The Civilian Executive Assistants, as identified in §700.310, are assigned department-wide responsibilities essential to the efficient administration of the Department of the Navy.

(b) Each Civilian Executive Assistant, within his or her assigned area of responsibility, is the principal civilian
advisor and assistant to the Secretary on the administration of the affairs of the Department of the Navy. The Civilian Executive Assistants carry out their duties with the professional assistance of the Office of the Chief of Naval Operations and Headquarters, Marine Corps, as presided over by the Chief of Naval Operations and Commandant of the Marine Corps, respectively.

(c) The Civilian Executive Assistants are authorized and directed to act for the Secretary within their assigned areas of responsibility.

§ 700.321 The Under Secretary of the Navy.

(a) The Under Secretary of the Navy shall perform such duties and exercise such powers as the Secretary of the Navy shall prescribe.

(b) The Under Secretary of the Navy is designated as the deputy and principal assistant to the Secretary of the Navy. The Under Secretary of the Navy acts with full authority of the Secretary in the general management of the Department of the Navy and supervision of offices, organizations and functions as assigned by the Secretary.

§ 700.322 Assistant Secretaries of the Navy; statutory authorization.

There are four Assistant Secretaries of the Navy. The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe in accordance with law.

§ 700.323 The Assistant Secretary of the Navy (Financial Management).

The Assistant Secretary of the Navy (Financial Management) is the Comptroller of the Navy, and is responsible for all matters related to the financial management of the Department of the Navy, including:

(a) Budgeting;

(b) Accounting;

(c) Disbursing;

(d) Financing;

(e) Internal review;

(f) Progress and statistical reporting; and

(g) Supervision of offices and organizations as assigned by the Secretary of the Navy.

§ 700.324 The Assistant Secretary of the Navy (Manpower and Reserve Affairs).

The Assistant Secretary of the Navy (Manpower and Reserve Affairs) is responsible for:

(a) The overall supervision of manpower and reserve component affairs of the Department of the Navy, including policy and administration of affairs related to military (active and inactive) and civilian personnel; and

(b) Supervision of offices and organizations as assigned by the Secretary, specifically the Naval Council of Personnel Boards and the Board for Correction of Naval Records.

§ 700.325 The Assistant Secretary of the Navy (Installations and Environment).

The Assistant Secretary of the Navy (Installations and Environment) is responsible for:

(a) Policy relating to Navy installations, facilities, environment, safety, shore resources management and quality improvement;

(b) Development, implementation and evaluation of military construction, facilities management and engineering, strategic homeporting, housing, utilities, and base utilization issues;

(c) Environmental policy, safety, occupational health, and Marine Corps and Navy environmental affairs, including environmental protection, restoration, compliance and legislation, natural resource programs, hazardous material/waste minimization, plastics reduction and control, afloat environmental issues, state and federal agency and environmental organization coordination, and the National Environmental Policy Act; and

(d) Advising on fiscal resources related to shore appropriations.

§ 700.326 The Assistant Secretary of the Navy (Research, Development and Acquisition).

The Assistant Secretary of the Navy (Research, Development and Acquisition) is responsible for:

(a) Research, development and acquisition, except for military requirements and operational test and evaluation;
§ 700.327 The General Counsel of the Navy.

(a) The General Counsel is head of the Office of the General Counsel and is responsible for providing legal advice, counsel, and guidance within the Department of the Navy on the following matters:

(1) Business and commercial law, environmental law, civilian personnel law, real and personal property law and patent law;

(2) Procurement of services, including the fiscal, budgetary and accounting aspects, for the Navy and Marine Corps;

(3) Litigation involving the issues enumerated above; and

(4) Other matters as directed by the Secretary of the Navy.

(b) The General Counsel maintains a close working relationship with the Judge Advocate General on all matters of common interest.

§ 700.330 The Staff Assistants.

The Staff Assistants, as identified in §700.310, assist the Secretary of the Navy, or one or more of the Civilian Executive Assistants, in the administration of the Navy. They supervise all functions and activities internal to their offices and assigned field activities, if any, and are responsible to the Secretary or to one of the Civilian Executive Assistants for the utilization of resources by, and the operating efficiency of, all activities under their supervision or command. Their duties are as provided by law or as assigned by the Secretary.

§ 700.331 The Judge Advocate General.

(a) The Judge Advocate General of the Navy commands the Office of the Judge Advocate General and is the Chief of the Judge Advocate General’s Corps. The Judge Advocate General:

(1) Provides or supervises the provision of all legal advice and related services throughout the Department of the Navy, except for the advice and services provided by the General Counsel;

(2) Performs the functions required or authorized by law;

(3) Provides legal and policy advice to the Secretary of the Navy on military justice, administrative law, claims, operational and international law, and litigation involving these issues; and

(4) Acts on other matters as directed by the Secretary.

(b) The Judge Advocate General maintains a close working relationship with the General Counsel on all matters of common interest.

§ 700.332 The Naval Inspector General.

(a) Under the direction of the Secretary of the Navy, the Naval Inspector General:

(1) Inspects, investigates or inquires into any and all matters of importance to the Department of the Navy with particular emphasis on readiness, including, but not limited to effectiveness, efficiency, economy and integrity;

(2) Exercises broad supervision, general guidance and coordination for all Department of the Navy inspection, evaluation and appraisal organizations to minimize duplication of efforts and the number of necessary inspections;

(3) Through analysis of available information, identifies areas of weakness in the Department of the Navy as they relate to matters of integrity and efficiency and provides appropriate recommendations for improvement. To accomplish these functions, the Inspector General shall have unrestricted access, by any means, to any information maintained by any naval activity deemed necessary, unless specifically restricted by the Secretary of the Navy;
(4) Receives allegations of inefficiency, misconduct, impropriety, mismanagement or violations of law, and investigates or refers such matters for investigation, as is appropriate; and

(5) Serves as principal advisor to the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps on all inspection and investigation matters.

(b) In addition, the Naval Inspector General has various functions, including (but not limited to):

(1) Providing of an alternative to the normal chain of command channel for receipt of complaints of personnel;

(2) Serving as the official to whom employees may complain without fear of reprisal;

(3) Cooperating with the Inspector General, Department of Defense;

(4) Providing oversight of intelligence and special activities;

(5) Serving as the Department of the Navy coordinator for fraud, waste and efficiency matters;

(6) Serving as Navy Program Manager and focal point for the Department of the Navy and Navy Hotline programs; and

(7) Designation as the centralized organization within the Department of Defense to monitor and ensure the coordination of criminal, civil, administrative and contractual remedies for all significant cases, including investigation of fraud or corruption related to procurement activities affecting the Department of the Navy.

§ 700.333 The Chief of Naval Research.

(a) The Chief of Naval Research shall command the Office of the Chief of Naval Research, the Office of Naval Research, the Office of Naval Technology and assigned shore activities.

(b) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to:

(1) The encouragement, promotion, planning, initiation and coordination of naval research;

(2) The conduct of naval research in augmentation of and in conjunction with the research and development conducted by other agencies and offices of the Department of the Navy; and

(3) The supervision, administration and control of activities within or for the Department of the Navy relating to patents, inventions, trademarks, copyrights and royalty payments, and matters connected therewith.

§ 700.334 The Chief of Information.

(a) The Chief of Information is the direct representative of the Secretary of the Navy in all public affairs and internal relations matters. The Chief of Information is authorized to implement Navy public affairs and internal relations policies and to coordinate those Navy and Marine Corps activities of mutual interest.

(b) The Chief of Naval Operations and the Commandant of the Marine Corps are delegated responsibilities for:

(1) Conduct of their respective services’ internal information programs;

(2) Conduct of their respective services’ community relations programs; and

(3) Implementing the Secretary of the Navy’s public affairs policy and directives.

(c) The Chief of Information will report to the Chief of Naval Operations for support of the responsibilities outlined in paragraph (b) of this section, and will provide such staff support as the Chief of Naval Operations considers necessary to perform those duties and responsibilities.

(d) The Deputy Chief of Information for Marine Corps Matters may report directly to the Secretary regarding public information matters related solely to the Marine Corps. The Deputy Chief will promptly inform the Chief of Information regarding the substance of all independent contacts with the Secretary pertaining to Marine Corps matters. The Deputy Chief of Information for Marine Corps Matters will report to the Commandant of the Marine Corps for support of the responsibilities outlined in paragraph (b) of this section, and will provide such staff support as the Commandant considers necessary to perform those duties and responsibilities.

§ 700.335 The Chief of Legislative Affairs.

The mission of the Chief of Legislative Affairs is to:

(a) Plan, develop and coordinate relationships between representatives of
§ 700.336 The Director, Office of Program Appraisal.

(a) The Director, Office of Program Appraisal, directs, under the immediate supervision of the Secretary of the Navy, the Office of Program Appraisal.

(b) The Office of Program Appraisal will assist the Secretary in assuring that existing and proposed Navy and Marine Corps programs provide the optimum means of achieving the objectives of the Department of the Navy.

§ 700.337 The Auditor General.

(a) The Auditor General of the Navy is responsible for:

1. Serving as Director of the Naval Audit Service; and

2. Developing and implementing Navy internal audit policies, programs and procedures within the framework of Government auditing standards.

(b) The Auditor General can provide information and may provide assistance and support to the Chief of Naval Operations and the Commandant of the Marine Corps to enable them to discharge their duties and responsibilities.

SUBPART D—THE CHIEF OF NAVAL OPERATIONS

§ 700.401 Precedence.

The Chief of Naval Operations, while so serving, has the grade of admiral. In the performance of duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service, except an officer of the naval service who is serving as Chairman or Vice Chairman of the Joint Chiefs of Staff.

§ 700.402 Succession.

When there is a vacancy in the position of Chief of Naval Operations, or during the absence or disability of the Chief of Naval Operations:

(a) The Vice Chief of Naval Operations shall perform the duties of the Chief of Naval Operations until a successor is appointed or the absence or disability ceases.

(b) If there is a vacancy in the position of Vice Chief of Naval Operations or the Vice Chief of Naval Operations is absent or disabled, unless the President directs otherwise, the most senior officer of the Navy in the Office of the Chief of Naval Operations who is not absent or disabled and who is not restricted in the performance of duty shall perform the duties of the Chief of Naval Operations until a successor to the Chief of Naval Operations or the Vice Chief of Naval Operations is appointed or until the absence or disability of the Chief of Naval Operations ceases, whichever occurs first.

§ 700.403 Statutory authority and responsibility of the Chief of Naval Operations.

(a) Except as otherwise prescribed by law, and subject to the statutory authority of the Secretary of the Navy to assign functions, powers and duties, the Chief of Naval Operations performs duties under the authority, direction and control of the Secretary of the Navy and is directly responsible to the Secretary.

(b) Subject to the authority, direction and control of the Secretary of the Navy, the Chief of Naval Operations shall:

1. Preside over the Office of the Chief of Naval Operations;

2. Transmit the plans and recommendations of the Office of the Chief of Naval Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;

3. After approval of the plans or recommendations of the Office of the
Chief of Naval Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) Exercise supervision, consistent with the statutory authority assigned to commanders of unified or specified combatant commands, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;

(5) Perform the duties prescribed for a member of the Armed Forces Policy Council and other statutory duties; and

(6) Perform such other military duties, not otherwise assigned by law, as are assigned to the Chief of Naval Operations by the President, the Secretary of Defense or the Secretary of the Navy.

c) The Chief of Naval Operations shall also perform the statutory duties prescribed for a member of the Joint Chiefs of Staff.

(1) To the extent that such action does not impair the independence of the Chief of Naval Operations in the performance of duties as a member of the Joint Chiefs of Staff, the Chief of Naval Operations shall inform the Secretary of the Navy regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(2) Subject to the authority, direction and control of the Secretary of Defense, the Chief of Naval Operations shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary of the Navy.

§ 700.405 Delegated authority and responsibility.

(a) The Chief of Naval Operations is the principal naval advisor and naval executive to the Secretary of the Navy on the conduct of the naval activities of the Department of the Navy.

(b)(1) Internal to the administration of the Department of the Navy, the Chief of Naval Operations shall be responsible to the Secretary of the Navy for the Utilization of resources by, and the operating efficiency of, the Office of the Chief of Naval Operations, the Operating Forces of the Navy and assigned shore activities.

§ 700.404 Statutory authority and responsibility of the Office of the Chief of Naval Operations.

(a) The Office of the Chief of Naval Operations shall furnish professional assistance to the Secretary, the Under Secretary and the Assistant Secretaries of the Navy, and to the Chief of Naval Operations. Under the authority, direction and control of the Secretary of the Navy, the Office of the Chief of Naval Operations shall:

(1) Subject to §700.311(a), prepare for such employment of the Navy, and for such recruiting, organizing, supplying, equipping, (including those aspects of research and development assigned by the Secretary of the Navy), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Navy, as will assist in the execution of any power, duty or function of the Secretary or the Chief of Naval Operations;

(2) Investigate and report upon the efficiency of the Navy and its preparation to support military operations by combatant commands;

(3) Prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) As directed by the Secretary or the Chief of Naval Operations, coordinate the action of organizations of the Navy; and

(5) Perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(b) Except as otherwise specifically prescribed by law, the Office of the Chief of Naval Operations shall be organized in such manner, and its members shall perform such duties and have such titles as the Secretary may prescribe.
(c) In addition, the Chief of Naval Operations has the following specific responsibilities:

(1) To organize, train, equip, prepare and maintain the readiness of Navy forces, including those for assignment to unified or specified commands, for the performance of military missions as directed by the President, the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

(2) To determine current and future requirements of the Navy (less Fleet Marine Forces and other assigned Marine Corps forces) for manpower, material, weapons, facilities and services, including the determination of quantities, military performance requirements and times, places and priorities of need;

(3) To exercise leadership in maintaining a high degree of competence among Navy officer, enlisted and civilian personnel in necessary fields of specialization, through education training and equal opportunities for personal advancement, and maintaining the morale and motivation of Navy personnel and the prestige of a Navy career;

(4) To plan and provide health care for personnel of the naval service, their dependents and eligible beneficiaries;

(5) To direct the organization, administration, training and support of the Naval Reserve;

(6) To inspect and investigate components of the Department of the Navy to determine and maintain efficiency, discipline, readiness, effectiveness and economy, except in those areas where such responsibility rests with the Commandant of the Marine Corps;

(7) To determine the requirements of naval forces and activities, to include requirements for research, development, test, and evaluation to plan and provide for the conduct of test and evaluation which are adequate and responsive to long range objectives, immediate requirements, and fiscal limitations; and to provide assistance to the Assistant Secretary of the Navy (Research, Development and Acquisition) in the review and appraisal of the overall Navy program to ensure fulfillment of stated requirements;

(8) To formulate Navy strategic plans and policies and participate in the formulation of Joint and combined strategic plans and policies and related command relationships; and

(9) Subject to guidance from the Assistant Secretary of the Navy (Financial Management), to formulate budget proposals for the Office of the Chief of Naval Operations, the Operating Forces of the Navy and assigned shore activities, and other activities and programs as assigned.

d) The Chief of Naval Operations, under the direction of the Secretary of the Navy, shall exercise overall authority throughout the Department of the Navy in matters related to:

(1) The effectiveness of the support of the Operating Forces of the Navy and assigned shore activities;

(2) The coordination and direction of assigned Navy wide programs and functions, including those assigned by higher authority;

(3) Matters essential to naval military administration, such as:

(i) Security;

(ii) Intelligence;

(iii) Discipline;

(iv) Communications; and

(v) Matters related to the customs and traditions of the naval service;

(4) Except for those areas wherein such responsibility rests with the Commandant of the Marine Corps, the coordination of activities of the Department of the Navy in matters concerning effectiveness, efficiency and economy.

§ 700.406 Naval Vessel Register, classification of naval craft, and status of ships and service craft.

(a) The Chief of Naval Operations shall be responsible for the Naval Vessel Register (except the Secretary of the Navy shall strike vessels from the Register) and the assignment of classification for administrative purposes to water borne craft and the designation of status for each ship and service craft.

(b) Commissioned vessels and craft shall be called “United States Ship” or “U.S.S.”

(c) Civilian manned ships, of the Military Sealift Command or other commands, designated “active status in service” shall be called “United States Naval Ship” or “U.S.N.S.”
§ 700.503 Statutory authority and responsibility of the Commandant of the Marine Corps.

(a) Except as otherwise prescribed by law and subject to the statutory authority of the Secretary of the Navy to assign functions, powers and duties, the Commandant of the Marine Corps performs duties under the authority, direction and control of the Secretary of the Navy and is directly responsible to the Secretary.

(b) Subject to the authority, direction and control of the Secretary of the Navy, the Commandant of the Marine Corps shall:

(1) Preside over the Headquarters, Marine Corps;

(2) Transmit the plans and recommendations of the Headquarters, Marine Corps, to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) After approval of the plans or recommendations of the Headquarters, Marine Corps, by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) Exercise supervision, consistent with the statutory authority assigned to commanders of unified or specified combatant commands, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;

(5) Perform the duties prescribed for a member of the Armed Forces Policy Council and other statutory duties; and

(6) Perform such other military duties, not otherwise assigned by law, as are assigned to the Commandant of the Marine Corps by the President, the Secretary of Defense or the Secretary of the Navy.

(c) The Commandant of the Marine Corps shall also perform the statutory duties prescribed for a member of the Joint Chiefs of Staff.

(1) To the extent that such action does not impair the independence of the Commandant of the Marine Corps in the performance of duties as a member of the Joint Chiefs of Staff, the Commandant of the Marine Corps shall
inform the Secretary of the Navy regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(2) Subject to the authority, direction and control of the Secretary of Defense, the Commandant of the Marine Corps shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary of the Navy.

§ 700.504 Statutory authority and responsibility of the Headquarters, Marine Corps.

(a) The Headquarters, Marine Corps, shall furnish professional assistance to the Secretary, the Under Secretary and the Assistant Secretaries of the Navy, and to the Commandant of the Marine Corps.

(1) Under the authority, direction and control of the Secretary of the Navy, the Headquarters, Marine Corps shall:

(i) Subject to §700.311(a), prepare for such employment of the Marine Corps, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Navy), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Marine Corps, as will assist in the execution of any power, duty or function of the Secretary or the Commandant;

(ii) Investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations by combatant commands;

(iii) Prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(iv) As directed by the Secretary or the Commandant, coordinate the action of organizations of the Marine Corps; and

(v) Perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(2) [Reserved]

(b) Except as otherwise specifically prescribed by law, the Headquarters, Marine Corps, shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

§ 700.505 Delegated authority and responsibility.

(a)(1) Internal to the administration of the Department of the Navy, the Commandant of the Marine Corps, consistent with the statutory authority assigned to commanders of unified or specified combatant commands, under the direction of the Secretary of the Navy, shall command:

(i) The operating forces of the Marine Corps; and

(ii) Such shore activities as may be assigned by the Secretary.

(2) The Commandant shall be responsible to the Secretary of the Navy for the utilization of resources by, and the operating efficiency of, all commands and activities under such command.

(b) In addition, the Commandant has the following specific responsibilities:

(1) To plan for and determine the needs of the Marine Corps for equipment, weapons or weapons systems, materials, supplies, facilities, maintenance, and supporting services. This responsibility includes the determination of Marine Corps characteristics of equipment and material to be procured or developed, and the training required to prepare Marine Corps personnel for combat. It also includes the operation of the Marine Corps Material Support System.

(2) Subject to guidance from the Assistant Secretary of the Navy (Financial Management), to formulate budget proposals for the Headquarters, Marine Corps, the Operating Forces of the Marine Corps, and other activities and programs as assigned.

(3) To develop, in coordination with other military services, the doctrines, tactics and equipment employed by landing forces in amphibious operations.

(4) To formulate Marine Corps strategic plans and policies and participate in the formulation of joint and combined strategic plans and policies and related command relationships.

(5) To plan for and determine the present and future needs, both quantitative and qualitative, for manpower,
§ 700.603 Duties and responsibilities.

In exercising command over the Coast Guard while operating as a service of the Navy, the Commandant shall:

(a) Organize, train, prepare and maintain the readiness of the Coast Guard to function as a specialized service in the Navy for the performance of national defense missions, as directed;

(b) Plan for and determine the present and future needs of the Coast Guard, both quantitative and qualitative, for personnel, including reserve personnel;

(c) Budget for the Coast Guard, except as may be otherwise directed by the Secretary of the Navy;

(d) Plan for and determine the support needs of the Coast Guard for equipment, materials, weapons or combat systems, supplies, facilities, maintenance and supporting services;

(e) Exercise essential military administration of the Coast Guard. This includes, but is not limited to, such matters as discipline, communications, personnel records and accounting, conforming, as practicable, to Navy procedures;

(f) In conjunction with the Director of Naval Intelligence, and the National Intelligence Community, where appropriate, establish and maintain an intelligence and security capability to provide support for the maritime defense zones, port security, narcotics interdiction, anti-terrorist activity, fishery activity, pollution monitoring and other Coast Guard missions;

(g) Enforce or assist in enforcing Federal laws on and under the high seas and waters subject to the jurisdiction of the United States;

(h) Administer, promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States. This applies to those matters not specifically delegated by law to some other executive department;
§ 700.701

(i) Develop, establish, maintain and operate, with due regard to the requirements of national defense, aids to maritime navigation, ice breaking facilities, for the promotion of safety on, under and over the high seas and waters subject to the jurisdiction of the United States;
(j) Engage in oceanographic surveys in conjunction with the Office of the Oceanographer of the Navy; and
(k) Continue in effect under the Secretary of the Navy those other functions, powers and duties vested in the Commandant by appropriate orders and regulations of the Secretary of Transportation on the day prior to the effective date of transfer of the Coast Guard to the Department of the Navy until specifically modified or terminated by the Secretary of the Navy.

SUBPART G—COMMANDERS IN CHIEF AND OTHER COMMANDERS

§ 700.701 Titles of commanders.

(a) The commander of a principal organization of the operating forces of the Navy, as determined by the chief of Naval Operations, or the officer who has succeeded to such command as provided elsewhere in these regulations, shall have the title “Commander in Chief.” The name of the organization under the command of such an officer shall be added to form his or her official title.

(b) The commander of each other organization of units of the operating forces of the Navy or marine corps, or organization of units of shore activities, shall have the title “Commander,” “Commandant,” “Commanding General” or other appropriate title. The name of the organization under the command of such an officer shall be added to form his or her official title.

§ 700.702 Responsibility and authority of commanders.

(a) Commanders shall be responsible for the satisfactory accomplishment of the mission and duties assigned to their commands. Their authority shall be commensurate with their responsibilities. Normally, commanders shall exercise authority through their immediate subordinate commanders, but they may communicate directly with any of their subordinates.

(b) Commanders shall ensure that subordinate commands are fully aware of the importance of strong, dynamic leadership and its relationship to the overall efficiency and readiness of naval forces. Commanders shall exercise positive leadership and actively develop the highest qualities of leadership in persons with positions of authority and responsibility throughout their commands.

(c) Subject to orders of higher authority, and subject to the provisions of §700.106 of these regulations, commanders shall issue such regulations and instructions as may be necessary for the proper administration of their commands.

(d) Commanders shall hold the same relationship to their flagships, or to shore activities of the command in which their headquarters may be located, in regard to internal administration and discipline, as to any other ship or shore activity of their commands.

§ 700.703 To announce assumption of command.

(a) Upon assuming command, commanders shall so advise appropriate superiors, and the units of their commands.

(b) When appropriate, commanders shall also advise the following officers and officials located within the area encompassed by the command concerning their assumption of command.

(1) Senior commanders of other United States armed services;
(2) Officials of other federal agencies; and
(3) Officials of foreign governments.

§ 700.704 Readiness.

Commanders shall take all practicable steps to maintain their commands in a state of readiness to perform their missions. In conformity with the orders and policies of higher authority, they shall:

(a) Organize the forces and resources under their command and assign duties to their principal subordinate commanders;
(b) Prepare plans for the employment of their forces to meet existing and foreseeable situations;
(c) Collaborate with the commanders of other United States armed services and with appropriate officials of other federal agencies and foreign governments located within the area encompassed by their commands;
(d) Maintain effective intelligence and keep themselves informed of the political and military aspects of the national and international situation;
(e) Make, or cause to be made, necessary inspections to ensure the readiness, effectiveness and efficiency of the components of their commands; and
(f) Develop, in accordance with directives issued by higher authority, training strategies and plans for their commands.

§ 700.705 Observance of international law.
At all times, commanders shall observe, and require their commands to observe, the principles of international law. Where necessary to fulfill this responsibility, a departure from other provisions of Navy Regulations is authorized.

§ 700.706 Keeping immediate superiors informed.
Commanders shall keep their immediate superiors appropriately informed of:
(a) The organization of their commands, the prospective and actual movements of the units of their commands, and the location of their headquarters;
(b) Plans for employment of their forces;
(c) The condition of their commands and of any required action pertaining thereto which is beyond their capacity or authority;
(d) Intelligence information which may be of value;
(e) Any battle, engagement or other significant action involving units of their commands;
(f) Any important service or duty performed by persons or units of their commands; and
(g) Unexecuted orders and matters of interest upon being relieved of command.

§ 700.711 Authority and responsibilities of officers of a staff.
(a) The chief of staff and aide or chief staff officer, under the commander, shall be responsible for supervising and coordinating the work of the staff and shall be kept informed of all matters pertaining to that work. All persons attached to the staff, except a vice commander or deputy responsible directly to the commander shall be subordinate to the chief of staff and aide or chief staff officer while he or she is executing the duties of that office.
(b) The officers of a staff shall be responsible for the performance of those duties assigned to them by the commander and shall advise the commander on all matters pertaining thereto. In the performance of their staff duties they shall have no command authority of their own. In carrying out such duties, they shall act for, and in the name of, the commander.
§ 700.720 Administration and discipline: Staff embarked.

In matters of general discipline, the staff of a commander embarked and all enlisted persons serving with the staff shall be subject to the internal regulations and routine of the ship. They shall be assigned regular stations for battle and emergencies. Enlisted persons serving with the staff shall be assigned to the ship for administration and discipline, except in the case of a staff embarked for passage only, and provided in that case that an organization exists and is authorized to act for such purposes.

§ 700.721 Administration and discipline: Staff based ashore.

When a staff is based ashore, the enlisted persons serving with the staff shall, when practicable, be assigned to an appropriated activity for purposes of administration and discipline. The staff officers may be similarly assigned. Members of a staff assigned for any purpose to a command or activity shall conform in matters of general discipline to the internal regulations and routine of that command or activity.

§ 700.722 Administration and discipline: Staff unassigned to an administrative command.

(a) When it is not practicable to assign enlisted persons serving with the staff of a commander to an established activity for administration and discipline, the commander may designate an officer of the staff to act as the commanding officer of such persons and shall notify the Judge Advocate General and the Commandant of the Marine Corps, or the Chief of Naval Personnel, as appropriate, of such action.

(b) If the designating commander desires the commanding officer of staff enlisted personnel to possess authority to convene courts-martial, the commander should request the Judge Advocate General to obtain such authorization from the Secretary of the Navy.

§ 700.723 Administration and discipline: Separate and detached command.

Any flag or general officer in command, any officer authorized to convene general courts-martial, or the senior officer present may designate organizations which are separate or detached commands. Such officer shall state in writing that it is a separate or detached command and shall inform the Judge Advocate General of the action taken. If authority to convene courts-martial is desired for the commanding officer or officer in charge of such separate or detached command, the officer designating the organization as separate or detached shall request the Judge Advocate general to obtain authorization from the Secretary of the Navy.

SUBPART H—THE COMMANDING OFFICER

§ 700.801 Applicability.

In addition to commanding officers, the provisions of this chapter shall apply, where pertinent, to aircraft commanders, officers in charge (including warrant officers and petty officers when so detailed) and those persons standing the command duty.

§ 700.802 Responsibility.

(a) The responsibility of the commanding officer for his or her command is absolute, except when, and to the extent, relieved therefrom by competent authority, or as provided otherwise in these regulations. The authority of the commanding officer is commensurate with his or her responsibility. While the commanding officer may, at his or her discretion, and when not contrary to law or regulations, delegate authority to subordinates for the execution of details, such delegation of authority shall in no way relieve the commanding officer of his or her continued responsibility for the safety, well-being, and efficiency of the entire command.
(b) A commanding officer who departs from his or her orders or instructions, or takes official action which is not in accordance with such orders or instructions, does so upon his or her own responsibility and shall report immediately the circumstances to the officer from whom the prior orders or instructions were received. Of particular importance is the commanding officer’s duty to take all necessary and appropriate action in self-defense of the command.

(c) The commanding officer shall be responsible for economy within his or her command. To this end the commanding officer shall require from his or her subordinates a rigid compliance with the regulations governing the receipt, accounting, and expenditure of public money and materials, and the implementation of improved management techniques and procedures.

(d) The commanding officer and his or her subordinates shall exercise leadership through personal example, moral responsibility, and judicious attention to the welfare of persons under their control or supervision. Such leadership shall be exercised in order to achieve a positive, dominant influence on the performance of persons in the Department of the Navy.

§ 700.804 Organization of commands.

All commands and other activities of the Department of the Navy shall be organized and administered in accordance with law, United States Navy Regulations, and the orders of competent authority. All orders and instructions of the commanding officer shall be in accordance therewith.

§ 700.809 Persons found under incriminating circumstances.

(a) The commanding officer shall keep under restraint or surveillance, as necessary, any person not in the armed services of the United States who is found under incriminating or irregular circumstances within the command, and shall immediately initiate an investigation.

(b) Should an investigation indicate that such person is not a fugitive from justice or has not committed or attempted to commit an offense, he shall be released at the earliest opportunity, except:

(1) If not a citizen of the United States, and the place of release is under the jurisdiction of the United States, the nearest federal immigration authorities shall be notified as to the time and place of release sufficiently in advance to permit them to take such steps as they deem appropriate.

(2) Such persons shall not be released in territory not under the jurisdiction of the United States without first obtaining the consent of the proper foreign authorities, except where the investigation shows that he entered the command from territory of the foreign state, or that he is a citizen or subject of that state.

(c) If the investigation indicates that such person has committed or attempted to commit an offense punishable under the authority of the commanding officer, the latter shall take such action as he deems necessary.

(d) If the investigation indicates that such a person is a fugitive from justice, or has committed or attempted to commit an offense which requires actions beyond the authority of the commanding officer, the latter shall, at the first opportunity, deliver such person, together with a statement of the circumstances, to the proper civil authorities.

(e) In all cases under paragraph (d) of this section, a report shall be made promptly to the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate.

§ 700.810 Rules for visits.

(a) Commanding officers are responsible for the control of visitors to their commands and shall comply with the relevant provisions of Department of the Navy concerning classified information and physical security.

(b) Commanding officers shall take such measures and impose such restrictions on visitors as are necessary to safeguard the classified material under their jurisdiction. Arrangements for general visiting shall always be made with due regard for physical security and based on the assumption that foreign agents will be among the visitors.
§ 700.811

(c) Commanding officers and others officially concerned shall exercise reasonable care to safeguard the persons and property of visitors to naval activities as well as taking those necessary precautions to safeguard the persons and property within the command.

§ 700.811 Dealers, tradesmen, and agents.

(a) In general, dealers or tradesmen or their agents shall not be admitted within a command, except as authorized by the commanding officer:

(1) To conduct public business;

(2) To transact specific private business with individuals at the request of the latter; or

(3) To furnish services and supplies which are necessary and are not otherwise, or are insufficiently, available to the personnel of the command.

(b) Personal commercial solicitation and the conduct of commercial transactions are governed by policies of the Department of Defense.

§ 700.812 Postal matters.

Commanding officers shall ensure that mail and postal funds are administered in accordance with instructions issued by the Postmaster General and approved for the naval service by the Chief of Naval Operations, and instructions issued by the Chief of Naval Operations, the Chief of Naval Personnel, or the Commandant of the Marine Corps, as appropriate; and that postal clerks or other persons authorized to handle mail perform their duties strictly in accordance with those instructions.

§ 700.815 Deaths.

The commanding officer, in the event of the death of any person within his or her command, shall ensure that the cause of death and the circumstances under which death occurred are established, that the provisions of the Manual of the Judge Advocate General are adhered to in documenting the cause and circumstances, and that the appropriate casualty report is submitted.

§ 700.816 The American National Red Cross.

(a) Pursuant to the request of the Secretary of the Navy, and subject to such instructions as the Secretary may issue, the American National Red Cross is authorized to conduct a program of welfare, including social, financial, medical and dental aid, for naval personnel; to assist in matters pertaining to prisoners of war; and to provide such other services as are appropriate functions for the Red Cross. The American National Red Cross is the only volunteer society authorized by the Government to render medical and dental aid to the armed forces of the United States. Other organizations desiring to render medical and dental aid may do so only through the Red Cross.

(b) Requests for Red Cross services shall be made to the Chief of Naval Personnel or the Commandant of the Marine Corps or, in the case of medical services, to the Commander, Naval Medical Command.

(c) Activities and personnel of the American National Red Cross in areas subject to naval jurisdiction shall conform to such administrative regulations as may be prescribed by appropriate naval authority.

(d) Red Cross personnel shall be considered to have the status of commissioned officers, subject to such restrictions as may be imposed by the Chief of Naval Personnel or the Commandant of the Marine Corps.

§ 700.819 Records.

The commanding officer shall require that records relative to personnel, material and operations, as required by current instructions, are maintained properly by those responsible therefor.

§ 700.822 Delivery of personnel to civil authorities and service of subpoena or other process.

(a) Commanding officers or other persons in authority shall not deliver any person in the naval service to civil authorities except as provided by the Manual of the Judge Advocate General.

(b) Commanding officers are authorized to permit the service of subpoenas or other process as provided by the Manual of the Judge Advocate General.

§ 700.826 Physical security.

(a) The commanding officer shall take appropriate action to safeguard
§ 700.835 Work, facilities, supplies, or services for other Government departments, State or local governments, foreign governments, private parties and morale, welfare, and recreational activities.

(a) Work may be done for or on facilities, supplies, or services furnished to departments and agencies of the Federal and State governments, local governments, foreign governments, private parties, and morale, welfare, and recreational activities with the approval of a commanding officer provided:

(1) The cost does not exceed limitations the Secretary of the Navy may approve or specify; and

(2) In the case of private parties, it is in the interest of the government to do so and there is no issue of competition with private industry; and

(3) In the case of foreign governments, a disqualification of a government has not been issued for the benefits of this article.

(b) Work shall not be started nor facilities, supplies, or services furnished...
§ 700.840 Unauthorized persons on board.

The commanding officer shall satisfy him or herself that there is no unauthorized person on board before proceeding to sea or commencing a flight.

§ 700.841 Control of passengers.

(a) Control of passage in and protracted visits to aircraft and ships of the Navy by all persons, within or without the Department of the Navy, shall be exercised by the Chief of Naval Operations.

(b) Nothing in this section shall be interpreted as prohibiting the senior officer present from authorizing the passage in ships and aircraft of the Navy by such persons as he or she judges necessary in the public interest or in the interest of humanity. The senior officer present shall report the circumstances to the Chief of Naval Operations when he or she gives such authorization.

§ 700.842 Authority over passengers.

Except as otherwise provided in these regulations or in orders from competent authority, all passengers in a ship or aircraft of the naval service are subject to the authority of the commanding officer and shall conform to the internal regulations and routine of the ship or aircraft. The commanding officer of such ship or aircraft shall take no disciplinary action against a passenger not in the naval service, other than that authorized by law. The commanding officer may, when he or
§ 700.844 Marriages on board.

The commanding officer shall not perform a marriage ceremony on board his or her ship or aircraft. He or she shall not permit a marriage ceremony to be performed on board when the ship or aircraft is outside the territory of the United States, except:

(a) In accordance with local laws and the laws of the state, territory, or district in which the parties are domiciled, and

(b) In the presence of a diplomatic or consular official of the United States, who has consented to issue the certificates and make the returns required by the consular regulations.

§ 700.845 Maintenance of logs.

(a) A deck log and an engineering log shall be maintained by each ship in commission, and by such other ships and craft as may be designated by the Chief of Naval Operations.

(b) A compass record shall be maintained as an adjunct to the deck log. An engineer’s bell book shall be maintained as an adjunct to the engineering log.

(c) The Chief of Naval Operations shall prescribe regulations governing the contents and preparation of the deck and engineering logs and adjunct records.

(d) In the case of a ship or craft equipped with automated data logging equipment, the records generated by such equipment satisfy the requirements of this section.

§ 700.846 Status of logs.

The deck log, the engineering log, the compass record, the bearing hooks, the engineer’s bell book, and any records generated by automated data logging equipment shall each constitute an official record of the command.

§ 700.847 Responsibility of a master of an in-service ship of the Military Sealift Command.

(a) In an in-service ship of the Military Sealift Command, the master’s responsibility is absolute, except when, and to the extent, relieved therefrom by competent authority. The authority of the master is commensurate with the master’s responsibility. The master is responsible for the safety of the ship and all persons on board. He or she is responsible for the safe navigation and technical operation of the ship and has paramount authority over all persons on board. He or she is responsible for the preparation of the abandon ship bill and has exclusive authority to order the ship abandoned. The master may, using discretion, and when not contrary to law or regulation, delegate authority for operation of shipboard functions to competent subordinates. However, such delegation of authority shall in no way relieve the master of continued responsibility for the safety, well-being, and efficiency of the ship.

(b) All orders and instructions of the master shall be in accordance with appropriate laws of the United States, and all applicable orders and regulations of the Navy, Military Sealift Command, and the Office of Personnel Management. A master who departs from the orders or instructions of competent authority or takes official action contrary to such orders or instructions, shall report immediately the circumstances to the authority from whom the prior orders or instructions were received.

§ 700.848 Relations with merchant seamen.

When in foreign waters, the commanding officer, with the approval of the senior officer present, may receive on board as supernumeraries for rations and passage:

(a) Distressed seamen of the United States for passage to the United States, provided they bind themselves to be amenable in all respects to Navy Regulations.

(b) As prisoners, seamen from merchant vessels of the United States, provided that the witnesses necessary to substantiate the charges against them
§ 700.855 Status of boats.

(a) Boats shall be regarded in all matters concerning the rights, privileges and comity of nations as part of the ship or aircraft to which they belong.

(b) In ports where war, insurrection or armed conflict exists or threatens, the commanding officer shall:

(1) Require that boats away from the ship or aircraft have some appropriate and competent person in charge; and

(2) See that steps are taken to make their nationality evident at all times.

§ 700.856 Pilotage.

(a) The commanding officer shall:

(1) Pilot the ship under all ordinary circumstances, but he may employ pilots whenever, in his or her judgment such employment is prudent;

(2) Not call a pilot on board until the ship is ready to proceed;

(3) Not retain a pilot on board after the ship has reached her destination or a point where the pilot is no longer required;

(4) Give preference to licensed pilots; and

(5) Pay pilots no more than the local rates.

(b) A pilot is merely an adviser to the commanding officer. The presence on board of a pilot shall not relieve the commanding officer or any subordinate from his or her responsibility for the proper performance of the duties with which he or she may be charged concerning the navigation and handling of the ship. For an exception to the provisions of this paragraph, see “Rules and Regulations Covering Navigation of the Panama Canal and Adjacent Waters,” (35 CFR Chapter I, subchapter C) which directs that the pilot assigned to a vessel in those waters shall have control of the navigation and movement of the vessel. Also see the provisions of these regulations concerning the navigation of ships at a naval shipyard or station, or in entering or leaving drydock.

§ 700.857 Safe navigation and regulations governing operation of ships and aircraft.

(a) The commanding officer is responsible for the safe navigation of his or her ship or aircraft, except as prescribed otherwise in these regulations for ships at a naval shipyard or station, in drydock, or in the Panama Canal. During an armed conflict, an exercise simulating armed conflict, or an authorized law enforcement activity, competent authority may modify the use of lights or other safeguards against collision. Except in time of actual armed conflict, such modifications will be authorized only when ships or aircraft clearly will not be hazarded.

(b) Professional standards and regulations governing shiphandling, safe navigation, safe anchoring and related operational matters shall be promulgated by the Chief of Naval Operations.

(c) Professional standards and regulations governing the operation of naval aircraft and related matters shall be promulgated by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate.

(d) The Commanding Officer is responsible for ensuring that weather and oceanic effects are considered in the effective and safe operation of his or her ship or aircraft.

§ 700.859 Quarantine.

(a) The commanding officer or aircraft commander of a ship or aircraft shall comply with all quarantine regulations and restrictions, United States or foreign, for the port or area within which the ship or aircraft is located.

(b) The commanding officer shall give all information required by authorized foreign officials, insofar as permitted by military security, and will meet the quarantine requirements promulgated by proper authority for United States or foreign ports. However, nothing in this section shall be interpreted as authorizing commanding officers to permit on board inspections by foreign officials, or to modify in any manner the provisions of §700.828 of these regulations.

(c) The commanding officer shall allow no intercourse with a port or area or with other ships or aircraft
until after consultation with local health authorities when:

(1) Doubt exists as to the sanitary regulations or health conditions of the port or area;
(2) A quarantine condition exists aboard the ship or aircraft;
(3) Coming from a suspected port or area, or one actually under quarantine.

(d) No concealment shall be made of any circumstance that may subject a ship or aircraft of the Navy to quarantine.

(e) Should there appear at any time on board a ship or aircraft conditions which present a hazard of introduction of a communicable disease outside the ship or aircraft, the commanding officer or aircraft commander shall at once report the fact to the senior officer present, to other appropriate higher authorities and, if in port, to the health authorities having quarantine jurisdiction. The commanding officer or aircraft commander shall prevent all contracts likely to spread disease until pratique is received. The commanding officer of a ship in port shall hoist the appropriate signal.

§ 700.860 Customs and immigration inspections.

(a) The commanding officer or aircraft commander shall facilitate any proper examination which it may be the duty of a customs officer or immigration officer of the United States to make on board the ship or aircraft. The commanding officer or aircraft commander shall not permit a foreign customs officer or immigration officer to make any examination whatsoever, except as hereinafter provided, on board the ship, aircraft or boats under his or her command.

(b) When a ship or aircraft of the Navy or a public vessel manned by naval personnel and operating under the direction of the Department of the Navy is carrying cargo for private commercial account, such cargo shall be subject to the local customs regulations of the port, domestic or foreign, in which the ship or aircraft may be, and in all matters relating to such cargo, the procedure prescribed for private merchant vessels and aircraft shall be followed. Government-owned stores or cargo in such ship or aircraft not landed nor intended to be landed nor in any manner trafficked in, are, by the established precedent of international courtesy, exempt from customs duties, but a declaration of such stores or cargo, when required by local customs regulations, shall be made. Commanding officers shall prevent, as far as possible, disputes with the local authorities in such cases, but shall protect the ship or aircraft and the Government-owned stores and cargo from any search or seizure.

(c) Upon arrival from a foreign country, at the first port of entry in United States territory, the commanding officer, or the senior officer of ships or aircraft in company, shall notify the collector of the port. Each individual aboard shall, in accordance with customs regulations, submit a list of articles purchased or otherwise acquired by him abroad. Dutiable articles shall not be landed until the customs officer has completed his inspection.

(d) Commanding officers of naval vessels and aircraft transporting United States civilian and foreign military and civilian passengers shall satisfy themselves that the passenger clearance requirements of the Immigration and Naturalization Service are complied with upon arrival at points within the jurisdiction of the United States. Clearance for such passengers by an immigration officer is necessary upon arrival from foreign ports and at the completion of movements between any of the following: Continental United States (including Alaska and Hawaii), the Canal Zone, Puerto Rico, Virgin Islands, Guam, American Samoa, or other outlying places subject to United States jurisdiction. Commanding officers, prior to arriving, shall advise the cognizant naval or civilian port authority of the aforementioned passengers aboard and shall detain them for clearance as required by the Immigration and Naturalization Service.

(e) The provisions of this section shall not be construed to require delaying the movements of any ship or aircraft of the Navy in the performance of her assigned duty.
§ 700.871 Responsibility for safety of ships and craft at a naval station or shipyard.

(a) The commanding officer of a naval station or shipyard shall be responsible for the care and safety of all ships and craft at such station or shipyard not under a commanding officer or assigned to another authority, and for any damage that may be done by or to them. In addition, the commanding officer of a naval station or shipyard shall be responsible for the safe execution of work performed by that activity upon any ship located at the activity.

(b) It shall be the responsibility of the commanding officer of a ship in commission which is undergoing overhaul, or which is otherwise immobilized at a naval station or shipyard, to request such services as are necessary to ensure the safety of the ship. The commanding officer of the naval station or shipyard shall be responsible for providing requested services in a timely and adequate manner.

(c) When a ship or craft not under her own power is being moved by direction of the commanding officer of a naval station or shipyard, that officer shall be responsible for any damage that may result therefrom. The pilot or other person designated for the purpose shall be in direct charge of such movement, and all persons on board shall cooperate with and assist the pilot as necessary. Responsibility for such actions in a private shipyard will be assigned by contract to the contractor.

(d) When a ship operating under her own power is being drydocked, the commanding officer shall be fully responsible for the safety of his ship until the extremity of the ship first to enter the drydock reaches the dock sill and the ship is pointed fair for entering the drydock. The docking officer shall then take charge and complete the docking, remaining in charge until the ship has been properly landed, bilge blocks hauled, and the dock pumped down. In undocking, the docking officer shall assume charge when flooding the dock preparatory to undocking is started, and shall remain in charge until the extremity of the ship last to leave the dock clears the sill, and the ship is pointed fair for leaving the drydock, when the ship’s commanding officer shall assume responsibility for the safety and control of the ship.

(e) When a naval ship is to be drydocked in a private shipyard under a contract being administered by a supervisor of shipbuilding, the responsibilities of the commanding officer are the same as in the case of drydocking in a naval shipyard. The responsibilities for the safety of the actual drydocking, normally assigned to the commanding officer of a naval shipyard through the docking officer, will be assigned by contract to the contractor. The supervisor of shipbuilding is responsible, however, for ensuring that the contractor facilities, methods, operations, and qualifications meet the standards of efficiency and safety prescribed by Navy directives.

(f) If the ship is elsewhere than at a naval station or shipyard, the relationship between the commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the commanding officer and the commanding officer of a naval station or naval shipyard as specified in this article.

§ 700.872 Ships and craft in drydock.

(a) The commanding officer of a ship in drydock shall be responsible for effecting adequate closure, during such periods as they will be unattended, of all openings in the ship’s bottom upon which work is being undertaken by the docking activity. The commanding officer of the docking activity shall be responsible for the closing, at the end of working hours, of all valves and other openings in the ship’s bottom upon which work is being undertaken by the docking activity, when such closing is practicable.

(b) Prior to undocking, the commanding officer of a ship shall report to the docking officer any material changes in the amount and location of weights on board which have been made by the ship’s force while in dock, and shall ensure, and so report, that all sea valves and other openings in the ship’s bottom are properly closed. The level of water in the dock shall not be
permitted to rise above the keel blocks prior to receipt of this report. The above valves and openings shall be tended during flooding of the dock.

(c) When a ship or craft, not in commission, is in a naval drydock, the provisions of this article shall apply, except that the commanding officer of the docking activity or his representative shall act in the capacity of the commanding officer of the ship or craft.

(d) When a naval ship or craft is in drydock in a private shipyard, responsibility for actions normally assigned by the commanding officer of the docking activity will be assigned by contract to the contractor.

§ 700.873 Inspection incident to commissioning of ships.

When a ship is to be commissioned, the authority designated to place such ship in commission shall, just prior to commissioning, cause an inspection to be made to determine the cleanliness and readiness of the ship to receive its crew and outfit. In the case of the delivery of a ship by a contractor, the above inspection shall precede acceptance of the ship. A copy of the report of this inspection shall be furnished the officer detailed to command the ship and to appropriate commands.

SPECIAL CIRCUMSTANCES/PROSPECTIVE COMMANDING OFFICERS

§ 700.880 Duties of the prospective commanding officer of a ship.

(a) Except as may be prescribed by the Chief of Naval Operations, the prospective commanding officer of a ship not yet commissioned shall have no independent authority over the preparation of the ship for service by virtue of his assignment to such duty, until the ship is commissioned and placed under his or her command. The prospective commanding officer shall:

(1) Procure from the commander of the naval shipyard or the supervisor of shipbuilding the general arrangement plans of the ship, and all pertinent information relative to the general condition of the ship and the work being undertaken on the hull, machinery and equipment, upon reporting for duty;

(2) Inspect the ship as soon after reporting for duty as practicable, and frequently thereafter, in order to keep him or herself informed of the state of her preparation for service. If, during the course of these inspections he or she notes an unsafe or potentially unsafe condition, he or she shall report such fact to the commander of the naval shipyard or the supervisor of shipbuilding and to his or her superior for resolution;

(3) Keep him or herself informed as to the progress of the work being done, including tests of equipment, and make such recommendations to the commander of the naval shipyard or the supervisor of shipbuilding as he or she deems appropriate;

(4) Ensure that requisitions are submitted for articles to outfit the ship which are not otherwise being provided;

(5) Prepare the organization of the ship;

(6) Train the nucleus crew to effectively and efficiently take charge of and operate the ship upon commissioning; and

(7) Make such reports as may be required by higher authority, and include therein a statement of any deficiency in material or personnel.

(b) If the prospective commanding officer does not consider the ship in proper condition to be commissioned at the time the commander of the naval shipyard or the supervisor of shipbuilding signifies his intention of transferring the ship to the prospective commanding officer, he or she shall report that conclusion with his reasons therefore, in writing, to the commander of the naval shipyard or the supervisor of shipbuilding and to the appropriate higher authority.

(c) If the ship is elsewhere than at a naval shipyard, the relationship between the prospective commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the prospective commanding officer and the commander of a naval shipyard as specified in this article.

(d) The Chief of Naval Operations shall be responsible for providing the commanding officer or prospective commanding officer of a naval nuclear
§ 700.901 The senior officer present.

Unless some other officer has been so designated by competent authority, the “senior officer present” is the senior line officer of the Navy on active duty, eligible for command at sea, who is present and in command of any part of the Department of the Navy in the locality or within an area prescribed by competent authority, except where personnel of both the Navy and the Marine Corps are present on shore and the officer of the Marine Corps who is in command is senior to the senior line officer of the Navy. In such cases, the officer of the Marine Corps shall be the senior officer present on shore.

§ 700.902 Eligibility for command at sea.

All officers of the line of the Navy, including Naval Reserve, on active duty, except those designated for the performance of engineering, aeronautical engineering or special duties, and except those limited duty officers who are not authorized to perform all deck duties afloat, are eligible for command at sea.

§ 700.903 Authority and responsibility.

At all times and places not excluded in these regulations, or in orders from competent authority, the senior officer present shall assume command and direct the movements and efforts of all persons in the Department of the Navy present, when, in his or her judgment, the exercise of authority for the purpose of cooperation or otherwise is necessary. The senior officer present shall exercise this authority in a manner consistent with the operational command responsibility vested in the commanders of unified or specified commands.

§ 700.904 Authority of senior officer of the Marine Corps present.

The authority and responsibility of the senior officer present are also conferred upon the senior commanding officer of the Marine Corps present with respect to those units of the Marine Corps, including Navy personnel attached, which are in the locality and not under the authority of the senior officer present.

§ 700.922 Shore patrol.

(a) When liberty is granted to any considerable number of persons, except in an area that can absorb them without danger of disturbance or disorder, the senior officer present shall cause to be established, temporarily or permanently, in charge of an officer, a sufficient patrol of officers, petty officers, and noncommissioned officers to maintain order and suppress any unseemly conduct on the part of any person on liberty. The senior patrol officer shall communicate with the chief of police or other local officials and make such arrangements as may be practicable to aid the patrol in carrying out its duties properly. Such duties may include providing assistance to military personnel in relations with civil courts and police, arranging for release of service personnel from civil authorities to the parent command, and providing other services that favorably influence discipline and morale.

(b) A patrol shall not be landed in any foreign port without first obtaining the consent of the proper local officials. Tact must be used in requesting permission; and, unless it is given willingly and cordially, the patrol shall not be landed. If consent cannot be obtained, the size of liberty parties shall be held to such limits as may be necessary to render disturbances unlikely.

(c) Officers and enlisted personnel on patrol duty in a foreign country normally should not be armed. In the United States, officers and men may be armed as prescribed by the senior officer present.

(d) No officer or enlisted person who is a member of the shore patrol or beach guard, or is assigned in support thereof, shall partake of or indulge in any form of intoxicating beverage or...
other form of intoxicant while on duty, on post, or at other times prescribed by the senior patrol officer. The senior patrol officer shall ensure that the provisions of this paragraph are strictly observed and shall report promptly in writing to the senior officer present all violations of these provisions that may come to his or her notice. All officers and enlisted personnel of the patrol shall report to the senior patrol officer all violations of the provisions of this paragraph on the part of those under them.

§ 700.923 Precautions for health.

The senior officer present shall take precautions to preserve the health of the persons under his or her authority. He or she shall obtain information regarding the healthfulness of the area and medical facilities available therein and shall adopt such measures as are required by the situation.

§ 700.924 Medical or dental aid to persons not in the naval service.

The senior officer present may require the officers of the Medical Corps and Dental Corps under his or her authority to render emergency professional aid to persons not in the naval service when such aid is necessary and demanded by the laws of humanity or the principles of international courtesy.

§ 700.934 Exercise of power of consul.

When upon the high seas or in any foreign port where there is no resident consul of the United States, the senior officer present afloat has the authority to exercise all powers of a consul in relation to mariners of the United States.

§ 700.939 Granting of asylum and temporary refuge.

(a) If an official of the Department of the Navy is requested to provide asylum or temporary refuge, the following procedures shall apply:

(i) At his or her request, an applicant for asylum will be received on board any naval aircraft or waterborne craft, Navy or Marine Corps activity or station.

(ii) Under no circumstances shall the person seeking asylum be surrendered to foreign jurisdiction or control, unless at the personal direction of the Secretary of the Navy or higher authority. Persons seeking political asylum should be afforded every reasonable care and protection permitted by the circumstances.

(b) In territories under foreign jurisdiction (including foreign territorial seas, territories, and possessions):

(i) Temporary refuge shall be granted for humanitarian reasons on board a naval aircraft or waterborne craft, Navy or Marine Corps activity or station, only in extreme or exceptional circumstances wherein life or safety of a person is put in imminent danger, such as pursuit by a mob. When temporary refuge is granted, such protection shall be terminated only when directed by the Secretary of the Navy or higher authority.

(ii) A request by foreign authorities for return of custody of a person under the protection of temporary refuge will be reported to the CNO or Commandant of the Marine Corps. The requesting foreign authorities will be informed that the case has been referred to higher authorities for instructions.

(iii) Persons whose temporary refuge is terminated will be released to the protection of the authorities designated in the message authorizing release.

(iv) While temporary refuge can be granted in the circumstances set forth above, permanent asylum will not be granted.

(v) Foreign nationals who request assistance in forwarding requests for political asylum in the United States will be received on board any naval aircraft or waterborne craft, Navy or Marine Corps activity or station, but will be advised to apply in person at the nearest American Embassy or Consulate. If a foreign national is already on board, however, such person will not be surrendered to foreign jurisdiction or control unless at the personal direction of the Secretary of the Navy.

(3) The Chief of Naval Operations or Commandant of the Marine Corps, as
§ 700.1020 Exercise of authority.

(a) All persons in the naval service on active service, and those on the retired list with pay, and transferred members of the Fleet Reserve and the Fleet Marine Corps Reserve, are at all times subject to naval authority. While on active service they may, if not on leave of absence except as noted below, on the sick list, taken into custody, under arrest, suspended from duty, in confinement or otherwise incapable of discharging their duties, exercise authority over all persons who are subordinate to them.

(b) A person in the naval service, although on leave, may exercise authority:

(1) When in a naval ship or aircraft and placed on duty by the commanding officer or aircraft commander.

(2) When in a ship or aircraft of the armed services of the United States, other than a naval ship or aircraft, as the commanding officer of naval personnel embarked, or when placed on duty by such officer.

(c) When senior officer at the scene of a riot or other emergency, or when placed on duty by such officer.

§ 700.1026 Authority of an officer who succeeds to command.

(a) An officer who succeeds to command due to incapacity, death, departure on leave, detachment without relief or absence due to orders from competent authority of the officer detailed to command, has the same authority and responsibility as the officer whom he or she succeeds.

(b) An officer who succeeds to command during the temporary absence of the commanding officer shall make no changes in the existing organization, and shall endeavor to have the routine and other affairs of the command carried on in the usual manner.

(c) When an officer temporarily succeeding to command signs official correspondence, the word “Acting” shall appear below his or her signature.

§ 700.1038 Authority of a sentry.

A sentry, within the limits stated in his or her orders, has authority over all persons on his or her post.
§ 700.1053 Commander of a task force.

(a) A commander in chief, and any other naval commander, may detail in command of a task force, or other task command, any eligible officer within his or her command whom he or she desires. All other officers ordered to the task force or the task command shall be considered subordinate to the designated commander.

(b) All orders issued under the authority of this article shall continue in effect after the death or disability of the officer issuing them until they are revoked by his or her successor in command or higher authority.

(c) The powers delegated to a commander by this article are not conferred on any other officer by virtue of the fact that he or she is the senior officer present.

§ 700.1054 Command of a naval base.

The officer detailed to command a naval base shall be an officer of the line in the Navy, eligible for command at sea.

§ 700.1055 Command of a naval shipyard.

The officer detailed to command a naval shipyard shall be trained in the technical aspects of building and repair of ships and shall have had substantial previous experience in the technical and management phases of such work. Such officer may have been designated for engineering duty.

§ 700.1056 Command of a ship.

(a) The officer detailed to command a commissioned ship shall be an officer of the line in the Navy eligible for command at sea.

(b) The officer detailed to command an aircraft carrier, an aircraft tender, or a ship with a primary task of operating or supporting aircraft shall be an officer of the line in the navy, eligible for command at sea, designated as a naval aviator or naval flight officer.

§ 700.1057 Command of an air activity.

(a) The officer detailed to command a naval aviation school, a naval air station, or a naval air unit organized for flight tactical purposes shall be an officer of the line in the navy, designated as a naval aviator or naval flight officer, eligible for command at sea.

(b) For the purposes of Title 10 U.S.C. § 5942, a naval air training squadron is not considered to be a naval aviation school or a naval air unit organized for flight tactical purposes. The officer detailed to command a naval air training squadron or an air unit organized for administrative purposes shall be a line officer of the naval service, designated as a naval aviator or naval flight officer, eligible for command. If a naval air training squadron has been designated a multi-service training squadron, the officer detailed to command that squadron may be a line officer from any armed service designated as the equivalent of a naval aviator naval flight officer and otherwise eligible to command an aviation squadron or unit under that officer’s pertinent service regulations.

(c) The officer detailed to command a naval air activity of a technical nature on shore may be an officer of the line in the navy not eligible for command at sea, but designated as a naval aviator or a naval flight officer or designated for aeronautical engineering duty.

(d) The officer detailed to command a Marine Corps air unit organized for flight tactical purpose shall be an officer of the Marine Corps, designated as a naval aviator or naval flight officer.

(e) Other than an air training squadron, an officer of the Navy shall not normally be detailed to command an aviation unit of the Marine Corps nor shall an officer of the Marine Corps normally be detailed to command an aviation unit of the Navy. Aircraft units of the Marine Corps may, however, be assigned to ships or to naval air activities in the same manner as aircraft units of the navy and, conversely, aircraft units of the navy may be so assigned to Marine Corps air activities. A group composed of aircraft units of the Navy and aircraft units of the Marine Corps may be commanded
§ 700.1058 Command of a submarine.

The officer detailed to command a submarine shall be an officer of the line in the Navy, eligible for command at sea and qualified for command of submarines.

§ 700.1059 Command of a staff corps activity.

Officers in a staff corps shall be detailed to command only such activities as are appropriate to their corps.

SUBPART K—GENERAL REGULATIONS
STANDARDS OF CONDUCT

§ 700.1101 Demand for court-martial.

Except as otherwise provided in the Uniform Code of Military Justice, no person in the naval service may demand a court martial either on him or herself or on any other person in the naval service.

§ 700.1113 Endorsement of commercial product or process.

Except as necessary during contract administration to determine specification or other compliance, no person in the Department of the Navy, in his or her official capacity, shall endorse or express an opinion of approval or disapproval of any commercial product or process.

§ 700.1120 Personal privacy and rights of individuals regarding their personal records.

(a) Except as specifically provided in this section, maintenance of personal records of individuals, and the release of those records, shall be in accordance with the provisions of the Privacy Act and directives issued by the Secretary of the Navy.

(b) Except as specifically provided in this section, the release of departmental records to private parties shall be in accordance with the provisions of the Freedom of Information Act and directives issued by the Secretary of the Navy.

§ 700.1121 Disclosure, publication and security of official information.

(a) No person in the Department of the Navy shall convey or disclose by oral or written communications, publication, graphic (including photographic) or other means, any classified information except as provided in directives governing the release of such information. Additionally, no person in the Department of the Navy shall communicate or otherwise deal with foreign entities, even on an unclassified basis, when this would commit the Department of the Navy to disclose classified military information except as may be required in that person’s official duties and only after coordination with and approval by a release authority designated by competent authority.

(b) No person in the Department of the Navy shall convey or disclose by oral or written communication, publication or other means except as may be required by his or her official duties, any information concerning the Department of Defense or forces, or any person, thing, plan or measure pertaining thereto, where such information might be of possible assistance to a foreign power; nor shall any person in the Department of the Navy make any public speech or permit publication of an article written by or for that person which is prejudicial to the interests of the United States. The regulations concerned with the release of information to the public through any media will be as prescribed by the Secretary of the Navy.

(c) No person in the Department of the Navy shall disclose any information whatever, whether classified or unclassified, or whether obtained from official records or within the knowledge of the relator, which might aid or be of assistance in the prosecution or support of any claim against the United States. The prohibitions prescribed by the first sentence of this paragraph are not applicable to an officer or employee of the United States who is acting in the proper course of, and within the scope of, his or her official duties, provided that the disclosure of such information is otherwise authorized by statute, Executive Order
of the President or departmental regulation.

(d) Any person in the Department of
the Navy receiving a request from the
public for Department of the Navy
records shall be governed by the provi-
sions of the Freedom of Information
Act and implementing directives issued
by the Secretary of the Navy.

(e) Persons in the Department of
the Navy desiring to submit manuscripts
to commercial publishers on profes-
sional, political or international sub-
jects shall comply with regulations
promulgated by the Secretary of the Navy.

(f) No persons in the naval service on
active duty or civilian employee of the
Department of the Navy shall act as
correspondent of a news service or peri-
odical, or as a television or radio news
commentator or analyst, unless as-
signed to such duty in connection with
the public affairs activities of the De-
partment of the Navy, or authorized by
the Secretary of the Navy. Except as
authorized by the Secretary of the Navy,
no person assigned to duty in
connection with public affairs activi-
ties of the Department of the Navy
shall receive any compensation for act-
ing as such correspondent, commen-
tator or analyst.

§700.1126 Correction of naval records.

(a) Any military record in the De-
partment of the Navy may be corrected
by the Secretary of the Navy, acting
through the Board for Correction of
Naval Records, when the Secretary
considers that such action should be
taken in order to correct an error or to
remove an injustice.

(b) Applications for corrections under
this article may be made only after ex-
haustration of all other administrative
remedies afforded by law or regulation.

(c) Applications for such corrections
should be submitted to the Secretary
of the Navy (Board for Correction of
Naval Records) in accordance with pro-
cedural regulations established by the
Secretary of the Navy and approved by
the Secretary of Defense.

§700.1127 Control of official records.

(a) No person, without proper author-
ity, shall withdraw official records or
correspondence from the files, or de-
stroy them, or withhold them from
those persons authorized to have access
to them.

(b) Except as specifically provided in
this section, maintenance of personal
records of individuals, and the release
of those records, shall be in accordance
with the provisions of the Privacy Act
and directives issued by the Secretary
of the Navy.

(c) Except as specifically provided in
this section, the release of depart-
mental records to private parties shall
be in accordance with the provisions of
the Freedom of Information Act and di-
rectives issued by the Secretary of the Navy.

§700.1128 Official records in civil
courts.

(a) Department of the Navy personnel
shall not provide official information,
testimony, or documents, submit to
interview, or permit a view or visit, for
litigation purposes, without special
written authorization.

(b) Department of the Navy personnel
shall not provide, with or without com-
pensation, opinion or expert testimony
concerning official Department of De-
fense information, subjects, personnel
or activities, except on behalf of the
United States or a party represented
by the Department of Justice, or with
special written authorization.

DUTIES OF INDIVIDUALS

§700.1138 Responsibilities concerning
marijuana, narcotics, and other
controlled substances.

(a) All personnel shall endeavor to
prevent and eliminate the unauthor-
ized use of marijuana, narcotics and
other controlled substances within the
naval service.

(b) The wrongful possession, use, in-
troduction, manufacture, distribution
and possession, or introduction with
intent to distribute, of a controlled
substance by persons in the naval ser-
vice are offenses under Article 112a, Uni-
form Code of Military Justice. Except
for authorized medicinal or other au-
thorized purposes, the possession, use,
introduction, sale, or other transfer of
marijuana, narcotics or other con-
trolled substances on board any ship or
aircraft of the Department of the Navy
or within any naval base, station or
§ 700.1139 Rules for preventing collisions, afloat and in the air.

(a) All persons in the naval service responsible for the operation of naval ships, craft and aircraft shall diligently observe the International Rules for Preventing Collisions at Sea (commonly called the COLREGS) (33 CFR chapter I), Inland Navigation Rules (33 CFR chapter I), domestic and international air traffic regulations (14 CFR chapter I), and such other rules and regulations as may be established by the Secretary of Transportation or other competent authority for regulating traffic and preventing collisions on the high seas, in inland waters or in the air, where such laws, rules and regulations are applicable to naval ships and aircraft. In those situations where such law, rule or regulation is not applicable to naval ships, craft or aircraft, they shall be operated with due regard for the safety of others.

(b) Any significant infraction of the laws, rules and regulations governing traffic or designed to prevent collisions on the high seas, in inland waters or in the air which may be observed by persons in the naval service shall be promptly reported to their superiors, including the Chief of Naval Operations or Commandant of the Marine Corps when appropriate.

(c) Reports need not be made under this article if the facts are otherwise reported in accordance with other directives, including duly authorized safety programs.

§ 700.1162 Alcoholic beverages.

(a) Except as may be authorized by the Secretary of the Navy, the introduction, possession or use of alcoholic beverages on board any ship, craft, air-craft, or in any vehicle of the Department of the Navy is prohibited. The transportation of alcoholic beverages for personal use ashore is authorized, subject to the discretion of the officer in command or officer in charge, or higher authority, when the beverages are delivered to the custody of the officer in command or officer in charge of the ship, craft, or aircraft in sealed packages, securely packed, properly marked and in compliance with customs laws and regulations, and stored in securely locked compartments, and the transportation can be performed without undue interference with the work or duties of the ship, craft, or aircraft. Whenever an alcoholic beverage is brought on board any ship, craft, or aircraft for transportation for personal use ashore, the person who brings it on board shall at that time file with the officer in command or officer in charge of the ship, craft or aircraft, a statement of the quantity and kind of alcoholic beverage brought on board, together with a certification that its importation will be in compliance with customs and internal revenue laws and regulations and applicable State or local laws at the place of debarkation.

(b) The introduction, possession and use of alcoholic beverages for personal consumption or sale is authorized within naval activities and other places ashore under naval jurisdiction to the extent and in such manner as the Secretary of the Navy may prescribe.

§ 700.1165 Fraternization prohibited.

(a) Personal relationships between officer and enlisted members which are unduly familiar and which do not respect differences in rank are inappropriate and violate long-standing traditions of the naval service.

(b) When prejudicial to good order and discipline or of a nature to bring discredit on the naval service, personal relationships are prohibited:

(1) Between an officer and an enlisted member which are unduly familiar and do not respect differences in rank and grade;

(2) Between officer members which are unduly familiar and do not respect differences in rank and grade where a direct senior-subordinate supervisory relationship exists; and
(3) Between enlisted members which are unduly familiar and do not respect differences in rank and grade where a direct senior-subordinate supervisory relationship exists.

(c) Violation of this article may result in administrative or punitive action. This article applies in its entirety to all regular and reserve personnel.

§ 700.1166 Sexual harassment.

(a) Sexual harassment will not be condoned or tolerated in the Department of the Navy. It is a form of arbitrary discrimination which is unprofessional, unmilitary, and which adversely affects morale and discipline and ultimately the mission effectiveness of the command involved.

(b) Personnel who use implicit or explicit sexual behavior to control, influence or affect the career, promotion opportunities, duty assignments or pay of any other person are engaging in sexual harassment. Naval personnel who make deliberate or repeated offensive verbal comments, gestures or physical contact of a sexual nature in the work environment are also engaging in sexual harassment.

§ 700.1167 Supremacist activity.

No person in the naval service shall participate in any organization that espouses supremacist causes; attempts to create illegal discrimination based on race, creed, color, sex, religion, or national origin; advocates the use of force or violence against the Government of the United States or the Government of any state, territory, district, or possession thereof, or the Government of any subdivision therein; or otherwise engages in efforts to deprive individuals of their civil rights. The term “participate”, as used in this article, includes acts or conduct, performed alone or in concert with another, such as demonstrating, rallying, fundraising, recruiting, training, or organizing or leading such organizations. The term “participate” also includes engaging in any other activities in relation to such organizations or in furtherance of the objectives of such organizations when such activities are detrimental to good order, discipline, or mission accomplishment.
§ 701.1

701.46 Aggregating requests.
701.47 FOIA fees must be addressed in response letters.
701.48 Fee waivers.
701.49 Payment of fees.
701.51 Refunds.
701.52 Computation of fees.
701.53 FOIA fee schedule.
701.54 Collection of fees and fee rates for technical data.
701.55 Processing FOIA fee remittances.

Subpart D—FOIA Exemptions

701.56 Background.
701.57 Ground rules.
701.58 In-depth analysis of FOIA exemptions.
701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

Subpart E—Indexing, Public Inspection, and Federal Register Publication of Department of the Navy Directives and Other Documents Affecting the Public

701.61 Purpose.
701.62 Scope and applicability.
701.63 Policy.
701.64 Publication of adopted regulatory documents for the guidance of the public.
701.65 Availability, public inspection, and indexing of other documents affecting the public.
701.66 Publication of proposed regulations for public comment.
701.67 Petitions for issuance, revision, or cancellation of regulations affecting the public.

Subpart F—Department of the Navy Privacy Act Program

701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.
§ 701.3 Applicability.
(a) Subparts A, B, C, and D of this part apply throughout the Department of the Navy (DON) and take precedence over other DON instructions, which may serve to supplement it [i.e., Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

(b) The FOIA applies to “records” maintained by “agencies” within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that “any person” (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

(c) Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

(d) The Department of Defense (DoD) FOIA directive states that the FOIA programs of the U.S. Atlantic Command and the U.S. Pacific Command fall under the jurisdiction of the Department of Defense and not the Department of the Navy. This policy represents an exception to the policies directed under DoD Directive 5100.3, “Support of the Headquarters of Unified, Specified, and Subordinate Commands.”

§ 701.4 Responsibility and authority.
(a) The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON’s FOIA program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of the 5 U.S.C. 552 and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (see 32 CFR part 286).

1 As principal DON FOIA policy official, CNO (N09B30) issues SECNAV Instruction 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy’s FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on the DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review, DoD of same; responds to depositions and litigation regarding DON FOIA policy Secretary of the Navy Instruction 5820.8A, Release of Information for Litigation Purposes and Testimony by DON Personnel; reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within the DON to ensure compliance with 5 U.S.C. 552 and this part; reviews all SECNAV and Operations Navy instructions/forms that address FOIA; and oversees the processing of FOIA requests received by SECNAV and Chief of Naval Operations (CNO), to ensure responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(b) SECNAV has delegated Initial Denial Authority (IDA) to N09B30 for requests at the Secretary and OPNAV level.

2 SECNAV has delegated Initial Denial Authority (IDA) to N09B30 for requests at the Secretariat and OPNAV level.
§ 701.4  

assists CNO (N09B30) in promoting the Department of the Navy FOIA Program by issuing a Marine Corps FOIA Handbook; utilizing the Marine Corps FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of Marine Corps FOIA coordinators, etc.

(c) The DON Chief Information Officer (DONCIO) is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record locator systems maintained by the Department of the Navy as required by 5 U.S.C. 552 and DoD 5400.7–R, ‘‘DoD Freedom of Information Act Program.’’

(d) FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (i.e., designate the command/activity’s FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with 5 U.S.C. 552 and DoD Directives 5400.7 and 5400.7–R and this part; provide general awareness training to command/activity personnel on the provisions of 5 U.S.C. 552 and this instruction; collect and compile FOIA statistics and submit a consolidated Annual FOIA Report to Echelon 2 FOIA coordinator for consolidation; provide guidance on how to process FOIA requests; and provide guidance on the scope of FOIA exemptions.

(2) Additionally, CMC (ARAD) and Echelon 2 FOIA coordinators will:

(i) Ensure that reading room materials are placed in the activity’s electronic reading room and that the activity’s website is linked to the Navy FOIA website and the activity’s reading room is linked to the Navy’s FOIA reading room lobby. Documents placed in the reading room shall also be indexed as a Government Information Locator Service (GILS) record, as this will serve as an index of available records.

(ii) Review proposed legislation and policy recommendations that impact the FOIA and provide comments to CNO (N09B30).

(iii) Review SECNAVINST 5720.42F and provide recommended changes/comments to CNO (N09B30).

(iv) Routinely conduct random staff assistance visits/reviews/self-evaluations within the command and lower echelon commands to ensure compliance with FOIA.

(v) Collect and compile command and feeder reports for the Annual FOIA Report and provide a consolidated report to CNO (N09B30).

(vi) Maintain a listing of their subordinate activities’ FOIA coordinators to include full name, address, and telephone (office and fax) and place on their website.

NOTE TO PARAGRAPH (d)(2)(vi): Do not place names of FOIA coordinators who are overseas, routinely deployable or in sensitive units on the website. Instead just list “FOIA Coordinator”

(vii) Notify CNO (N09B30) of any change of name, address, office code and zip code, telephone and facsimile number, and/or e-mail address of Echelon 2 FOIA Coordinators.

(viii) Conduct overview training to ensure all personnel are knowledgeable of the FOIA and its requirements. See §701.12.

(ix) Work closely with the activity webmaster to ensure that information placed on the activity’s website does not violate references in paragraphs (a), (c) and (f).

(e) Initial Denial Authorities (IDAs).

The following officials are delegated to serve as Initial Denial Authorities, on behalf of SECNAV (see §701.30 for definition):

(1) Under Secretary of the Navy; Deputy Under Secretary of the Navy; Assistant Secretaries of the Navy (ASN)s and their principal deputy assistants; Assistant for Administration (SECNAV); Director, Administrative Division (SECNAV); Special Assistant for Legal and Legislative Affairs (SECNAV); Director, Office of Program Appraisal (SECNAV); DONCIO; Director, Small and Disadvantaged Business
### § 701.4

Utilization (SECNAV); Chief of Information (CHINFO); Director, Navy International Programs Office; Chief of Legislative Affairs; CNO; Vice CNO; Director, Naval Nuclear Propulsion Program (NOON); Director, Navy Staff (N09B); Head, DON PA/FOIA Policy Branch (N09B30); Director of Naval Intelligence (N2); Director of Space, Information Warfare, Command and Control (N6); Director of Navy Test & Evaluation & Technology Requirements (N09I); Surgeon General of the Navy (N09G); Director of Naval Reserve (N095); Oceanographer of the Navy (N096); Director of Religious Ministries/Chief of Chaplains of the Navy (N097); all Deputy Chiefs of Naval Operations; Chief of Naval Personnel; Director, Strategic Systems Programs; Chief, Bureau of Medicine and Surgery; Director, Office of Naval Intelligence; Naval Inspector General; Auditor General of the Navy; Commanders of the Naval Systems Commands; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Director, Naval Criminal Investigative Service; Deputy Commander, Naval Legal Service Command; Commander, Navy Personnel Command; Director, Naval Center of Cost Analysis; Commander, Naval Meteorology and Oceanography Command; Director, Naval Historical Center; heads of DON staff offices, boards, and councils; Program Executive Officers; and all general officers.

(2) Within the Marine Corps: CMC and his Assistant, Chief of Staff, Deputy Chiefs of Staff; Director, Personnel Management Division; Fiscal Director of the Marine Corps; Counsel for the Commandant; Director of Intelligence; Director, Command, Communications and Computer Systems Division; Legislative Assistant to the Commandant; Director, Judge Advocate Division; Inspector General of the Marine Corps; Director, Manpower, Plans, and Policy Division; Head, Freedom of Information and Privacy Acts Section, HQMC; Director of Public Affairs; Director of Marine Corps History and Museums; Director, Personnel Procurement Division; Director, Morale Support Division; Director, Human Resources Division; Director of Headquarters Support; commanding generals; directors, Marine Corps districts; commanding officers, not in the administrative chain of command of a commanding general or district director. For each official listed above, the deputy or principal assistant is also authorized denial authority.

(3) JAG and his Deputy and the DON General Counsel (DONGC) and his deputies are excluded from this grant of authorization, since SECNAV has delegated them to serve as his appellate authorities. However, they are authorized to designate IDA responsibilities to other senior officers/officials within JAG and DONGC. DONGC has delegated IDA responsibilities to the Assistant General Counsels and the Associate General Counsel (Litigation).

(4) For the shore establishment and operating forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C) to convene general courts-martial.

(5) IDAs must balance their decision to centralize denials for the purpose of promoting uniform decisions against decentralizing denials to respond to requests within the FOIA time limits. Accordingly, the IDAs listed in paragraphs (e)(1) through (4) are authorized to delegate initial denial authority to subordinate activities for the purpose of streamlining FOIA processing. They may also delegate authority to a specific staff member, assistant, or individuals acting during their absence if this serves the purpose of streamlining and/or complying with the time limits of FOIA.

**NOTE TO PARAGRAPH (e)(5):** Such delegations shall be limited to comply with DoD Directive 5400.7, “DoD Freedom of Information Act Program”.

(6) Delegations of IDA authority should be reflected in the activity’s supplementing FOIA instruction or by letter, with a copy to CNO (N09B30) or CMC (ARAD), as appropriate.

(f) Release authorities.

Release authorities are authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies; to respond to requesters concerning refinement of their requests; to
provide fee estimates; and to offer appeal rights for adequacy of search or fee estimates to the requester.

(g) Appellate authorities are addressed in §701.12.

§ 701.5 Policy.

(a) Compliance with the FOIA. DON policy is to comply with the FOIA as set forth in the Department of Defense’s FOIA Directives 5400.7 and 5400.7–R, and this instruction in this part in both letter and spirit; conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation; and provide the public with the maximum amount of accurate and timely information concerning its activities.

(b) Prompt action. DON activities shall act promptly on requests when a member of the public complies with the procedures established in the instruction in this part (i.e., files a “perfected request”) and the request is received by the official designated to respond. See §701.11 for minimum requirements of the FOIA.

(c) Provide assistance. DON activities shall assist requesters in understanding and complying with the procedures established by the instruction in this part, ensuring that procedural matters do not unnecessarily impede a requester from obtaining DON records promptly.

(d) Grant access. (1) DON activities shall grant access to agency records when a member of the public complies with the provisions of the instruction in this part and there is no FOIA exemption available to withhold the requested information (see subpart D of this part).

(2) In those instances where the requester has not cited FOIA, but the records are determined to be releasable in their entirety, the request shall be honored without requiring the requester to invoke FOIA.

(e) Create a record. (1) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to the instruction in this part and the FOIA. Accordingly, DON activities need not process requests for records which are not in existence at the time the request is received. In other words, requesters may not have a “standing FOIA request” for release of future records.

(2) There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. However, this is not to be confused with honoring form or format requests (see §701.8). A DON activity, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart C of this part.

(3) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DON activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed when the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant interference with the operation of the DON activity’s automated information system would not be a business as usual approach.

(5) Disclosures—(1) Discretionary Disclosures. DON activities shall make discretionary disclosures whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. A discretionary disclosure is normally not appropriate for records clearly exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(F). Exemptions (b)(2), (b)(5), and (b)(7)(A),
§ 701.6 Reading rooms.

The FOIA requires that (a)(2) records created on or after 1 November 1996, be made available electronically (starting 1 November 1997) as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. DoD 5400.7–R, “DoD Freedom of Information Act Program,” requires that each DoD Component provide an appropriate facility or facilities where the public may inspect and copy or have copied the records held in their reading rooms. To comply, the Navy FOIA website includes links that assist members of the public in locating Navy libraries, online documents, and Navy electronic reading rooms maintained by SECNAV/CNO, CMC, OGC, JAG and Echelon 2 commands. Although each of these activities will maintain their own document collections on their own servers, the Navy FOIA website provides a common gateway for all Navy online resources. To this end, DON activities shall:

(a) Establish their reading rooms and link them to the Navy FOIA Reading Room Lobby which is found on the Navy FOIA website.

(b) Ensure that responsive documents held by their subordinate activities are also placed in the reading room.

NOTE TO PARAGRAPH (b): SECNAV/ASN and OPNAV offices shall ensure that responsive documents are provided to CNO (N09B30) for placement in the reading room.

(c) Ensure that documents placed in a reading room are properly excised to preclude the release of personal or contractor-submitted information prior to being made available to the public. In every case, justification for the deletion must be fully explained in writing.
§ 701.7 Relationship between the FOIA and PA.

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

(a) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Subpart F of this part implements the DON’s Privacy Act Program.

(b) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA
system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(c) Requesters who seek records about themselves that are not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(d) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(e) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the FOIA or both Acts will have their requests processed under the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under the FOIA.

(f) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(g) Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

(h) The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

(i) Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which is retrieved by their name and/or personal identifier).

§ 701.8 Processing FOIA requests.

Upon receipt of a FOIA request, DON activities shall:

(a) Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

(1) Minimum requirements of a FOIA request. A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request.

NOTE TO PARAGRAPH (a)(2): The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.

(b) When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject’s attorney.

(c) Review description of requested record(s). (1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in this paragraph. DON activities are not obligated to act on the request until the requester responds to the
specificity letter. When practicable, DON activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the FOIA. The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DON activity’s filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided solely in connection with a request for records concerning the requester, only records in Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DON activity has reason to believe that records on the requester may exist in a record system other than a PA system, the DON activity shall search the system under the provisions of the FOIA. In either case, DON activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the records are required to be released under the FOIA, the PA does not bar its disclosure.

(4) The guidelines in paragraph (c)(3) notwithstanding, the decision of the DON activity concerning reasonableness of description must be based on the knowledge of its files. If the description enables the DON activity personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DON activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the staff to reasonably ascertain and locate which records are being requested.

(d) Review request to determine if FOIA fees may be applicable. (1) FOIA fee issues shall be resolved before a DON activity begins processing a FOIA request.

(2) FOIA fees shall be at the rates prescribed at subpart C of this part.

(3) If fees are applicable, a requester shall be apprised of what category of requester he/she has been placed and provided a complete breakout of fees to include any and all information provided before fees are assessed (e.g., first two hours of search and first 100 pages of reproduction have been provided without charge.)

(4) Forms DD 2086 (for FOIA requests) and 2086–1 (for FOIA requests for technical data) serve as an administrative record of all costs incurred to process a request; actual costs charged to a requester (i.e., search, review, and/or duplication and at what salary level and the actual time expended); and as input to the Annual FOIA Report. Requesters may request a copy of the applicable form to review the time and costs associated with the processing of a request.

(5) Final response letters shall address whether or not fees are applicable or have been waived. A detailed explanation of FOIA fees is provided at subpart C of this part.

(e) Control FOIA Request. Each FOIA request should be date stamped upon receipt; given a case number; and entered into a formal control system to track the request from receipt to response. Coordinators may wish to conspicuously stamp, label, and/or place the request into a brightly colored folder/cover sheet to ensure it receives immediate attention by the action officer.

(f) Enter request into multitrack processing system. When a DON activity has
a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing.

(1) DON activities may establish as many queues as they wish, however, at a minimum three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request: one track for simple requests, one track for complex requests, and one track for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DON activity.

(2) DON activities shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing), an opportunity to limit in writing by hard copy, facsimile, or electronically the scope of the request in order to qualify for the fastest queue.

(3) This multitrack processing system does not obviate the activity’s responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) Referred requests shall be processed according to the original date received by the initial activity and then placed in the appropriate queue.

(5) Establish a separate queue for expedited processing. A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester’s compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DON activities shall process the request as soon as practicable. Actions by DON activities to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(iii) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(iv) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(v) Other reasons that merit expedited processing by DON activities are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Humanitarian need means that disclosing the information will promote the welfare
and interests of mankind. A demonstration of humanitarian need shall also be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Both of these statements must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(6) These same procedures also apply to requests for expedited processing of administrative appeals.

(g) Respond to request within FOIA time limits. Once an activity receives a “perfected” FOIA request, it shall inform the requester of its decision to grant or deny access to the requested records within 20 working days. Activities are not necessarily required to release records within the 20 working days, but access to releasable records should be granted promptly thereafter and the requester apprised of when he/she may expect to receive a final response to his/her request. Naturally, interim releases of documents are encouraged if appropriate. Sample response letters are provided on the Navy FOIA website.

(1) If a significant number of requests, or the complexity of the requests prevents a final response determination within the statutory time period, DON activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released, or will be released by a certain date, or the records are denied under the appropriate FOIA exemption(s) or the records cannot be provided for one or more of the “other reasons” (see §701.8(n)). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination under FOIA.

(2) Formal extension. In those instances where a DON activity cannot respond within the 20 working day time limit, the FOIA provides for extension of initial time limits for an additional 10 working days for three specific situations: the need to search for and collect records from separate offices; the need to examine a voluminous amount of records required by the request; and the need to consult with another agency or agency component. In such instances, naval activities shall apprise requesters in writing of their inability to respond within 20 working days and advise them of their right to appeal to the appellate authority.

NOTE TO PARAGRAPH (g)(2): Formal extension letters require IDA signature.)

(3) Informal extension. A recommended alternative to taking a formal extension is to call the requester and negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds a formal extension of an additional 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to a FOIA appeal.

(h) Conduct a search for responsive records. (1) Conduct a search for responsive records, keeping in mind a test for reasonableness (i.e., file disposition requirements set forth in SECNAVINST 5212.5D, “Navy and Marine Corps Records Disposal Manual”). This includes making a manual search for records as well as an electronic search for records. Do not assume that because a document is old, it does not exist. Rather, ensure that all possible avenues are considered before making a determination that no record could be found (i.e., such as determining if the record was transferred to a federal records center for holding).

(2) Requesters can appeal “adequacy of search.” To preclude unnecessary appeals, you are encouraged to detail your response letter to reflect the search undertaken so the requester understands the process. It is particularly helpful to address the records disposal requirements set forth in
(i) **Review documents for release.** Once documents have been located, the originator or activity having possession and control is responsible for reviewing them for release and coordinating with other activities/agencies having an interest. The following procedures should be followed:

1. Sort documents by originator and make necessary referrals (see § 701.9).
2. Documents for which the activity has possession and control should be reviewed for release. If the review official determines that all or part of the documents requested require denial, and the head of the activity is an IDA, he/she shall respond directly to the requester. If, however, the activity head is not an IDA, then the request, a copy of the responsive documents (unexcised), proposed redacted copy of the documents, and a detailed explanation regarding their release must be referred to the IDA for a final release determination and the requester shall be notified in writing of the transfer.
3. Documents for which the activity does not have possession and control, but has an interest, should be referred to the originator along with any recommendations regarding release (see § 701.9).

(j) **Process non-responsive information in responsive documents.** DON activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DON activities desire to withhold non-responsive information, the following steps shall be accomplished:

1. Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester’s concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.
2. If the responsive record is unclassified and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempted (state the appropriate exemption(s).) Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.
3. If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures provided. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(k) **Withholding/excising information.**

1. DON records may only be withheld if they qualify for exemption under one or more of the nine FOIA exemptions/three exclusions and it is determined that a foreseeable harm to an interest protected by those exemptions would result if the information is released. There are nine FOIA exemptions. See subpart D of this part for the scope of each exemption.
2. Although a FOIA exemption may apply, DON activities are encouraged to consider discretionary disclosures of information when an exemption permits such disclosure (see §701.5(f).)
3. **Excising documents.** The excision of information within a document should be made so that the requester can readily identify the amount of information being withheld and the reason for the withholding. Accordingly, ensure that any deletion of information is bracketed and all applicable exemptions listed. In those instances, where multiple pages of documents are determined to
§ 701.8

be exempt from disclosure in their entirety, indicate the number of pages being denied and the basis for the denial.

(l) Reasonably segregable information. DON activities must release all “reasonably segregable information” when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

(m) Making a discretionary disclosure. A discretionary disclosure to one requester may preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else. The following suggested language should be included with the discretionary disclosure of any record that could be subject to withholding: “The information you requested is subject to being withheld under section (b) (___) of the FOIA. The disclosure of this material to you by the DON is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future.”

(n) Other reasons. There are 10 reasons for not complying with a request for a record under FOIA:

(1) No record. The DON activity conducts a reasonable search of files and fails to identify records responsive to the request.

NOTE TO PARAGRAPH (n)(1): Requester must be advised that he/she may appeal the adequacy of search and provided appeal rights. Response letter does not require signature by IDA.

(2) Referral. The request is referred to another DoD/DON activity or to another executive branch agency for their action.

NOTE TO PARAGRAPH (n)(2): Referral does not need to be signed by IDA.

(3) Request withdrawn. The requester withdraws request.

NOTE TO PARAGRAPH (n)(3): Response letter does not require signature by IDA.

(4) Fee-related reason. Requester is unwilling to pay fees associated with the request; is past due in payment of fees from a previous request; or disagrees with the fee estimate.

NOTE TO PARAGRAPH (n)(4): Requester must be advised that he/she may appeal the fee estimate. Response letter does not require signature by IDA.

(5) Records not reasonably described. A record has not been described with sufficient particularity to enable the DON activity to locate it by conducting a reasonable search.

NOTE TO PARAGRAPH (n)(5): Response letter does not require signature by IDA.

(6) Not a proper FOIA request for some other reason. When the requester fails unreasonably to comply with procedural requirements, other than those fee-related issues described in paragraph (n)(4), imposed by the instruction in this part and/or other published rules or directives.

NOTE TO PARAGRAPH (n)(6): Response letter does not require signature by IDA.

(7) Not an agency record. When the requester is provided a response indicating that the requested information was “not an agency record” within the meaning of the FOIA and the instruction in this part.

NOTE TO PARAGRAPH (n)(7): Response letter does not require signature by IDA.

(8) Duplicate request. When a request is duplicative of another request which has already been completed or currently in process from the same requester.

NOTE TO PARAGRAPH (n)(8): Response letter does not require signature by IDA.

(9) Other (specify). When a FOIA request cannot be processed because the requester does not comply with published rules, other than for those reasons described in paragraphs (n) (1) through (8). DON activities must document the specific discrepancy.

NOTE TO PARAGRAPH (n)(9): Response letter does not require signature by IDA.

(10) Denial of request. The record is denied in whole or in part in accordance with procedures set forth in 5 U.S.C. 552, DoD 5400.7-R, and the instruction in this part.
NOTE TO PARAGRAPH (n)(10): The requester is advised that he/she may appeal the determination and response letter must be signed by IDA.

(o) Writing a response letter. FOIA response letters should contain the following information:

1. The date of the request; when it was received; if records were not located, where the search was conducted and what the records disposal requirements are for those records.

2. Cut-off dates. Normally, DON activities shall consider the date of receipt of a FOIA request as the cut-off date for a records search. Where a DON activity employs a particular cut-off date, however, it should give notice of that date in the response letter to the requester.

3. If a request is denied in whole or in part, the denial response letter should cite the exemption(s) claimed; if possible, delineate the kinds of information withheld (i.e., social security numbers, date of birth, home addresses, etc.) as this may satisfy the requester and thus eliminate an appeal; provide appeal rights, and be signed by an IDA. However, there is no requirement that the response contain the same documentation necessary for litigation (i.e., FOIA requesters are not entitled to a Vaughn index (see definition in §701.39 during the administrative process).

4. The fees charged or waived; if fees were charged, what category was the requester placed in and provide a breakout of the fees charged (i.e., the first 2 hours of search were waived and so you are being charged for the remaining 4 hours of search at $25 per hour, or $100; the first 100 pages of reproduction were waived and the remaining 100 pages being provided were charged at $.15 per page, resulting in $60 in reproduction fees, for a total of $160). These figures are derived from Form DD 2086 (FOIA Fees) or Form DD 2086–1 (Technical Data Fees).

5. Sample response letters are provided on the Navy FOIA website.

(p) Press responses. Ensure responses being made to the press are cleared through public affairs channels.

(q) Special mail services. DON activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

§ 701.9 Referrals.

(a) The DoD/DON FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DON activity receives a request for records originated by another DoD/DON activity, it should contact the activity to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed.

(b) While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DON activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DON activities should coordinate with the originator of the information prior to making a release determination.

(c) A request received by a DON activity having no records responsive to a request shall be referred routinely to another DoD/DON activity, if the other activity has reason to believe it has the requested record. Prior to notifying the requester of a referral to another DoD/DON activity, the DON activity receiving the initial request shall consult with the other DoD/DON activity to determine if that activity’s association with the material is exempt. If the association is exempt, the activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected activity. The protected activity shall be responsible for submitting the justifications required in any litigation.

(d) Any DON activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DON activities making referrals of requests or records shall include with the referral, a point of contact by name, a telephone
§ 701.10 Processing requests received from governmental officials.

(a) Members of Congress. Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her record to the Congressional member, since the Privacy Act’s “blanket routine use” for Congressional inquiries applies.

(b) Privileged release to U.S. Government officials. DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as “Privileged” and “Exempt from Public Disclosure” and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact

number (commercial and DSN), and an e-mail address (if available).

(e) A DON activity shall refer a FOIA request for a record that it holds but was originated by another Executive Branch agency, to them for a release determination and direct response to the requester. The requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(f) A DON activity may refer a request for a record that it originated to another activity or agency when the activity or agency has a valid interest in the record, or the record was created for the use of the other agency or activity. In such situations, provide the record and a release recommendation on the record with the referral action. DON activities should include a point of contact and telephone number in the referral letter. If that organization is to respond directly to the requester, apprise the requester of the referral.

(g) Within the DON/DoD, a DON activity shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DON/DoD activity or that contains substantial information obtained from that activity, to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The requester shall be notified of such referral. In any case, DON activities shall not release or deny such records without prior consultation with the activity, except as provided in paragraph (c) of this section.

(h) Activities receiving a referred request shall place it in the appropriate processing queue based on the date it was initially received by the referring activity/agency.

(i) Agencies outside the DON that are subject to the FOIA. (i) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(NOTE: DON activities shall not refer documents originated by entities outside the Executive Branch of Government (e.g., Congress, State and local government agencies, police departments, private citizen correspondence, etc.), to them for action and direct response to the requester, since they are not subject to the FOIA.

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

§ 701.10 Processing requests received from governmental officials.

(a) Members of Congress. Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her record to the Congressional member, since the Privacy Act’s “blanket routine use” for Congressional inquiries applies.

(b) Privileged release to U.S. Government officials. DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as “Privileged” and “Exempt from Public Disclosure” and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact
on future decisions to release/deny requests for the same records to other requesters. Examples of privileged releases are:

(1) In response to a request from a Committee or Subcommittee of Congress, or to either House sitting as a whole.

(2) To the Federal Courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a DON activity or designee.

(c) State or local government officials. Requests from State or local government officials for DON records are treated the same as any other requester.

(d) Non-FOIA requests from foreign governments. Requests from foreign governments that do not invoke the FOIA shall be referred to the appropriate foreign disclosure channels and the requester so notified. See §701.11(c) regarding processing FOIA requests from foreign governments and/or their officials.

§ 701.11 Processing specific kinds of records.

DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named in this section and if appropriate apprise the requester of the referral:

(a) Classified records. Executive Order 12958 governs the classification of records.

(1) Glomar response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a “Glomar” response only when records do exist and gave a “no records” response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appropriate, the referring agency shall deny the request.

(b) Courts-martial records of trial. The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374-1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

(c) Foreign requests/information. (1) FOIA requests received from foreign governments/foreign government officials should be processed as follows:

(i) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(ii) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a
§ 701.11  

copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(iii) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (i.e., records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments) which are under the possession and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

(d) Government Accounting Office (GAO) documents. (1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISP, P.O. Box 6015, Gaithersburg, MD 20877-1450 under the cash sales program.

(e) Judge Advocate General Manual (JAGMAN) investigative records. These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374–5066.

(2) Command Investigation—to the command that conducted the investigation.


(4) Court or Board of Inquiry—to the Echelon 2 commander over the command that convened the investigation.

(f) Mailing lists. Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters’ addresses without the occupant’s name (i.e., exemption (b)(6) applies).

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from households. Release of such information aids in the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public
interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(i) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(ii) Routinely deployable units—Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(iii) Units engaged in sensitive operations. Those primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The policy in paragraphs (f) (1) through (3) should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable, overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

(g) Medical quality assurance documents. The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

(h) Mishap investigation reports (MIRs). The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511-4399 for action. Telephonic liaison with NAVSAFECEN is encouraged. The requester shall be notified of the referral.

(i) National Security Council (NSC)/White House. (1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

(j) Naval attache documents/information. The Director, Defense Intelligence Agency (DIA) has the responsibility for
reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI-1), Washington, DC 20340-5100 for action and direct response to the requester. Ensure that the requester is notified in writing of the transfer to DIA.

(k) Naval Audit Service reports. The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041-5080 for action. The requester shall be notified of the referral.

(1) Naval Criminal Investigative Service (NCIS) reports. The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388-5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

(m) Naval Inspector General (NAVINSGEN) reports. (1) NAVINSGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374-5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINSGEN should be processed by the command that conducted the investigation and NAVINSGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

(n) Naval Nuclear Propulsion Information (NNPI). The Director, Naval Nuclear Propulsion Program (CNO (NOONB)/NAVSEA (08)) is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy Pentagon, Washington, DC 20350-2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

(o) Naval Telecommunications Procedures (NTP) publications. The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394-5460 for action and direct response to the requester.

(p) News media requests. (1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall
promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

(q) Records originated by other government agencies. (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

(r) Submitter documents. (1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of Executive Order 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

(s) Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

§ 701.12 FOIA appeals/litigation.

(a) Appellate authorities. SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; disapproval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing “no record” determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under 5 U.S.C. 552 and this instruction.

The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with 5 U.S.C. 552, DoD 5400.7 and 5400.7–R, and the instruction
§ 701.12

in this part; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC’s cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel’s responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.

(3) JAG’s cognizance: In addition to military law, all matters except those falling under the cognizance of the DONGC.

(b) Appellants may file an appeal if they have been denied information in whole or in part; have been denied a waiver or reduction of fees; have been denied/have not received a response within 20 working days; or received a “no record” response or wish to challenge the “adequacy of a search” that was made. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disputes regarding fee estimates, review of an expedited basis determination not to grant expedited access to agency records, or any determination found to be adverse in nature by the requester.

(c) Action by the appellate authority. (1) Upon receipt, JAG (34) or Assistant to the General Counsel (FOIA) will promptly notify the IDA of the appeal. In turn, the IDA will provide the appellate authority with the following documents so that a determination can be made: a copy of the request, responsive documents both excised and unexcised, a copy of the denial letter, and supporting rationale for continued withholding. IDAs shall respond to the appellate authority within 10 working days.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multi-track processing system based, at a minimum, on the three processing tracks established for initial requests.

(3) If the appeal is received by the wrong appellate authority, the time limits do not take effect until it is received by the right one. If, however, the time limit for responding cannot be met, the appellate authority shall advise the appellant that he/she may consider his/her administrative remedies exhausted. However, he/she may await a substantive response without prejudicing his/her right of judicial remedy. Nonetheless, the appellate authority will continue to process the case expeditiously, whether or not the appellant seeks a court order for release of records. In such cases, a copy of the response will be provided to the Department of Justice (DOJ).

(d) Addresses for filing appeals. (1) General Counsel of the Navy, 720 Kennon Street, SE, Room 214, Washington Navy Yard, Washington, DC 20374–5012, or


(e) Appeal letter requirements. The appellant shall file a written appeal with the cognizant appellate authority (i.e., DONGC or JAG). The appeal should include a copy of the DON response letter and supporting rationale on why the appeal should be granted.

(f) Consultation/coordination. (1) The Special Assistant for Naval Investigative Matters and Security (CNO (N09N)) may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with officials within DON and other interested Federal
agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate DoD and DOJ officials.

(3) SECNAV, appropriate Assistant or Deputy Assistant Secretaries, and CNO (N09B30) shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases involving public affairs implications.

(4) Final refusal involving issues not previously resolved or that the DON appellate authority knows to be inconsistent with rulings of other DoD components ordinarily should not be made before consultation with the DoD Office of General Counsel (OGC).

(5) Tentative decisions to deny records that raise new and significant legal issues of potential significance to other agencies of the Government shall be provided to the DoD OGC.

(g) Copies of final appeal determinations. Appellate authorities shall provide copies of final appeal determinations to the activity affected and to CNO (N09B30) as appeals are decided.

(h) Denying an appeal. The appellate authority must render his/her decision in writing with a full explanation as to why the appeal is being denied along with a detailed explanation of the basis for refusal with regard to the applicable statutory exemption(s) invoked. With regard to denials involving classified information, the final refusal should explain that a declassification review was undertaken and based on the governing Executive Order and implementing security classification guides (identify the guides), the information cannot be released and that information being denied does not contain meaningful portions that are reasonably segregable. In all instances, the final denial letter shall contain the name and position title of the official responsible for the denial and advise the requester of the right to seek judicial review.

(i) Granting an appeal. The appellate authority must render his/her decision in writing. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the releasable records should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

(j) Processing appeals made under PA and FOIA. When denials have been made under the provisions of PA and FOIA, and the denied information is contained in a PA system of records, the appeal shall be processed under both PA and FOIA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under FOIA.

(k) Response letters. (1) When an appellate authority makes a final determination to release all or portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response at a minimum shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under the provisions of the FOIA, and with respect to other issues appealed for which an adverse determination was made.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) When the denial is based upon an exemption (b)(3) statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the
§ 701.13

decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(1) Time limits/requirements. (1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the case may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) FOIA litigation. The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

Subpart B—FOIA Definitions and Terms


Section (a)(1) of the FOIA requires publication in the Federal Register of descriptions of agency organizations, functions, substantive rules, and statements of general policy.


Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as “reading room” materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

(a) 5 U.S.C. 552(a)(2)(A) records. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(b) 5 U.S.C. 552(a)(2)(B) records. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

(c) 5 U.S.C. 552(a)(2)(C) records. Administrative staff manuals and instructions, or portions thereof, that establish DON policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DON activity. Examples of manuals
and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(d) 5 U.S.C. 552(a)(2)(D) records. Those (a)(2) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records. DON activities shall decide on a case-by-case basis whether records fall into this category based on the following factors: previous experience of the DON activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; and/or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(1) This provision is intended for situations where public access in a timely manner is important and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DON activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(2) Should a requester submit a FOIA request for FOIA-processed (a)(2) records and insist that the request be processed under FOIA, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for (a)(2)(A), (B) and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) However, agency records that are withheld under FOIA from public disclosure, based on one or more of the FOIA exemptions, do not qualify as (a)(2) materials and need not be published in the FEDERAL REGISTER or made available in a library reading room.


Agency records which are processed for release under the provisions of the FOIA.

§ 701.16 Administrative appeal.

A request made by a FOIA requester asking the appellate authority (JAG or OGC) to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for a waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. FOIA requesters may also appeal a non-response to a FOIA request within the statutory time limits.

§ 701.17 Affirmative information disclosure.

This is where a DON activity makes records available to the public on its own initiative. In such instance, the DON activity has determined in advance that a certain type of records or information is likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity. Affirmative disclosures can be of mutual benefit to both the DON and the members of the public who are interested in obtaining access to such information.

§ 701.18 Agency record.

Agency records are either created or obtained by an agency and under agency control at the time of the FOIA request. Agency records are stored as various kinds of media, such as:

(a) Products of data compilation (all books, maps, photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials), regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of
§ 701.19 Appellate authority.

SECNAV has delegated the OGC and JAG to review administrative appeals of denials of FOIA requests on his behalf and prepare agency paperwork for use by the DOJ in defending a FOIA lawsuit. JAG is further authorized to delegate this authority to a designated Assistant JAG. The authority of OGC is further delegated to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

§ 701.20 Discretionary disclosure.

The decision to release information that could qualify for withholding under a FOIA exemption, but upon review the determination has been made that there is no foreseeable harm to the Government for releasing such information. Discretionary disclosures do not apply to exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C).

§ 701.21 Electronic record.

Records (including e-mail) which are created, stored, and retrieved by electronic means.

§ 701.22 Exclusions.

The FOIA contains three exclusions (c)(1), (c)(2) and (c)(3) which expressly authorize Federal law enforcement agencies for specially sensitive records under certain specified circumstances to treat the records as not subject to the requirements of the FOIA.

§ 701.23 Executive Order 12958.

Revoked Executive Order 12356 on October 14, 1995 and is the basis for claiming that information is currently and properly classified under (b)(1) exemption of the FOIA. It sets forth new requirements for classifying and declassifying documents. It recognizes both the right of the public to be informed about the activities of its government and the need to protect national security information from unauthorized or untimely disclosure.
§ 701.24 Federal agency.

A Federal agency is any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.


An access statute that pertains to agency records of the Executive Branch of the Federal Government, including the Executive Office of the President and independent regulatory agencies.

Note to §701.25: Records maintained by State governments, municipal corporations, by the courts, by Congress, or by companies and private citizens do not fall under this Federal statute

§ 701.26 FOIA exemptions.

There are nine exemptions that identify certain kinds of records/information that qualify for withholding under FOIA. See subpart D of this part for a detailed explanation of each exemption.

§ 701.27 FOIA fee terms location.

The FOIA fee terms can be found in subpart C of this part.

§ 701.28 FOIA request.

A written request for DON records, made by “any person” including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA by citing DoD FOIA regulations or the instruction in this part. FOIA requests can be made for any purpose whatsoever, with no showing of relevancy required. Because the purpose for which records are sought has no bearing on the merits of the request, FOIA requesters do not have to explain or justify their requests. Written requests may be received by postal service or other commercial delivery means, by facsimile or electronically.

§ 701.29 Glomar response.

Refusal by the agency to either confirm or deny the existence or non-existence of records responsive to a FOIA request. See exemptions (b)(1), (b)(6), and (b)(7)(C) at subpart D of this part.

§ 701.30 Initial Denial Authority (IDA).

SECNAV has delegated authority to a limited number of officials to act on his behalf to withhold records under their cognizance that are requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure; to deny a fee category claim by a requester; to deny a request for expedited processing due to demonstrated compelling need; to deny or grant a request for waiver or reduction of fees when the information sought relates to matters within their respective geographical areas of responsibility or chain of command; fees; to review a fee estimate; and to confirm that no records were located in response to a request. IDAs may also grant access to requests.

§ 701.31 Mosaic or compilation response.

The concept that apparently harmless pieces of information when assembled together could reveal a damaging picture. See exemption (b)(1) at subpart D of this part.

§ 701.32 Perfected request.

A request which meets the minimum requirements of the FOIA to be processed and is received by the DON activity having possession and control over the documents/information.

§ 701.33 Public domain.

Agency records released under the provisions of FOIA and the instruction in this part to a member of the public.

§ 701.34 Public interest.

The interest in obtaining official information that sheds light on a DON activity’s performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private
§ 701.35 Reading room.

Location where (a)(2) materials are made available for public inspection and copying.

§ 701.36 Release authorities.

Commanding officers and heads of Navy and Marine Corps shore activities or their designees are authorized to grant requests on behalf of SECNAV for agency records under their possession and control for which no FOIA exemption applies. As necessary, they will coordinate releases with other officials who may have an interest in the releasability of the record.

§ 701.37 Reverse FOIA.

When the "submitter" of information, usually a corporation or other business entity, that has supplied the agency with data on its policies, operations and products, seeks to prevent the agency that collected the information from revealing the data to a third party in response to the latter’s FOIA request.

§ 701.38 Technical data.

Recorded information, regardless of form or method of the recording, of a scientific or technical nature (including computer software documentation).

§ 701.39 Vaughn index.

Itemized index, correlating each withheld document (or portion) with a specific FOIA exemption(s) and the relevant part of the agency’s nondisclosure justification. The index may contain such information as: date of document; originator; subject/title of document; total number of pages reviewed; number of pages of reasonably segregable information released; number of pages denied; exemption(s) claimed; justification for withholding; etc. FOIA requesters are not entitled to a Vaughn index during the administrative process.

Subpart C—FOIA Fees

§ 701.40 Background.

(a) The DON follows the uniform fee schedule developed by DoD and established to conform with the Office of Management and Budget’s (OMB’s) Uniform Freedom of Information Act Fee Schedule and Guidelines.

(b) Fees reflect direct costs for search; review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, which does not supersede the collection of fees under the FOIA.

(c) FOIA fees do not supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. For example, 5 U.S.C. 552 (a)(4)(A)(vi) enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DON activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

§ 701.41 FOIA fee terms.

(a) Direct costs means those expenditures a DON activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.
(b) Duplication refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available, and that the activity’s master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator’s time, shall be charged. In practice, if a DON activity estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) Review refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. DON activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(d) Search refers to time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. DON activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the activity and the requester. For example, activities should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

1. DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request.
2. DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.
3. In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.42 Categories of requesters—applicable fees.

(a) Commercial requesters refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, DON activities must determine the use to which a requester will put the records requested. More over, where an activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request
§ 701.42

itself, it should seek additional clarification before assigning the request to a specific category.

(1) Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(2) When DON activities receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(b) Educational Institution refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding the first 100 pages) when the request is made by an educational institution whose purpose is scientific research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of or scientific research.

(3) Fees shall be waived or reduced in the public interest if criteria of §701.58 have been met.

(c) Non-commercial Scientific Institution refers to an institution that is not operated on a “commercial” basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of or scientific research.

(d) Representative of the news media. (1) Refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but DON activities may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria established in paragraph (d)(1), and his or her request must not be
made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) Representative of the news media does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(4) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the fee waiver criteria have been met.

(e) All other requesters. DON activities shall charge requesters who do not fit into any of the categories described in paragraph (a) through (d) fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

§ 701.43 Fee declarations.

Requesters should submit a fee declaration appropriate for the categories in paragraphs (a) through (c) of this section, if fees are expected to exceed the minimum fee threshold of $15.00.

(a) Commercial. Requesters should indicate a willingness to pay all search, review and duplication costs.

(b) Educational or noncommercial scientific institution or news media. Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(c) All others. Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

(d) If the conditions in paragraphs (a) through (c) are not met, then the request need not be processed and the requester shall be so informed.

§ 701.44 Restrictions.

(a) No fees may be charged by any DON activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the “cost of collecting a fee” are the administrative costs to the DON activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury’s special account. The cost to
the Department of Treasury to handle such remittance is negligible and shall not be considered in activity determinations.

(d) For the purposes of the restrictions in this section, the word “pages” refers to paper copies of a standard size, which will normally be “8½x11” or “11x14.” Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(e) In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

§ 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall analyze each request to determine the category of the requester. If the activity’s determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

(1) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(2) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the activity.

(c) Estimate of fees. DON activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should the activity’s actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester’s agreed amount shall not be charged without the requester’s agreement.

(d) Advance payment of fees. DON activities may not require advance payment of any fee (i.e., before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (i.e., 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed $250.00.

(e) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no payment history.

(f) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount.
§ 701.48 Fee waivers.

Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the DON activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the DON/DoD and is not primarily in the commercial interest of the requester. When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(a) Disclosure of the information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.”

§ 701.47 FOIA fees must be addressed in response letters.

DON activities shall ensure that requesters receive a complete breakout of all fees which are charged and apprised of the “Category” in which they have been placed. For example: “We are treating you as an ‘All Other Requester.’ As such, you are entitled to 2 free hours of search and 100 pages of reproduction, prior to any fees being assessed. We have expended an additional 2 hours of search at $25.00 per hour and an additional 180 pages of reproduction, for a total fee of $65.00.”

§ 701.46 Aggregating requests.

Except for requests that are for a commercial use, a DON activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the activity may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and activities should have a solid basis for determining that aggregation is warranted in such cases. DON activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may an activity aggregate multiple requests on unrelated subjects.

of the estimated fee before the DON activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed by 31 U.S.C. 3737 and confirmed with respective finance and accounting offices.

(g) After all the work is completed on a request, and the documents are ready for release, DON activities may require payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed to previously pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(h) DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.
§ 701.48  32 CFR Ch. VI (7–1–02 Edition)

(b) The subject of the request. DON activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DON/DoD. Requests for records in the possession of the DON which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the DON/DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DON/DoD.

(c) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the DON. While the subject of a request may contain information that concerns operations or activities of the DON, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DON must be approached with caution and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the DON.

(d) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(e) The significance of the contribution to public understanding. In applying this factor, DON activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. DON activities shall not make value
judgments as to whether the information is important enough to be made public.

(f) Disclosure of the information “is not primarily in the commercial interest of the requester.”

(1) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, DON activities should address the magnitude of that interest to determine if the requester’s commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, DON activities may draw inference from the requester’s identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester’s commercial benefit must clearly override any personal or non-profit interest.

(2) The primary interest in disclosure. Once a requester’s commercial interest has been determined, DON activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester’s commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(g) The factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, DON activities should rule in favor of the requester.

(h) The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., $15.00–$30.00).

§ 701.49 Payment of fees.

(a) Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed $250.00.

(b) However, after all work is completed on a request, and the documents are ready for release, DON activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(c) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity

The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

§ 701.51 Refunds.

In the event that a DON activity discovers that it has overcharged a requester or a requester has overpaid, the DON activity shall promptly refund the charge to the requester by reimburse-
computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(2) Machine time. Machine time involves only direct costs of the central processing unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine-related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DON activities lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) Duplication.

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</tr>
<tr>
<td>Computer copies (tapes, discs or printouts)</td>
<td>Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).</td>
</tr>
</tbody>
</table>

(d) Review time (in the case of commercial requesters, only).

<table>
<thead>
<tr>
<th>Type</th>
<th>Grade</th>
<th>Hourly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical</td>
<td>E9/GS8 and below</td>
<td>$12.00</td>
</tr>
<tr>
<td>Professional</td>
<td>O1–O6/GS9–GS15</td>
<td>25.00</td>
</tr>
<tr>
<td>Executive</td>
<td>O7/GS16/ES1 and above</td>
<td>45.00</td>
</tr>
</tbody>
</table>

(e) Audiovisual documentary materials. Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) Other records. Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) Costs for special services. Complying with requests for special services is at the discretion of the DON activity. Neither the FOIA nor its fee structure cover these kinds of services. Therefore, DON activities may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for such fees as certifying that records are true copies, sending records by special methods such as express mail, etc.

§ 701.54 Collection of fees and fee rates for technical data.

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information.

(b) DON activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under information released under FOIA.

(c) Waiver. DON activities shall waive the payment of costs required in paragraph (a) of this section which are greater than the costs that would be required for release of this same information under the FOIA if:
§ 701.55

(1) The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DON activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The DON activity determines in accordance with § 701.48 that such a waiver is in the interest of the United States.

(d) Fee rates.

(1) Manual search.

<table>
<thead>
<tr>
<th>Type</th>
<th>Grade</th>
<th>Hourly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical</td>
<td>E9/GS8 and below</td>
<td>$13.25</td>
</tr>
<tr>
<td>Clerical (Minimum Charge)</td>
<td>E9/GS8 and below</td>
<td>$8.30</td>
</tr>
<tr>
<td>Professional</td>
<td>01 to 06/GS9 to GS15</td>
<td>(*)</td>
</tr>
<tr>
<td>Executive</td>
<td>07/GS16/ES1 or higher</td>
<td>(*)</td>
</tr>
</tbody>
</table>

** Rate to be established at actual hourly rate prior to search. A minimum charge will be established at ½ Minimum Charge

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale for manual search) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) Duplication.

<table>
<thead>
<tr>
<th>Type</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents</td>
<td>$2.50</td>
</tr>
<tr>
<td>Engineering data (microfilm):</td>
<td></td>
</tr>
<tr>
<td>Aperture cards:</td>
<td></td>
</tr>
<tr>
<td>Silver duplicate negative, per card</td>
<td>$0.75</td>
</tr>
<tr>
<td>When key punched and verified, per card</td>
<td>$0.85</td>
</tr>
<tr>
<td>Diazo duplicate negative, per card</td>
<td>$0.65</td>
</tr>
<tr>
<td>When key punched and verified, per card</td>
<td>$0.75</td>
</tr>
<tr>
<td>35mm roll film, per frame</td>
<td>$0.50</td>
</tr>
<tr>
<td>16mm roll film, per frame</td>
<td>$0.45</td>
</tr>
<tr>
<td>Paper prints (engineering drawings), each</td>
<td>$1.50</td>
</tr>
</tbody>
</table>

§ 701.55 Processing FOIA fee remittances.

(a) Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

(b) Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

(c) Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

Subpart D—FOIA Exemptions

§ 701.56 Background.

The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to
be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

§ 701.57 Ground rules.

(a) Identity of requester. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized in systems notice and by a FOIA exemption.

(b) Reasonably segregable. Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to unintelligible gibberish.

(c) Discretionary release. A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

(d) Initial Denial Authority (IDA) actions. The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in §701.4.

§ 701.58 In-depth analysis of FOIA exemptions.


§ 701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

(a) 5 U.S.C. 552 (b)(1): Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

(1) Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified based on the Executive Order on classification (i.e., Executive Order 12958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(i) Glomar response: The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Compilation: Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

(b) 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules
§ 701.59

and practices of the DON and its activities. This exemption is entirely discretionary and has two profiles, high (b)(2) and low (b)(2):

(1) High (b)(2) are records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DON. For example:

(i) Those operating rules, guidelines, and manuals for DON investigators, inspectors, auditors, or examiners that must remain privileged in order for the DON activity fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion;

(iii) Computer software, the release of which would allow circumvention of a statute or DON rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Discussion of low (b)(2) is provided for information only, as DON activities may not invoke the low (b)(2). Low (b)(2) records are those matters which are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel’s use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(c) 5 U.S.C. 552 (b)(3): Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. A few examples of (b)(3) statutes are:

(1) 10 U.S.C. 128, Physical Protection of Special Nuclear Material, Limitation on Dissemination of Unclassified Information.

(2) 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data.

(3) 10 U.S.C. 1102, Confidentiality of Medical Quality Assurance Records.

(4) 10 U.S.C. 2305(g), Protection of Contractor Submitted Proposals.


(6) 18 U.S.C. 798, Communication Intelligence.

(7) 35 U.S.C. 181–188, Patent Secrecy—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(8) 35 U.S.C. 205, Confidentiality of Inventions Information.

(9) 41 U.S.C. 423, Procurement Integrity.

(10) 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data.


(d) 5 U.S.C. 552 (b)(4): Those containing trade secrets or commercial or financial information that a DON activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government’s ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm. If the information qualifies as exemption (b)(4) information,
there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DON activity and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption (b)(3).

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the DON.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR, subparts 227.71 and 227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption (b)(3) if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 of 6 November 1984.

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(e) 5 U.S.C. 552(b)(5): Those containing information considered privileged in litigation, primarily under the deliberative process privilege. For example: internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DON activities. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary. Examples of the deliberative process include:

(1) The nonfactual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of the DON by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.
§ 701.59

(3) Those non-factual portions of evaluations by DON personnel of contractors and their products.

(4) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(5) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DON activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(6) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(8) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party’s particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(9) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(10) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(11) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) 5 U.S.C. 552(b)(6): Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption (b)(6) information, there is no discretion in its release. Examples of other files containing personal information similar to that contained in personnel and medical files include:

(1) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative
action, including disciplinary action, may be taken.

(3) Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name. Additionally, the names and duty addresses (postal and/or e-mail) of DON/DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(4) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(5) Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(6) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24 of 28 October 1996 (NOTAL).

(7) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

(8) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(6) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON activities or Federal agencies before referring a record that is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; the person initiated or directly participated in an investigation that led to the creation of an agency record seeks access to that record; or the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) 5 U.S.C. 552(b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued under law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of
(b)(7)(C) and (b)(7)(F), this exemption is discretionary. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:


2. 5 U.S.C. 552(b)(7)(B): Would deprive a person of the right to a fair trial or to an impartial adjudication.

3. 5 U.S.C. 552(b)(7)(C): Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. (i) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the activity is aware of that fact.

5. 5 U.S.C. 552(b)(7)(D): Could reasonably be expected to disclose the identity of a confidential source, including a source within the DON; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. 5 U.S.C. 552(b)(7)(E): Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

7. 5 U.S.C. 552(b)(7)(F): Could reasonably be expected to endanger the life or physical safety of any individual.

Some examples of exemption 7 are: Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings; the identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained nor any civil action filed against them by the United States; information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DON activity or a lawful national security intelligence investigation conducted by an authorized agency or office within the DON; national security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(9) Exclusions. Excluded from the exemption in paragraph (g)(8) are the following two situations applicable to the DON:

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to
believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, DON activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DON activity under the informant’s name or personal identifier are requested by a third party using the informant’s name or personal identifier, the DON activity may treat the records as not subject to the FOIA, unless the informant’s status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(iii) DON activities considering invoking an exclusion should first consult with the DOJ’s Office of Information and Privacy.

(h) 5 U.S.C. 552(b)(8): Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) 5 U.S.C. 552(b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart E—Indexing, Public Inspection, and Federal Register Publication of Department of the Navy Directives and Other Documents Affecting the Public

Source: 65 FR 24635, Apr. 27, 2000, unless otherwise noted.

§ 701.61 Purpose.

This subpart implements 5 U.S.C. 552(a) (1) and (2) and provisions of Department of Defense Directive 5400.7 May 13, 1968 (32 CFR part 286, 55 FR 53104); Department of Defense Directive 5400.9, December 23, 1974 (32 CFR part 336, 40 FR 49111); and the Regulations of the Administrative Committee of the Federal Register (1 CFR chaps. I and II) by delineating responsibilities and prescribing requirements, policies, criteria, and procedures applicable to:

(a) Publishing the following Department of the Navy documents in the Federal Register:

(1) Certain classes of regulatory, organizational policy, substantive, and procedural documents required to be published for the guidance of the public;

(2) Certain classes of proposed regulatory documents required to be published for public comment prior to issuance; and

(3) Certain public notices required by law or regulation to be published;

(b) Making available, for public inspection and copying, certain classes of documents having precedential effect on decisions concerning members of the public;

(c) Maintaining current indexes of documents having precedential effect on decisions concerning members of the public, and publishing such indexes or making them available by other means;

(d) Receiving and considering petitions of members of the public for the issuance, revision, or cancellation of regulatory documents of some classes; and

(e) Distributing the Federal Register for official use within the Department of the Navy.

§ 701.62 Scope and applicability.

This subpart prescribes actions to be executed by, or at the direction of, Navy Department (as defined in §700.104c of this chapter) components and specified headquarters activities for apprising members of the public of Department of the Navy regulations, policies, substantive and procedural rules, and decisions which may affect them, and for enabling members of the public to participate in Department of the Navy rulemaking processes in matters of substantial and direct concern to the public. This subpart complements subpart A, which implements Navy-wide requirements for furnishing documents to members of the public upon request. That a document may
§ 701.63 Policy.
In accordance with the spirit and intent of 5 U.S.C. 552, the public has the right to maximum information concerning the organization and functions of the Department of the Navy. This includes information on the policies and the substantive and procedural rules used by the Department of the Navy in its dealings with the public. In accordance with Department of Defense policy described in 32 CFR part 336, 40 FR 4911, moreover, the public is encouraged to participate in Department of the Navy rulemaking when the proposed rule would substantially and directly affect the public.

§ 701.64 Publication of adopted regulatory documents for the guidance of the public.

(a) Classes of documents to be published. Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release to the public [see subpart B of this part], the classes of Department of the Navy documents required to be published on a current basis in the FEDERAL REGISTER are listed below.

(1) Naval organization and points of contact—description of the central and field organization of the Department of the Navy and the locations at which, the members or employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Methods and procedures for business with public—statements of the general course and methods by which Department of the Navy functions affecting members of the public are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Procedural rules and forms—rules of procedure for functions affecting members of the public, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations required to be submitted under such rules of procedures; and

(4) Substantive rules and policies—substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department of the Navy. Such rules are commonly contained in directives, manuals, and memorandums.

(i) “General applicability” defined. The definition prescribed in 1 CFR 1.1 pertains to the classes of documents contemplated in §701.64(b)(4).

(ii) Internal personnel rules and internal practices. In addition to other exemptions listed in 5 U.S.C. 552(b) and subpart B of this part, particular attention is directed to the exemption pertaining to internal personnel rules and internal practices.

(iii) Local regulations. It is unnecessary to publish in the FEDERAL REGISTER a regulation which is essentially local in scope or application, such as a directive issued by a base commander in the implementation of his responsibility and authority under subpart G of part 700 of this title for guarding the security of the installation or controlling the access and conduct of visitors or tradesmen. However, such publication may be authorized under extraordinary circumstances, as determined by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the concurrence of the Judge Advocate General.

(iv) Incorporation by reference. With the approval of the Director of the Federal Register given in the limited instances authorized in 1 CFR Part 51 and 32 CFR 336.5(c), the requirement for publication in the FEDERAL REGISTER may be satisfied by reference in the FEDERAL REGISTER to other publications containing the information which must otherwise be published in the FEDERAL REGISTER. In general, matters eligible for incorporation by reference are restricted to materials in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information which are reasonably available to members of the class affected.
(b) **Public inspection.** when feasible, Department of the Navy and Department of Defense documents published in the *FEDERAL REGISTER* should be made available for inspection and copying, along with available indexes of such documents, in the same locations used for copying of the documents contemplated in §701.65.

§ 701.65 Availability, public inspection, and indexing of other documents affecting the public.

(a) **Discussion.** Section 552(a) of title 5, United States Code, requires the Department of the Navy to make available for public inspection and copying documents which have precedential significance on those Department of the Navy decisions which affect the public. These documents must be kept readily available for public inspection and copying at designated locations, unless they are promptly published and copies are offered for sale. Additionally, documents issued after July 4, 1967, are required to be indexed on a current basis. These indexes, or supplements thereto, must be published at least quarterly in accordance with the provisions of this paragraph. In determining whether a particular document is subject to the requirements of this paragraph, consideration should be given to the statutory purposes and legal effect of the provisions.

(1) **Statutory purposes.** In general, the purpose of the requirement to provide members of the public with essential information is to enable them to deal effectively and knowledgeably with Federal agencies; to apprise members of the public of the existence and contents of documents which have potential legal consequences as precedents in administrative determinations which may affect them; and to permit public examination of the basis for administrative actions which affect the public.

(2) **Legal effect.** If a document is required to be indexed and made available under this paragraph, it may not be used or asserted as a precedent against a member of the public unless it was indexed and made available, or unless the person against whom it is asserted had actual and timely notice of its contents.

(b) **Classes of documents affected.** (1) Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from the requirements of public disclosure, the following classes of Department of the Navy documents are included in the requirements of this paragraph:

(i) **Final adjudicative opinions and orders**—opinions (including concurring and dissenting opinions) which are issued as part of the final disposition of adjudication proceedings (as defined in 5 U.S.C. 551) and which may have precedential effect in the disposition of other cases affecting members of the public;

(ii) **Policy statements and interpretations**—statements of policy and interpretations of less than general applicability (i.e., applicable only to specific cases; organizations, or persons), which are not required to be published in the *FEDERAL REGISTER*, but which may have precedential effect in the disposition of other cases affecting members of the public;

(iii) **Manuals and instructions**—administrative staff manuals, directives, and instructions to staff, or portions thereof, which establish Department of the Navy policy or interpretations of policy that serve as a basis for determining the rights of members of the public with regard to Department of the Navy functions. In general, manuals and instructions relating only to Internal management aspects of property or fiscal accounting, personnel administration, and most other “proprietary” functions of the department are not within the scope of this provision. This provision also does not apply to instructions for employees on methods, techniques, and tactics to be used in performing their duties; for example:

(A) Instructions or manuals issued for audit, investigation, and inspection purposes;

(B) Those which prescribe operational tactics; standards of performance; criteria for defense, prosecution, or settlement of cases; or negotiating or bargaining techniques, limitations, or positions; and

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and
§ 701.65  32 CFR Ch. VI (7–1–02 Edition)

systems, and foreign intelligence operations.

(2) In determining whether a document has precedential effect, the primary test is whether it is intended as guidance to be followed either in decisions or evaluations by the issuing authority's subordinates, or by the issuing authority itself in the adjudication or determination of future cases involving similar facts or issues. The kinds of orders or opinions which clearly have precedential effect are those that are intended to operate both as final dispositions of the questions involved in the individual cases presented, and as rules of decision to be followed by the issuing authority or its subordinates in future cases involving similar questions. By contrast, many adjudicative orders and opinions issued within the Department of the Navy operate only as case-by-case applications of policies or interpretations established in provisions of manuals or directives and are not themselves used, cited, or relied on as rules of decision in future cases. In these instances, the underlying manual or directive provisions obviously would have precedential effect, but the orders and opinions themselves would not have. A recommendation by an official who is not authorized to adjudicate, or to issue a binding statement of policy or interpretation in a particular matter would not have precedential effect though an order, opinion, statement of policy, or interpretation issued by an authorized official pursuant to such recommendation might have that effect.

(c) Deletion of identifying details. (1) Although the exemptions from public disclosure described in 5 U.S.C. 552 and subpart B of this part are applicable to documents which are required to be indexed and made available for public inspection and copying under this paragraph, there is no general requirement that any segregable portions of partially exempt documents be so indexed and made available for public inspection and copying. As a general rule, a record may therefore be held exempt in its entirety from the requirements of this paragraph if it is determined that it contains exempt matter and that it is reasonably foreseeable that disclosure would be harmful to an interest protected by that exemption. An exception to this general rule does exist with regard to a record which would be exempt only because it contains information which, if disclosed, would result in a clearly unwarranted invasion of privacy.

(2) Where necessary to prevent a clearly unwarranted invasion of a person's privacy, identifying details should be deleted from a record which is required to be indexed and made available for public inspection and copying under this paragraph. In every such case, the justification for the deletion must be fully stated in writing in a manner which avoids creating inferences that could be injurious to the person whose privacy is involved. Usual reasons for deletion of identifying details include the protection of privacy in a person's business affairs, medical matters, or private family matters; humanitarian considerations; and avoidance of embarrassment to a person.

(d) Publication of indexes—(1) Form of indexes. Each index should be arranged topically or by descriptive words, so that members of the public may be able to locate the pertinent documents by subject, rather than by case name or by a numbering system.

(2) Time of publication. Each component having cognizance of records required under this paragraph to be indexed shall compile and maintain an index of such records on a continually current basis. Each such index was required to initially be published by July 1, 1975. An updated version of each such index, or a current supplement thereto, shall be published by an authorized method at least annually thereafter.

(3) Methods of publication. The methods authorized for publication of the indexes contemplated in this paragraph are:

(i) Publication in the Federal Register;

(ii) Commercial publication, provided that such commercial publication is readily available to members of the public, or will be made available upon request, and payment of costs (if this method is utilized, information on the cost of copies and the address from which they may be obtained shall be published in the Federal Register); or
(iii) Furnishing internally reproduced copies upon request, at cost not to exceed the direct cost of duplication in accordance with subpart D of this part, provided that it is determined by an order published in the Federal Register, that the publication of the index by methods §701.65(d) (3) (i) or (ii) would be unnecessary or impracticable. Such order shall state the cost of copies and the address from which they may be obtained. The Chief of Naval Operations (N09B30) is authorized to issue such an order in a proper case.

(4) Public inspection of indexes. In addition to publication by one of the foregoing methods, each index will be made available for public inspection and copying in accordance with §701.65(e) at the locations where Department of the Navy records are available for public inspection.

(e) Where records may be inspected. Locations and times at which Department of the Navy records, and indexes thereof, are available for public inspection and copying are shown in §701.32.

(f) Cost. Fees for copying services, if any, furnished at locations shown in §701.32 shall be determined in accordance with subpart D of this part.

(g) Records of the United States Navy-Marine Corps Court of Military Review. The United States Navy-Marine Corps Court of Military Review is deemed to be “a court of the United States” within the meaning of 5 U.S.C. 551 and is therefore excluded from the requirements of 5 U.S.C. 552. Nevertheless, unpublished decisions of the United States Navy-Marine Corps Court of Military Review, although not indexed, are available for public inspection at the location shown in §701.32(c).

§ 701.66 Publication of proposed regulations for public comment.

(a) Discussion. The requirements of this section are not imposed by statute, but are the implementation of policies and procedures created administratively in 32 CFR part 336. In effect, the pertinent provisions of 32 CFR part 336 establish, within the Department of Defense and its components, procedures that are analogous to the public rulemaking procedures applicable to some functions of other Federal agencies under 5 U.S.C. 553. While the administrative policy of encouraging the maximum practicable public participation in the Department of the Navy rulemaking shall be diligently followed, determinations by the Department of the Navy as to whether a proposed regulatory requirement originated by it comes within the purview of this paragraph and the corresponding provisions of 32 CFR part 336, and as to whether inviting public comment is warranted, shall be conclusive and final.

(b) Classes of documents affected. Each proposed regulation or other document of a class described in §701.64(a) (or a proposed revision of an adopted document of any of those classes) which would “originate” within the Department of the Navy a requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public, must be evaluated to determine whether inviting public comment prior to issuance is warranted. Documents that merely implement regulations previously issued by higher naval authorities or by the Department of Defense will not be deemed to “originate” requirements within the purview of this section. If a proposed document is within the purview of this section, publication to invite public comment will be warranted unless, upon evaluation, it is affirmatively determined both that a significant and legitimate interest of the Department of the Navy or the public will be served by omitting such publication for public comment, and that the document is subject to one or more of the following exceptions:

(1) It pertains to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(2) It relates to naval management, naval military or civilian personnel, or public contracts (e.g. Navy Procurement Directives) including non-appropriated fund contracts;
(3) It involves interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(4) It is determined with regard to the document, for good cause, that inviting public comment is impracticable, unnecessary, or contrary to the public interest.

(c) Procedures—(1) Normal case. Unless the official having cognizance of a proposed regulatory document determines under the criteria of §701.66(b) that inviting public comment is not warranted, he or she shall cause it to be published in the FEDERAL REGISTER with an invitation for the public to submit comments in the form of written data, views, or arguments during a specified period of not less than 30 days following the date of publication. An opportunity for oral presentation normally will not be provided, but may be provided at the sole discretion of the official having cognizance of the proposed directive if he or she deems it to be in the best interest of the Department of the Navy or the public to do so. After careful consideration of all relevant matters presented within the period specified for public comment, the proposed document may be issued in final form. After issuance, the adopted document, and a preamble explaining the relationship of the adopted document to the proposed and the nature and effect of public comments, shall be published in the FEDERAL REGISTER for guidance of the public.

(2) Where public comment is not warranted. The official having cognizance of a proposed document within the purview of this paragraph shall, if he or she determines that inviting public comment concerning the document is not warranted under the criteria of §701.66(b), incorporate that determination, and the basis therefor, in the document when it is issued or submitted to a higher authority for issuance. After issuance, such document shall be published in the FEDERAL REGISTER for the guidance of the public, if required under §701.64(b).

§ 701.67 Petitions for issuance, revision, or cancellation of regulations affecting the public.

In accordance with the provisions of 32 CFR part 336, the Department of the Navy shall accord any interested person the right to petition in writing, for the issuance, revision, or cancellation of regulatory document that originates, or would originate, for the Department of the Navy, a policy, requirement, or procedure which is, or would be, within the purview of §701.66. The official having cognizance of the particular regulatory document involved, or having cognizance of the subject matter of a proposed document, shall give full and prompt consideration to any such petition. Such official may, at his or her absolute discretion, grant the petitioner an opportunity to appear, at his or her own expense, for the purpose of supporting the petition, if this is deemed to be compatible with orderly conduct of public business. The petitioner shall be advised in writing of the disposition, and the reasons for the disposition, of any petition within the purview of this section.

Subpart F—Department of the Navy Privacy Act Program


SOURCE: 65 FR 31456, May 18, 2000, unless otherwise noted.

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11,1 and DoD 5400.11–R,2 (32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

1Copies may be obtained: http://www.whs.osd.mil/corres.htm.
2See footnote 1 to §701.100.
(b) Notifying individuals if any systems of records contain a record pertaining to them;
(c) Verifying the identity of individuals who request their records before the records are made available to them;
(d) Notifying the public of the existence and character of each system of records;
(e) Exempting systems of records from certain requirements of the Privacy Act; and
(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

Access. The review or copying of a record or parts thereof contained in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

Confidential source. A person or organization who has furnished information to the Federal Government either under an express promise that the person’s or the organization’s identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Defense Data Integrity Board. Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject’s designated agent or the subject’s legal guardian.

Federal personnel. Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

Individual. A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term “individual” does not embrace an individual.
acting in a non-personal capacity (for example, sole proprietorship or partnership).

**Individual access.** Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

**Maintain.** Includes maintain, collect, use, or disseminate.

**Member of the public.** Any individual or party acting in a private capacity.

**Minor.** Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

**Official use.** Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

**Personal information.** Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual’s official functions or public life.

**Privacy Act (PA) request.** A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

**Record.** Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual’s education, financial transactions, and medical, criminal, or employment history, and that contains the individual’s name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

**Review authority.** An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(MRA))), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

**Risk assessment.** An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

**Routine use.** Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the Federal Register.

**Statistical record.** A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

**System manager.** An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

**System of records.** A group of records under the control of a Department of the Navy activity from which information is retrieved by the individual’s name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the Federal Register and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211.

**Word processing equipment.** Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

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4 See footnote 3 to §701.101.
§701.103 Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

Working day. All days excluding Saturday, Sunday, and legal holidays.

§701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11-R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual’s or minor’s behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

1. Expressly authorized by statute;
2. Authorized by the individual;
3. Within the scope of an authorized law enforcement activity; or
4. For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

5. Maintain only systems of records which have been published in the Federal Register, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTES) 5211 and §701.105. These OPNAVNOTES 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems
notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) Chief of Naval Operations (CNO). CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.
(2) Serve as principal advisor on all Privacy Act matters.
(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.
(4) Develop Navy-wide Privacy Act training program and serve as training oversight manager.
(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.
(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) Commandant of the Marine Corps (CMC). CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code ARAD)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) Privacy Act Coordinator. Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.
(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.
(3) Issue implementing instruction which designates the activity’s Privacy Act Coordinator. Privacy Act records disposition, Privacy Act processing procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.
(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.
(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).
(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.
(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.
(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.
(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) Release authority. Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see §701.104(g)).

(e) Denial authority. Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access, and/or amendment of records. These officials could also be systems managers (see §701.104(g)).
within their respective areas of responsibility or chain of command:

(1) Department of the Navy. Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Administrative Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) For the shore establishment.(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C),5 to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) In the Operating Forces. All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) Review authority. (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary’s designee, and shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in §701.111(c)(2) and (4).

(2) The Judge Advocate General and General Counsel, as the Secretary’s designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in §701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) Systems manager. Systems managers, as designated in Department of the Navy’s compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211.6, “Current Privacy Act Issuances”) shall:

(1) Ensure the system has been published in the Federal Register and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances.”

(2) Maintain accountability records of disclosures.

(h) Department of the Navy employees. Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal

5Copies may be obtained: Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

6See footnote 3 to §701.101.
Systems of records.

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) Retrieval practices. (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with §701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with §701.107.

(b) Recordkeeping standards. A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) Authority to establish systems of records. Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) Exercise of First Amendment rights.

(1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) System manager’s evaluations and reviews. (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

(iii) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.
(i) When an alteration or amendment of an existing system is prepared pursuant to §701.107(b) and (c), do the evaluation described in paragraph (e) of this section.

(ii) Conduct the following reviews annually and be prepared to report, in accordance with §701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of §701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with §701.107(b). If minor changes are needed, amend the system notice pursuant to §701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and paragraph (h) of this section.

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient’s use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) Discontinued information requirements.

(1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5, "Disposal of Navy and Marine Corps Records."

(g) Review records before disclosing outside the Federal government. Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) Federal government contractors—(1) Applicability to Federal government contractors.

(i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) Minimum standards.
(1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.
(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.
(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.
(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) Records disposal.
(1) Dispose of records from systems of records so as
§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) Criteria for a new system of records. A new system of records is one for which no existing system notice has been published in the Federal Register. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the Federal Register. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) Criteria for an alteration to a system of records notice. A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the Federal Register. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (i.e., such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (e.g., printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with paragraph (b)(1) of this section.
§ 701.108 Collecting information about individuals.

(a) Collecting directly from the individual. To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual’s rights, benefits, or privileges under the Federal programs.

(b) Collecting information about individuals from third persons. It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor’s comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) Soliciting the social security number (SSN). (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual’s identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the Federal Register for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual’s numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.


*Copies may be obtained: Office of Personnel Management, 1900 E Street, Washington, DC 20415.*
(7) A Department of the Navy activity may request an individual’s SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) Contents of Privacy Act Statement.
(1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (i.e., forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:
(i) The Federal law or E.O. that authorizes collecting the information (i.e., E.O. 9397 authorizes collection of SSNs);
(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);
(iii) The principle purposes for collecting the information;
(iv) The routine uses that will be made of the information (i.e., to whom and why it will be disclosed outside the Department of Defense); and
(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) Format for Privacy Act Statement. When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,
(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),
(3) On the back of the form with a notation of its location below the title of the form, or
(4) On a separate form which the individual may keep.

§701.109 Access to records.

(a) Individual access to records. (1) Right of access. Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) Notification of record’s existence. Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) Individual request for access. Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances”).

(4) Verifying identity. (1) An individual shall provide reasonable verification of
§ 701.109

identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states “I declare under penalty of perjury or penalty under the laws of the United States of America that the foregoing is true and correct.”

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver’s license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual’s providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by paragraph (d) of this section.

(5) Blanket requests not honored. Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances”; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(b) Granting individual access to records.

(i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with §701.113.

(ii) Grant the individual’s request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to §701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) Illegible or incomplete records. Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or re-copy the document exactly.

(8) Access by parents and legal guardians.

(i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located
might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

1. The minor at the time of the treatment or consultation was 15, 16, or 17 years old;
2. The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;
3. The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and
4. The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) Access to information compiled in reasonable anticipation of a civil proceeding. (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term “civil action or proceeding” includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Paragraphs (a)(9)(i) and (ii) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) Personal notes or records not under the control of the Department of the Navy. (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;
(B) Created only for the author’s personal convenience;
(C) Not the result of official direction or encouragement, whether oral or written; and
(D) Not shown to other persons for any reason or filed in agency files.

(ii) [Reserved]

(11) Relationship between the Privacy Act and FOIA. In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program.”

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances”, simply because he or she failed to cite the appropriate statute or instruction.

(12) Time limits. Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt,
§ 701.110 Amendment of records.

(a) Individual review and amendment.

Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) Right to amend. An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system

and advise the requester of your decision to grant/deny access within 30 working days.

(b) Reproduction fees. Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page)............$.10

(ii) Microfiche (per fiche)............$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) Denying individual access.

(1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of §701.115.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) Notifying the individual. Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual’s right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) Individual review and amendment. Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) Right to amend. An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system
§ 701.110

has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) In writing. Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) Content of amendment request. An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) Burden of proof. The individual must provide adequate support for the request.

(c) Verifying identity. The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another’s record. Use the verification guidelines provided in § 701.109(a)(4).

(d) Limits on amending judicial and quasi-judicial evidence and findings. This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) Standards for amendment request determinations. The record which the individual requests to be amended must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) Time limits. Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgement is necessary. The acknowledgement must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) Granting an amendment request in whole or in part—(1) Notify the requester. To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(h) Denying an amendment request in whole or in part. If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;
§ 701.111 Privacy Act appeals.

(a) How to file an appeal. The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (i.e., ASN (MRA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(b) Time of receipt. The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) Review authorities. ASN (MRA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM governmentwide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee’s grievance or appeal file, to the General Counsel, Navy Department, 720 Kennon

(3) If the record pertains to a present or former military member’s fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

(d) Appeal procedures. (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) Final action, time limits and documentation. (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) Denial of appeal by activity’s failure to act. An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) Conditions of disclosure. (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program,” before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) Nonconsensual disclosures. 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) Disclosures within the Department of Defense. For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the “need to know” concept.
(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: Personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) Disclosures required by the FOIA. (i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program.”

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program” require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy interests against the qualifying public interest. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (i.e., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual’s family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual’s family; the passage of time since the event which is the topic of the record (i.e., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of “an unwarranted invasion of personal privacy” found in exemption (b)(7)(C) of 5 U.S.C. 552. This
Department of the Navy, DoD

§701.112

broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program”, but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series, present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program.”

(D) In response to FOIA requests, information concerning special and general courts-martial results (e.g., records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It
§ 701.112  Disclosures

is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) Disclosures for established routine uses. (i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:
(A) Be compatible with and related to the purpose for which the record was created;
(B) Identify the persons or organizations to whom the record may be disclosed;
(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and
(D) Have been published previously in the FEDERAL REGISTER.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the FEDERAL REGISTER at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common “Blanket Routine Uses” applicable to all record systems maintained with the Department of the Navy, have been established. These “Blanket Routine Uses” are published at the beginning of the Department of the Navy’s FEDERAL REGISTER compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances.” Unless a system notice specifically excludes a system of records from a “Blanket Routine Use,” all “Blanket Routine Uses” apply to that system.

(vi) If the recipient has not been identified in the FEDERAL REGISTER or if the recipient, though identified, intends to employ the information for a purpose not published in the FEDERAL REGISTER, the written consent of the individual is required before the disclosure can be made.

(4) Disclosures to the Bureau of the Census. Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) Disclosures for statistical research or reporting. Records may be disclosed to a recipient for statistical research or reporting if:
(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and
(ii) The records are transferred in a form that does not identify individuals.

(6) Disclosures to the National Archives and Records Administration. (i) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this
category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal Records Center is considered the agent of Department of the Navy and the disclosure is made under paragraph (b)(1) of this section.

(7) Disclosures when requested for law enforcement purposes. (i) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:
   (A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and
   (B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.
   (ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.
   (iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual’s consent and without an adequate written request, the disclosure must be under an established routine use, such as the “Blanket Routine Use” for law enforcement.
   (iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established “Blanket Routine Uses,” routine uses published in the individual record system notice, or to other governing authority.

(8) Disclosure to protect the health or safety of an individual. Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (i.e., when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer’s and medical facility’s identities and the caller’s telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) Disclosures to Congress. (i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.
   (ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.
   (iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a “Blanket Routine Use” has been established to permit disclosures to individual Members of Congress.
   (A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.
   (B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.
   (C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) Disclosures to the Comptroller General for the General Accounting Office (GAO). Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course
§ 701.112

32 CFR Ch. VI (7–1–02 Edition)

of the performance of the duties of the GAO.

(11) Disclosures under court orders. (i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court’s exercise of its authority of the minimal requirements of SECNAVINST 5820.8A.9 “Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel.”

(12) Disclosures to consumer reporting agencies. Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the FEDERAL REGISTER notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) Disclosures to commercial enterprises. Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

9Copies may be obtained: Judge Advocate General, Navy Department, (Code 34), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.
(d) Disclosure of health care records to the public. This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) Disclosures without the individual’s consent. Normally, the following information may be disclosed without the individual’s consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42F and OPM Regulations and the Federal Personnel Manual, as well as the information listed in paragraphs (b)(2)(v) (for military personnel) and (b)(2) of this section.

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual’s condition if the medical practitioner has volunteered the information, i.e., the individual’s condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) Disclosures with the individual’s consent. With the individual’s informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) Disclosure of Personal Information on Group/Bulk Orders. Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) Disclosure accounting. Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy’s compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) Disclosures with the individual’s consent. With the individual’s informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(g) Methods of disclosure accounting. Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) Retention of disclosure accounting. Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally maintained with the record, as this will ensure compliance with paragraph (f) of this section.
§ 701.113 Exemptions.

(a) Using exemptions. No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the FEDERAL REGISTER. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the FEDERAL REGISTER.

(b) Types of exemptions. There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) General exemptions. Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) Specific exemptions. Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) Establishing exemptions. (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the FEDERAL REGISTER. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the FEDERAL REGISTER, at least 30 days prior to the effective date, describing the system. This allows interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program.”

(d) Exemption for classified material. All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) Exempt records in nonexempt systems. (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a. on

(2) A record from one component’s (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Department of the Army) remains subject to the published system notice and rules of the originating component’s (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall
not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) General exemptions—(1) Central Intelligence Agency (CIA). The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) Law enforcement. (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferrell of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual’s suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) Specific exemptions. Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)–(k)(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) (k)(1) exemption: Information properly classified under Secretary of the Navy Instruction 5720.42F, “Department of the Navy Freedom of Information Act Program” and E.O. 12958, in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information (other than that information within the scope of paragraph (f)(2) of this section) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would
§ 701.114 Enforcement actions.

(a) Administrative remedies. An individual who alleges he or she has been affected adversely by a naval activity’s violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) Civil court actions. After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) Denial of an amendment request. The activity head, or his or her designee wrongfully refuses the individual’s request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) Denial of access. The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) Failure to meet recordkeeping standards. The activity fails to maintain an individual’s record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual’s rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) Failure to comply with Privacy Act. The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) Criminal penalties. Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) Wrongful disclosure. Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) Maintaining unauthorized records. Any member or employee of Department of the Navy who willfully maintains a system of records for which a
notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, “Current Privacy Act Issuances.”

(3) Wrongful requesting or obtaining records. Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) General. 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(b) The record comparison must be a computerized one. Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the Federal Register before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) System identifier and name:

(1) N01070-9, White House Support Program.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure
would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (1), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) Reasons: (i) Exempted portions of this system contain information which has been properly classified under E.O. 12958, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(ii) [Reserved]

(b) System identifier and name:

(1) N01131–1, Officer Selection and Appointment System.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) [Reserved]
(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) Reasons: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual’s right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(ii) [Reserved]

(e) System identifier and name:
(1) N01640-1, Individual Correctional Records.

(2) Exemption: (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(6), (e)(8), (f), and (g).

(3) Authority: 5 U.S.C. 552a(j)(2).

(4) Reason: (i) Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual’s right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.
§ 701.118 as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) [Reserved]

(f) System identifier and name: (1) N03834–1, Special Intelligence Personnel Access File.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2).

(4) Reasons: (i) Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) System identifier and name: (1) N04060–1, Navy and Marine Corps Exchange Security Files.

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2).

(4) Reasons: (i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) [Reserved]

(i) System identifier and name: (1) N05041–1, Inspector General (IG) Records.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.
(iii) Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority: 5 U.S.C. 552a(k)(1) and (k)(2).

(4) Reasons: (i) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(iii) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has been evaluated. Information may be obtained concerning the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(iv) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(1) and (k)(2) of the Privacy Act of 1974.

(v) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the Department of the Navy has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

(j) System identifier and name:
   (1) N05300–3, Faculty Professional Files.
   (2) Exemption: (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (H), and (f).

(3) Authority: 5 U.S.C. 552a(k)(5).

(4) Reasons: Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) System identifier and name:
   (1) N05354–1, Equal Opportunity Information Management System.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following
subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1) and (k)(5).

(4) Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) System identifier and name:

(1) N05520–1, Personnel Security Eligibility Information System.

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7).

(4) Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the Government under an express or implied promise of confidentiality.

(m) System identifier and name:

(1) N05520–4, NCIS Investigative Files System.

(2) Exemption: (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) Authority: 5 U.S.C. 552a(j)(2).

(4) Reason:

(i) Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual’s right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from
the requirement of the other cited provisions.

(ii) [Reserved]

(5) Exemption:

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(6) Authority: 5 U.S.C. 552a(k)(1), (k)(3), (k)(4), (k)(5) and (k)(6).

(7) Reason:

(i) The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record.

(ii) Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(iii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iv) The notice of this system of records published in the Federal Register sets forth the basic statutory or related authority for maintenance of the system.

(v) The categories of sources of records in this system have been published in the Federal Register in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vi) This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects
to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

(vii) Exempt portions of this system containing screening board reports.

(viii) Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) System identifier and name:
(2) Exemption:
(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).
(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.
(iii) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).
(3) Authority: 5 U.S.C. 552a(k)(1) and (k)(5).
(4) Reasons:
(i) Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.
(ii) [Reserved]
(o) System identifier and name:
(1) N05327–1, Security Incident System.
(2) Exemption:
(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.
(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).
(3) Authority: 5 U.S.C. 552a(j)(2).
(4) Reasons:
(i) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual’s right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.
(ii) [Reserved]
(p) [Reserved]
(q) System identifier and name:
(1) N05800–1, Legal Office Litigation/Correspondence Files.
(2) Exemption:
(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).
(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any
right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(v) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(4) Reasons:

(i) Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy’s ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the “ex parte” correction of such materials.

(ii) Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

(iii) Subsections (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(3) Authority: 5 U.S.C. 552a(j)(2).

(4) Reasons:

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

(3) Authority: 5 U.S.C. 552a(j)(2).

(4) Reasons:

(i) Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflecting items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

(ii) The exemption of the individual’s right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this
§ 701.118

32 CFR Ch. VI (7–1–02 Edition)

system of records from the requirements of the other cited provisions.

(s) System identifier and name:

(1) N06320–2, Family Advocacy Program System.

(2) Exemption:

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons:

(i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) System identifier and name:

(1) N12930–1, Human Resources Group Personnel Records.

(2) Exemption:

(i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

(3) Authority: 5 U.S.C. 552a(k)(5) and (k)(6).

(4) Reasons:

(i) Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(ii) Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.
(u) System identifier and name: NO5813-4, Trial/Government Counsel Files.

(1) Exemption. Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (l), (e)(8), (f), and (g).

(2) Exemption. Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(3) Exemption. Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (l), and (f).

(4) Authority: 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(5) Reason: (i) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

(iii) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(iv) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(v) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(vi) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vii) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible
§ 701.118

During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ‘other’ systems of records are entered into this system, the Department of the Navy hereby claims the same exemptions for the records from those ‘other’ systems that are entered into this system, as claimed for the original primary system of which they are a part.

(v) System identifier and name:
(1) N05211–1, Privacy Act Files and Tracking System
(2) Exemption

During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ‘other’ systems of records are entered into this system, the Department

...
of the Navy hereby claims the same exemptions for the records from those ‘other’ systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority:
5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

§701.119 Exemptions for specific Marine Corps record systems.

(a) System identifier and name:
(1) MMN00018, Base Security Incident Reporting System.

(2) Exemption:
(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (1), (e)(5), (e)(8), (f), and (g).

(3) Authority: 5 U.S.C. 552a(j)(2).

(4) Reasons:
(i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual’s right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(ii) [Reserved]

(b) System identifier and name:
(1) MIN00001, Personnel and Security Eligibility and Access Information System.

(2) Exemption:
(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be
exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

(4) Reasons:

(i) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iii) Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

PART 705—PUBLIC AFFAIRS REGULATIONS

Sec.
705.1 Purpose.
705.2 Chief of Information and the Office of Information (CHINFO).
705.3 [Reserved]
705.4 Communication directly with private organizations and individuals.
705.5 Taking of photos on board naval ships, aircraft and installations by members of the general public.
705.6 Releasing public information material to the media.
705.7 Radio and television.
705.8 Motion pictures.
705.9 Availability of motion pictures to external audiences.
705.10 Still photography.
705.11 Supplying photographs and services to other than Navy and Marine Corps.
705.12 Print media.
705.13 Commercial advertising.
705.14 Embarkation of media representatives.
705.15 Employment of Navy personnel as correspondents or staff members of civilian news media.
705.16 Navy produced public information material.
705.17 Participation guidelines.
705.18 Authority and coordination.
705.19 Financing.
705.20 Use of Navy material and facilities.
705.21 Requests for Navy participation.
705.22 Relations with community groups.
705.23 Guest cruises.
705.24 Exhibits.
705.25 Navy Exhibit Center.
705.26 Exhibit availability report.
705.27-705.28 [Reserved]
705.29 Navy Art Collection.
705.30 Aerospace Education Workshop.
705.31 USS Arizona Memorial, Pearl Harbor.
705.32 Aviation events and parachute demonstrations.
705.33 Participation by Armed Forces bands, choral groups, and troops in the public domain.
705.34 Other special events.
705.35 Armed Forces participation in events in the public domain.
705.36 Government transportation of civilians for public affairs purposes.
705.37 Public affairs and public service awards.


Source: 41 FR 29101, July 15, 1976, unless otherwise noted.

§ 705.1 Purpose.

The regulations and rules in this part prescribe policies and procedures for the Department of the Navy pertaining to public affairs practices.

§ 705.2 Chief of Information and the Office of Information (CHINFO).

(a) The Chief of Information is the direct representative of the Secretary of the Navy and of the Chief of Naval Operations in all public affairs and internal relations matters. As such, the Chief of Information has the authority to implement public affairs and internal relations policies and to coordinate Navy and Marine Corps public affairs and internal relations activities of mutual interest.

(b) The Chief of Information will keep Navy commands informed of Department of Defense policies and requirements. No command within the
Department of the Navy, DoD § 705.2

Department of the Navy, except Headquarters, Marine Corps, will deal directly with the Office of the Assistant Secretary of Defense (Public Affairs) on public affairs matters unless authorized to do so by the Chief of Information.

(c) The Chief of Information will be consulted on all Navy public affairs and internal relations matters and informed of all operations and proposed plans and policies which have national or international (and in the case of audio-visual material, regional) public affairs aspects.

(d) The Chief of Information heads the Navy Office of Information, the Navy Internal Relations Activity (NIRA), the Office of Information Branch Offices (NAVINFOs), the Navy Public Affairs Center (NAVPACENs) and the Fleet Home Town News Center (FHTNC). In addition, the Chief of Information has responsibility (on behalf of the Secretary of the Navy as Executive Agent for the Department of Defense) for the High School News Service and has operational control of the U.S. Navy Band, Washington, DC.

(e) The Navy Office of Information Branch Offices (NAVINFOs) are located in Atlanta, Boston, Chicago, Dallas, Los Angeles, and New York. As representatives of the Secretary of the Navy, Chief of Naval Operations, and Chief of Information, the NAVINFOs have a primary mission of providing direct liaison with local and regional mass communications media.

(i) Establish and maintain close personal relationships with local television, radio, film, publishing, and other mass-media organizations, including minority-group-oriented media.

(ii) Seek ways through these media to inform the public about naval personnel and activities.

(iii) Provide assistance to media organizations and respond to their interest in Navy programs, stories, and features. In this regard, maintain informal liaison with various information offices afloat and ashore in order to respond to requests from local media representatives, particularly those from inland areas, who desire to visit fleet units or activities ashore.

(iv) Provide advice on Navy cooperation and assistance, as appropriate, to representatives of national industrial and commercial organizations, including advertising agencies.

(v) Maintain a library of Navy motion picture films for use by local television stations, distribute news films and audio material, and otherwise perform normal audio-visual functions at the local level.

(vi) Provide personnel and other assistance as appropriate, to special Command Information Bureaus and public information staffs of other naval activities as directed by the Chief of Information.

(vii) Advise the Chief of Information on current trends and significant problems relating to local media requirements.

(viii) Seek ways to support the long-range goals and immediate priorities of the Navy.

(ix) Provide advice and assistance in the placement of news and feature materials to the field activities of the Navy Recruiting Command.

(x) Perform such other tasks as may be assigned by the Chief of Information.

(2) Additionally, NAVINFO Los Angeles is the Navy representative for all appropriate liaison with motion picture and network television offices in the Hollywood area. Naval activities will channel all requests for information or assistance from these media to NAVINFO Los Angeles, which will coordinate with CHINFO.

(3) Additionally, NAVINFO New York is the Navy representative for all appropriate liaison with television and radio networks in the New York area and with magazine and book publishers in that area. Requests for assistance originating from these media should be directed to NAVINFO New York, which will coordinate with CHINFO.

(4) Except as specifically directed by CHINFO, the Branch Offices do not have responsibility or authority for community relations or internal relations.

(5) Direct liaison between NAVINFOs and Naval District public affairs offices, Navy recruiters and other naval activities afloat and ashore is encouraged.
§ 705.3

(f) Areas covered by the respective offices are:
   (1) NAVINFO Atlanta: Alabama, the District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Southern West Virginia.
   (2) NAVINFO Boston: Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
   (3) NAVINFO Chicago: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Northern West Virginia.
   (4) NAVINFO Dallas: Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.
   (7) NAVINFO San Diego: California and Nevada.

(g) The Navy Public Affairs Centers (NAVPACENs) are located in Norfolk and San Diego. The centers have a primary mission of producing Navy stories for dissemination to the media through normal information channels.

(i) Produce written, audio and photographic feature public information material about fleet and shore personnel, units and activities, as coordinated with and approved for policy and concept by the respective fleet and shore commander concerned.

(ii) Serve as public affairs emergency reaction teams/resource personnel responsive to the requirements of the CNO and CHINFO, and when feasible and appropriate and as approved by CNO or CHINFO, serve as public affairs emergency reaction teams/resource personnel in support of Fleet Commanders.

(iii) Develop feature material to support the long range goals and the immediate priorities of the Navy. Direct liaison is authorized with the Navy Recruiting Command, Recruiting Areas, Recruiting Districts, and other Commanders as appropriate to achieve this function.

(iv) Perform such other tasks as may be assigned by the Chief of Information.

(2) NAVPACENs will have no public affairs news media responsibilities which conflict with the basic public affairs responsibilities of Fleet Commanders-in-Chief. Specifically, NAVPACENs are excluded from responding to news media queries, releasing news information, arranging news media embarkations, or any other day-to-day news media services concerning the respective fleets. These responsibilities remain with the Fleet Commander.

(3) NAVPACENs have no direct responsibility or authority for community relations or internal relations and shall defer in these areas to the cognizant Naval District Commandants.

(4) Direct liaison with Fleet Commanders-in-Chief and NAVINFOs is appropriate and authorized. As approved by the Fleet CINCs, direct liaison with forces afloat and shore activities under the Fleet CINCs is appropriate.

(5) NAVPACENs will carry out their mission and functions in such a manner as not to interfere with the public affairs responsibilities of the District Commandants.

[44 FR 6389, Feb. 1, 1979]

§ 705.4 Communication directly with private organizations and individuals.

(a) Questions from the public and requests from groups or individuals for pamphlets, photos, biographies, historical matter, etc., must be promptly answered. (32 CFR part 701, subparts A-D refers.)

(b) Assistance within the command’s capabilities should (and in some cases, must) be given. Where an established channel for obtaining the item exists, such as a publication stocked by the Superintendent of Documents (Government Printing Office), or photos, as explained in the subparagraph below, the requester may be directed to it. Under some circumstances, a charge may be made. (Consult part 701 or the command’s Freedom of Information authority for details.) If a lengthy search,
§ 705.6 Releasing public information material to the media.

(a) Methods of releasing information:
(1) Release at the seat of government and/or as approved by the Assistant Secretary of Defense (Public Affairs).
(i) Overall responsibility for release of information rests with the Assistant Secretary of Defense (Public Affairs). The Chief of Information is responsible for coordinating with him releases of national and international interest (and in the case of audiovisual material of regional interest) and for arranging for local release of such material if considered appropriate by OASD(PA). Information of the above types and also information proposed for release at the seat of government, with the exception of "spot news," as described in paragraph (b) of this section, following.
(2) Releases by local commands:
(i) News of purely local interest may be released by the command concerned. Higher and coordinating authorities (such as the District Commandant) will be informed, when appropriate, that the release has been made.
(ii) News of national or other wide interest may be released by a local command under the following circumstances:
(A) The Assistant Secretary of Defense (Public Affairs), having approved a release, directs that it be issued by the command concerned.
(B) An event of immediate and urgent news interest, such as a disastrous accident, occurs at the command, and emergency announcements must be made as delay in issuing information would be against the best interests of the Navy. The officer in command will make a "spot news" release of all appropriate information considered releasable.
(1) Copies of spot news releases made (or a description if the announcement

§ 705.5 Taking of photos on board naval ships, aircraft and installations by members of the general public.

(a) Visitors will not be allowed to take photographic equipment on board a naval ship or aircraft or into a naval activity or to take photographs within a naval jurisdiction unless specially authorized by the officer in command or higher authority.

(b) Guests of the Navy who wish to take photos within naval jurisdictions will be advised of areas where photography is permitted. An escort will be assigned to assure that security is maintained, unless photography is permitted throughout the ship, aircraft or installation, or the areas in which it is not permitted are appropriately guarded or secured.

(c) If there is reason to believe that film exposed by a visitor or media photographer contains classified information, the film will be processed under Navy jurisdiction.

(1) Classified photos, if any, will be retained. All unclassified film will be returned to the owner.

(2) When film exposed by civilian visitors or media representatives in sensitive areas is beyond the capability of the local command to process, it may be forwarded to the Commanding Officer, Naval Photographic Center, for processing. Any special processing instructions should be sent with the film.
is made orally) will be forwarded promptly to the Chief of Information.

(2) If the situation is considered critical, the spot news release will be forwarded by telephone or message.

(b) Means through which information is released to media:

(1) Navy oriented information material (written, taped, motion picture, still photo) is regularly released to all media presumed to be interested.

(2) Similar material is provided in response to query from a news media representative. The material may be produced by the Navy, or the newsman may be assisted in researching, filming, etc. himself.

(3) Exclusive releases:

(i) Information concerning naval activities may be provided on an exclusive basis only when a specific request or inquiry is received from one news media representative for material not requested by other media.

(ii) In such cases, and assuming that the information is properly releasable, the following rules will apply:

(A) If prior to the time information is given to the newsman making the original inquiry or request substantially similar inquiries or requests are received from other newsmen, the first inquirer will be so informed, and subsequent inquirers will be advised that a prior request has been received. None of the inquirers will be told the identity of the individuals or media who have placed these similar inquiries.

(B) If not more than three similar requests are received, the information will be provided simultaneously to each inquirer.

(C) If more than three requests for substantially the same information have been received before any are answered, inquirers will be advised as soon as possible that the information cannot be given on an exclusive or limited basis, and a general release covering the subject will be issued to all media.

(4) News conferences:

(i) A news conference is held when a command has something specific to announce to the press that cannot be handled in a news release or by phone call. A news conference should not be called just to get together with the press. A request from the press is also a reason for conducting a news conference. Special events, significant operations or serious accidents are frequent reasons for calling news conferences. If requested, spokesmen may be made available to the press for questions without specific subject matter in mind, but the press should be clearly informed of the nature of this meeting. Technically, this is not considered a news conference.

(ii) When a news conference is held, it is essential that all interested media be invited to attend.

(iii) A record of what is said should be kept. Ideally, the news conference should be tape recorded and a public affairs officer should be present.

(iv) Official spokesmen will be prepared to answer questions in a frank and candid manner. If the answer would compromise military security, the inquirer should be so advised. If the answer is not known to the spokesman, he should say so and add that the matter will be checked and any available unclassified information provided later.

(v) Newsmen are not normally asked to submit their questions in advance. If this is considered advisable, as in cases where highly technical answers may be required, the answers are prepared in advance and given to all attending newsmen (not just the questioner) at the news conference.

(5) Interviews. These are similar to news conferences except that they involve a single newsman (who has usually requested the interview) and a single Navy spokesman.

(i) Required procedures are essentially the same as for news conferences. However, a public affairs officer should be present only if desired by the person being interviewed. The interview may be taped, if the newsman agrees.

(ii) Without penalizing initiative displayed by a newsman in asking pertinent questions, care should be exercised by the naval spokesman not to make a major revelation of news material to a single media outlet in the course of a routine interview.

(iii) If major areas of difficulty arise in the interview, the Chief of Information should be notified of them.
(6) Background briefings: “Not for attribution”; or “Off the record.”

(i) Since there is a possibility or risk of a misunderstanding arising in these briefings, it is important that all concerned understand and agree to the ground rules.

(ii) In general, information will not be made public unless it can be openly attributed to the Navy and disseminated without reservation. Occasionally, a backgrounder may be helpful. An example is a briefing of embarked newsmen in advance of an operation, providing information which may not be reported until the operation is over. The purpose is to help the newsmen understand the operation while it is taking place.

§ 705.7 Radio and television.

(a) Navy relationships with radio and TV representatives are of two types:

(1) Dissemination to them of Navy produced tapes, photos, films, etc. (This is discussed in more detail in §705.17).

(2) Cooperation with them when they produce a program on a Navy subject. This is discussed in the paragraph following:

(b) Requirement for approval by higher authority.

(1) Commanding officers may:

(i) Release audiovisual material which is spot news, as defined in §705.6(a)(2)(ii) preceding, or is of purely local interest.

(ii) Participate in local community audiovisual projects of benefit to the Department of Defense or in the national interest.

(iii) Approve one-time, one-station participation by personnel of their commands (as individuals) in programs of purely local interest.

(2) All other audiovisual material originated by the Department of the Navy or requiring Navy cooperation must be approved by the Chief of Information, who will effect the necessary coordination and/or approval of the Assistant Secretary of Defense (Public Affairs).

(i) Requests for assistance from non-governmental audiovisual media will be forwarded, with the maximum available details and an evaluation of the request, through the chain of command to the Chief of Information.

(ii) No direct coordination or contact between local naval commands and the Assistant Secretary of Defense (PA) is authorized unless specifically provided for by separate directives or correspondence.

(c) Navy cooperation in productions by audiovisual media representatives (nongovernment).

(1) The production or project must:

(i) Be consistent with the goals and aims of the Department of Defense and/or be in the national interest.

(ii) Portray military operation, historical incidents, persons and places, in such a manner as to give a true portrayal and interpretation of military life.

(iii) Comply with accepted standards of dignity and propriety in the industry.

(2) There will be no deviation from established safety standards.

(3) Operational readiness shall not be impaired.

(4) Official activities of military personnel assisting the production must be within the scope of normal military activities. Exceptions to this policy will be made only in unusual circumstances.

(5) Diversion of ships, equipment, personnel and material resources from normal military locations or military operations will not normally be authorized for filming. Exceptions to such policy must be authorized by the Assistant Secretary of Defense (Public Affairs), through the Chief of Information.

(i) The production company concerned must reimburse the government for any extra expense involved. A strict accounting of the additional expenses incurred and charged to the production company must be maintained by the designated project officer. A copy of this accounting will be forwarded to the Chief of Information.

(6) Naval material and personnel will not be employed in such a manner as to compete with commercial and private enterprise. In this regard, any person or agency requesting their use will furnish a noncompetitive certification.
§ 705.8

(7) Additional details on procedures will be found in DOD Instruction 5410.16.

(8) In addition to cooperation requested by the media, commands will be alert to the advantages of providing Navy programming and/or encouraging participation by Navy personnel in local radio and TV programming. Examples are community forums, local talent shows, educational and religious programs, children’s shows, sports programs, etc.

(d) Participation by individual Navy personnel on radio or TV programs:
   (1) In general, such participation is encouraged if it is:
      (i) Dignified and considered in the interests of the Navy.
      (ii) Compatible with operational commitments.
      (iii) Not in competition with the regular employment of professional performers.
   (2) The public affairs officer will screen requests for such appearances for members of his command to see that the programs are in good taste, and that neither the Navy nor its personnel are exposed to embarrassment for the sake of entertainment.

(3) Approval of participation by Navy individuals:
   (i) Approval is not required for personnel attending audience participation broadcasts if they are selected at random from the audience.
   (ii) One-time, one-station participation of purely local interest may be approved by the officer in command concerned.
   (iii) If participation will be on a network (defined as more than one station, even if local) of if the same person or program is requested by two or more unrelated stations, approval by the Chief of Information must be obtained even if the show is of local interest only.

(e) Use of official footage:
   (1) Use of official U.S. Navy stock film footage on TV broadcasts is not authorized without approval and clearance by the Chief of Information and the Department of Defense.
   (2) Use of Navy public information motion pictures cleared for TV is authorized and encouraged except that such films may be used on subscription or pay TV only when offered to the viewers at no cost.

(3) Navy films will not be cut or portions duplicated for TV use in lieu of stock footage without prior approval by the Chief of Information.

(f) Music clearance. The Navy assumes no responsibility for clearance of music used on Navy recordings, transcriptions, or films not specially produced or authorized for radio or TV broadcast.

(g) Disclaimers. A disclaimer is not necessary if a product is advertised on a program in which the Navy participates, but there must be no stated or implied endorsement of it by the Navy or by naval personnel appearing on the program.

(h) Requests for courtesy prints of commercial television programs:
   (1) Requests will not be made directly to the producer or network concerned, but will be forwarded to the Chief of Information by the Navy requester.
   (2) These courtesy prints will be exhibited only under circumstances which cannot be construed as competitive with commercial ventures.

§ 705.8 Motion pictures.

(a) The rules and procedures given in the preceding for TV will also apply to cooperation with commercial motion picture producers.

(b) The Navy assists in the production of commercial, privately financed, nonteatrical motion pictures of institutional or of educational value to the public. They Navy will not:
   (1) Solicit their production.
   (2) Provide lists of subjects the Navy considers “desirable.”
   (3) State that the Navy will use a commercially produced film.
   (4) Imply endorsement of a product.
   (5) Permit the use of official Navy seals.

(c) Navy assistance to motion pictures and all other audio-visual products produced by Navy contractors will be subject to the same rules and procedures that apply to other non-government producers. Audio-visual products produced by Navy contractors, with or without Navy assistance, will be submitted to the Chief of Information via ...
§ 705.10 Still photography.

(a) Policy and procedures on taking photos by the general public, given in §705.5 apply also to media representatives.

(b) Basic policy and procedures for still photos are set forth in the Manual of Naval Photography, OPNAVINST 3150.6D.

(c) Authority to forbid photography:

(1) On Navy property, the officer in command may forbid the taking of photographs and may confiscate film, reviewing it if it is suspected that classified material has been photographed. In such cases, all unclassified photos will be returned promptly to the photographer.

(2) Navy personnel have no authority to confiscate film off Navy property. If, as in an accident, classified equipment is exposed which cannot be removed or covered, Navy representatives will ask news media photographers not to photograph it and will inform them of 18 U.S.C. 793(e), 795, 797, which makes it a criminal offense to photograph classified material. Navy personnel will not use force if media photographers refuse to cooperate, but will instead seek the assistance of appropriate civil authorities and/or the photographer’s superior in recovering film or photographs presumed to be of classified nature.

(3) If media photographers are uncooperative in regard to protection of classified material, an account of the matter will be forwarded to the Chief of Information.

(d) Release of photographs:

(1) Most unclassified photographs of interest to the public may be released to news media. However, the rights of individuals photographed and special constraints such as those described in section 0403 of the Public Affairs Regulations must be taken into consideration before a decision is made to release a photograph. In addition, photos which might be harmful to recruiting or otherwise not be in the Navy’s best interests will not be used unless this failure to release them constitutes suppression of legitimate news.

(2) Photographs of strictly local interest can be made available by the command to local media without being submitted to review by higher authority.

(3) If a feature type photo released locally is considered of possible interest
§ 705.11 Supplying photographs and services to other than Navy and Marine Corps.

(a) To avoid competition with civilian photographic organizations, naval aircraft will not be used to take photographs for, nor will photographs or mosaic maps be provided to any individuals, corporations, or agencies other than departments or agencies of the federal government, without specific permission from the Chief of Naval Operations.

(b) In the case of natural catastrophe, or other circumstances where prompt action is required, the senior officer present may authorize a departure from the preceding paragraph. In all such cases, a report of the circumstances will be made to the Chief of Naval Operations.

(c) This policy does not preclude releases to the media, news companies, and others in accordance with established procedures, or the sale of released photographs to private agencies or individuals under existing Department of Defense regulations and part 701, subparts A–D. Availability to the public of Department of the Navy Information and Records. Normally, requests by individuals for still photographs and motion picture photography for private use are forwarded to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, DC 20390, for action. Procedures for the collection or authority for waiver of fees for service and material provided are set forth in Volume III, NAVCOMPT Manual, and part 701, subparts A–D.

(d) Navy aerial photography released for sale to the public is transferred to the United States Department of the Interior. Inquirers regarding the purchase of this photography should be directed to Chief, Map Information Office, Geological Survey, Department of the Interior, Washington, DC 20025.

(e) Navy training films suitable for sale to the public are transferred to the National Audio-Visual Center, National Archives and Records Service, General Services Administration, Washington, DC 20408. Inquires regarding the sale of Navy training films should be addressed to the National Audio-Visual Center.

(f) This policy does not preclude releases to contractors and others properly engaged in the conduct of the Navy’s business. However, when services are performed for other agencies of the government, and under certain conditions, for other military departments, the Navy Comptroller Manual prescribes that such are subject to reimbursement.
(g) All private inquiries from foreign nationals should be returned, advising the addressee to contact his local U.S. Information Service officer for the desired materials.

§ 705.12 Print media.

Requests for reprints of items published in national media will be addressed to the Chief of Information. Commands will be careful not to reproduce on their own authority any copyrighted material without advance permission from the copyright holder.

§ 705.13 Commercial advertising.

(a) The Navy encourages cooperation with advertisers. However, the layout, artwork and text of the proposed advertisement must be submitted to the Chief of Information for review and for clearance by other appropriate authorities.

(b) Requests from commercial enterprises (including those with Navy contracts) for use of Navy personnel, facilities, equipment or supplies for advertising purposes must be referred to the Chief of Information.

(c) Official Navy photos which have been cleared and are released for open publication may be furnished for commercial advertising, if properly identified and captioned. No photos will be taken exclusively for the use of an advertiser.

(d) Navy cooperation in commercial advertising, publicity and other promotional activities will be based on the following requirements.

1. It must be in accordance with the provisions of 32 CFR part 721.

2. It must be in good taste and not reflect discredit on the Navy or the U.S. Government. Statements made must be matters of fact, without misleading information or other objectionable features.

3. It must not indicate that a product is used by the Navy to the exclusion of similar products offered by other manufacturers or appear to endorse or selectively benefit or favor (directly or indirectly) any private individual, sect, fraternal organization, commercial venture or political group, or be associated with solicitation of votes in a political election. It will not infer Navy responsibility for the accuracy of the advertiser’s claims or for his compliance with laws protecting the rights of privacy of military personnel whose photographs, names or statements appear in the advertisement. It will neither indicate that a product has undergone Navy tests nor disclose data from any Navy tests which may have been made.

4. It may not promote the use of tobacco or alcohol.

(e) Use of uniforms and naval insignias. These may be used provided it is done in a dignified manner.

(f) Use of Naval personnel:

1. Personnel may receive no compensation.

2. Personnel will not be inconvenienced or have their training or normal duties interrupted.

3. Written consent from the person concerned must be obtained before a photo may be used.

4. Navy civilians and military personnel on active duty may not use their position titles or ranks in connection with any commercial enterprise or endorsement of a commercial product. (Retired personnel and Reserves not on active duty may use their military titles in connection with commercial enterprises if this does not give rise to the appearance of sponsorship of the enterprise by the Navy or Department or in any way reflect discredit upon them.)

5. Testimonials from naval personnel are not banned, but the person giving the testimonial must not be specifically identified.

i. The use of name, initials, rank or rate of Navy personnel appearing in testimonial advertising is not permitted, but such expressions as, “says a Navy chief,” may be used.

ii. Care will be taken to ensure that testimonials from Navy personnel are presented in such a way as to make clear that the views expressed are those of the individual and not of the Department of the Navy.

§ 705.14 Embarkation of media representatives.

(a) General. (1) Although this paragraph applies primarily to embarkation in ships, provisions which are applicable to embarkation on aircraft
or visits to shore installations apply also to those situations.

(2) See also §705.37 on transportation of non-Navy civilians.

(b) Invitations to embark. (1) Invitations should be extended as far in advance as possible and inclusive information on the following should be provided:

(i) Type, scope and duration of operation or cruise.

(ii) Communications, methods of press transmission, and charges, if any.

(iii) Transportation arrangements.

(iv) Approximate cost of meals and/or quarters, and the statement that the newsman will be expected to pay for these and other personal expenses incurred.

(2) It should be made clear to the newsman that there may be limits on movement from one participating unit to another. If helicopters or highline transfers are to be used, their limitations and hazards should be explained.

(3) On operations where security is critical, embarkation of newsmen may be made contingent on their agreement to submit copy for security review. Under such circumstances, the reason for the review will be made clear prior to embarkation, and every effort will be made to avoid any interpretation of such review as “censorship” or interference with freedom of the press.

(c) Arrangements aboard ship. (1) Where appropriate, a briefing should be held at the earliest convenient time after embarkation at which newsmen may meet the commanding officer and other key personnel and guests and at which previously supplied information is reviewed.

(2) If feasible, an escort officer will be assigned to each newsman (or group of newsmen having similar requirements).

(3) It should be reported in the ship’s newspaper (and on radio and closed-circuit TV, if any) that newsmen will be embarked, giving their names and the media they represent.

(4) If a correspondent is interested in home town material, personnel from his area should be contacted in advance, if possible, to determine if and when they would be available for interviews and photos.

(5) Representatives of press associations and radio and TV networks will be embarked in the Exercise Commander’s flagship or the Exercise Control ship, when possible. This ship should also control the ship-to-shore press radio and teletype (RATT).

(6) When more than one representative from the same medium is embarked, an attempt should be made to have them located at separate vantage points.

(d) Communications. (1) Every effort will be made to provide suitable communication facilities for newsmen embarked (including equipment and personnel, if feasible).

(2) All persons embarked with permission of proper authority and accredited as correspondents are eligible to file press traffic, as authorized by the procedures set forth in Naval Telecommunication Procedures (NTP-9), “Commercial Communications.”

(3) Navy radio or wire transmission facilities, where available, may be made available to news media (including accredited civilian photographers) when operational requirements permit, in accordance with instructions set forth by the Director of Naval Communications. This includes making live broadcasts or telecasts. (A live network broadcast or telecast must, however, be approved by the Chief of Information.)

(4) Messages and instructions from editors and station managers to embarked newsmen will be handled as press traffic, as authorized in Naval Telecommunication Procedures (NTP-9).

(5) Stations receiving press circuits will be authorized to receipt for press traffic without asking for time-consuming “repeats.”

(6) Under normal circumstances, press copy will be transmitted on a first-come, first-served basis; however, newsmen will be informed that the prerogative of limiting the amount to be filed during any one period rests with the Exercise Commander.

(7) If it becomes necessary for operational reasons for newsmen to pool copy, such messages shall be filed as “multiple address messages” or book messages, as appropriate, or when requested by the newsmen concerned.

(8) If the locale of the exercise permits newsfilm and press mail to be
§ 705.16 Navy produced public information material.

(a) Still photo—(1) General. (i) The policy and procedures given for media produced still photos in §705.10, apply to Navy produced photos.

(ii) The Office of Information does not issue, nor have funds available for the purchases of, any photographic equipment or supplies for Navy commands. Details on the establishment of authorized laboratories and acquisition of equipment and supplies are given in the Manual of Navy Photography (OPNAVINST 3150.6D).

(2) Photographic coverage of command events. (i) If more than two photographers are required to cover a public event, consideration should be given to having them wear appropriate civilian attire.

(ii) Personnel in uniform who are amateur photographers and who are attending the event as spectators will not be discouraged from taking photos.

(3) Unofficial photos taken by Navy personnel. (i) The following regulations apply to Navy civilian employees and to Navy personnel in transit through a command, as well as to active duty personnel assigned to the command.

(ii) Personal cameras and related equipment are permitted on Navy ships, aircraft and stations at the discretion of the officer in command.

(iii) An officer in command may screen all photos taken by naval personnel with personal cameras within the jurisdiction of the command to protect classified information or to acquire photos for official use, including public affairs. Photographs taken by bystanders at times of accident, combat, or similar significant events can be valuable for preparation of official report and public release. They should be collected for screening and review as expeditiously as possible.

(iv) Amateur photographers should also be encouraged to volunteer the use of interesting or significant photos for public affairs use.

(v) Photos made by naval personnel, with either personal cameras and film, Navy equipment and film, or any combination thereof, may be designated “Official Navy Photo” if it is considered in the best interests of the Navy.

(A) All precautions will be taken to protect such film from loss or damage, and all unclassified personal photos not designated as “official” will be returned to the owner immediately after review.

§ 705.15 Employment of Navy personnel as correspondents or staff members of civilian news media.

(a) A member of the naval service on active duty or Navy civilian may act as correspondent for a news periodical or service, radio or TV station or network, or may work part-time for such an organization. The Secretary of the Navy will, however, be immediately informed, via the Chief of Information.

(1) See section 0307 (par. 5), section 0308 (par. 4), and section 0309 (par. 3) of the Navy Public Affairs Regulations for regulations referring to personnel assigned to public affairs staffs receiving compensation for such work.

(2) In time of war, only personnel assigned to public affairs billets and such other personnel as the Secretary of the Navy may authorize can act as correspondents for civilian media.

(b) Military personnel on active duty and Navy civilians may not serve on the staff of a “civilian enterprise” newspaper published for personnel of a Navy installation or activity.
§ 705.17 Participation guidelines.

(a) The provisions of this section refer to participation by naval personnel and use of Navy facilities and material in events sponsored by nongovernment organizations except where otherwise stated.

(b) Audiovisual. (1) The Chief of Information releases TV featurettes directly to local TV stations and the Office of Information's Branch Offices (NAV INFO's). After such featurettes have been cleared for public release by the Assistant Secretary of Defense (Public Affairs).

(2) The Assistant Secretary of Defense (PA) must approve, prior to commitment of funds, the initiation of Navy audiovisual productions intended for public release.

(3) Motion picture film.

(i) Film of major news value will be forwarded immediately, unprocessed, to the Commanding Officer, U.S. Naval Photographic Center. The package should be labeled as follows:

NEWS FILM—DO NOT DELAY
Commanding Officer, U.S. Naval Photographic Center (ATTN: CHINFO Liaison),
Washington, DC 20374.

(ii) The original negative of motion picture photography of feature value (photography which will not lose its timeliness over a reasonable length of time) will be forwarded to the Naval Photographic Center, and a copy of the forwarding letter will be sent to the Chief of Information.

(c) Fleet Home Town News Center (FHTNC). (1) All public affairs officers will assure that appropriate news and photo releases on personnel of their commands are regularly sent to the Fleet Home Town News Center.

(2) Procedures, requirements and formats are contained in CHIN-POINST 5724.1.

§ 705.18 Community relations programs.

(a) The Department of the Navy is committed to fostering and maintaining a climate of good relations with the public. All public affairs officers will assure that appropriate news and photo releases on personnel of their commands are regularly sent to the Fleet Home Town News Center.

(b) The Assistant Secretary of Defense (PA) must approve, prior to commitment of funds, the initiation of Navy audiovisual productions intended for public release.

(c) Officers in command will ensure that participation is appropriate in scope and type, and is limited to those occasions which are: In keeping with the dignity of the Department of the Navy, in good taste and in conformance with the provisions of part 721 of this chapter. The national, regional, state or local significance of the event and the agency sponsoring the event will be used as guides in determining the scope and type of Navy participation to be authorized.

(d) Participation in community relations programs is authorized and encouraged to accomplish the aims and purposes as set forth in §705.18 (following). Where mutually beneficial to the Department of Defense and the public, support authorized and provided is always subject to operational considerations, availability of requested support and the policy guidance provided herein.

(e) Military personnel, facilities, and materiel may be used to support non-government public affairs programs when:
(1) The use of such facilities, equipment and personnel will not interfere with the military mission or the training or operational commitments of the command.

(2) Such programs are sponsored by responsible organizations.

(3) Such programs are known to be nonpartisan in character, and there is no reason to believe that the views to be expressed by the participants will be contrary to established national policy.

(f) The sponsoring organizations or groups will be clearly identified in all cases where naval personnel participate as speakers, or military support is furnished.

(g) Public affairs programs sponsored by civilian organizations will not be cosponsored by a naval command unless expressly authorized by the Chief of Information.

(h) Participation will not normally be authorized in public events when the presence of military participants deprives civilians of employment. Officers in command will screen all requests for use of material and personnel in Navy-sponsored social functions held off military installations.

(i) Navy participation and cooperation must not directly or indirectly endorse, or selectively benefit, or appear to endorse, benefit or favor, any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal, or political organization, or commercial venture, or be associated with the solicitation of votes in a political election.

(1) Providing use of government facilities, such as transportation, housing, or messing, at government expense to private groups is normally interpreted as a selective benefit or favor and is not authorized as part of a community relations program. Therefore, such provisions are normally not authorized as part of a community relations program, even though certain uses of facilities may be authorized under directives on domestic action or other programs.

(2) The above does not bar private groups from providing entertainment on base. However, the appearance must be for entertainment and not for fund-raising, or any political or promotional purpose.

(j) Community relations programs must always be conducted in a manner free from any discrimination because of race, creed, color, national origin, or sex.

(1) Navy participation in a public event is not authorized if admission, seating and other accommodations and facilities are restricted in a discriminatory manner.

(2) Exceptions for participation may be made under certain circumstances for an ethnic or ideological group when they do not entertain any purpose of discriminating against any other group. Any such exceptions must be referred to the Chief of Information for consideration.

(3) Support to nationally recognized veterans' organizations is authorized when the participation is in support of positive programs which are not in themselves discriminatory.

(4) Navy support to nonpublic school activities is authorized when the participation is clearly in support of educational programs or Navy recruiting.

(5) Commands should ensure minority participation in all community relations activities and events, as appropriate. This includes but is not limited to the following:

(i) Ensure that the minority community is aware of the procedure for obtaining Navy support for community events and that they are appraised of the use of Navy demonstration teams, units, and speakers.

(ii) Encourage Navy involvement in, and attention to, local minority community events.

(iii) Continue to cultivate a rapport with key members of all minority communities.

(k) Participation is not authorized if there is fund raising of any type connected with the event, except as provided for in §705.34.

(1) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit, or exhibit.

(2) A general admission charge need not be considered prohibitory to Navy
participation, but no specific or additional charge may be made because of Navy participation.

(3) Participation shall be incidental to the event except for programs of a patriotic nature, celebration of national holidays, or events which are open to the general public at no charge for admission.

(4) The provisions of this paragraph do not apply to the Navy’s Blue Angel Flight Demonstration Team or to the Navy Band and other special bands engaged in authorized concert tours conducted at no additional cost to the government.

(m) Some participation in or support of commercially sponsored programs on audio or visual media is allowable. See §§705.7 and 705.8.

(n) Some participation which supports commercial advertising, publicity and promotional activities or events is allowable. See section 0405, par. 3 of the Navy Public Affairs Regulations.

(o) Navy speakers may be provided for certain events at which other forms of Navy participation may not be appropriate. See section 0604, par. 8 of the Navy Public Affairs Regulations.

(p) When participation is in the mutual interest of the Navy and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government (travel and transportation of military personnel, meals and quarters, or standard per diem allowances, etc.) will be borne by the sponsor.

(q) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, utilities, or janitorial costs. Other exceptions may be given under unusual circumstances.

(r) Navy participation in professional sports events and post-season bowl games will frequently be authorized at no additional cost to the government, will emphasize Joint Service activity when possible, and must support recruiting programs. Chief of Information approval is required.

(s) Navy participation in public events shall be authorized only when it can be reasonably expected to bring credit to the individuals involved and to the Armed Forces and their recruiting objectives. Naval personnel will not be used in such capacities as ushers, guards, parking lot attendants, runner or messengers, baggage handlers or for crowd control, or in any installations.

(t) Maximum advantage of recruiting potential will be taken at appropriate events for which Navy participation has been authorized.

(u) Navy support will not normally be authorized for commercially-oriented events such as shopping center promotions, Christmas parades, and other such events clearly sponsored by, or conducted for the benefit of commercial interests. However, this policy does not preclude participation of Navy recruiting personnel and their organic equipment, materials and exhibits so long as their participation is not used to stimulate sales or increase the flow of business traffic or to give that appearance. Requests for exceptions will be considered on a case-by-case basis by the Chief of Information.

(v) Questions as to appropriateness of Navy participation, or as to existing Navy and OASD (PA) policy, may be referred to the Chief of Information.

(w) Procedures for requesting participation are addressed in §705.21.


§ 705.18 Authority and coordination.

(a) Each naval command will coordinate its community relations program with the senior authority having responsibility for community relations in its area (District Commandant, Unified Commander, or other).

(b) Within policy limitations outlined in this section, the command receiving a request for Navy participation, and processing the required resources, has the authority to process the request and provide the support requested.

(c) Requests for support exceeding local capability, or requiring approval from higher authority, or requiring an exception to policy will be referred as directed in §705.21 for determination.

(d) The Assistant Secretary of Defense (Public Affairs) has the overall responsibility for the Department of Defense community relations program. Civilian sponsors should be advised to address requests for approval of the following types of programs directly to
the Director of Community Relations, Office of the Assistant Secretary of Defense (Public Affairs), Pentagon, Washington, DC 20301:

(1) National and international events, including conventions, except those taking place in overseas areas which are primarily of internal concern to Unified Commanders.

(2) Events outside the United States which have an interest and impact extending beyond the Unified Command areas, or which require assistance from outside the command area.

(3) Public events in the Washington, DC area.

(4) Aerial, parachute, or simulated tactical demonstrations held in the public domain, except those held in areas assigned to overseas Unified Commands.

(5) Aerial reviews on military installations within the United States if the review involves more than one Service.

(6) Programmed national sports, professional athletic events, formal international competitions, and contests between a Navy and professional team in the public domain. See section 0605, par. 18 of the Navy Public Affairs Regulations.

(7) Performing Navy units appearing on regional or national television.

(8) Overall planning for Armed Forces Day (not including local activities).

(9) Granting exceptions to policy.

(e) Overseas, Unified Commanders are designated to act for and on behalf of the Secretary of Defense in implementing community relations programs within their command areas and in granting any exceptions to policy or regulations. This authority may be delegated.

(1) Policy, direction and guidance for Unified Command community relations programs are provided to Navy components of these commands by the Unified Commander concerned.

(2) Authority of the Commander-in-Chief, Pacific extends to planning and execution of community relations programs in Alaska and Hawaii. Participation in events held in Alaska and Hawaii will be governed by the same principles as policies applicable to other states.

(3) Community relations programs and events taking place within the United States which have an effect on a Unified or Specified Command as a whole, or are otherwise of significant concern to the Unified Command, require complete coordination through appropriate channels between the Unified Command and naval activities concerned.

(4) Unified Commanders overseas requiring Navy support for a community relations program or participation in a public event should coordinate their requirements with the appropriate Navy component command.

(f) The Secretary of the Navy will plan and execute Navy community relations programs and approve Navy participation in public events not otherwise reserved or assigned to the Secretary of Defense. This authority may be delegated.

§ 705.19 Financing.

(a) The financial requirements for community relations purposes will be kept to the minimum necessary to accomplish Department of Defense objectives.

(b) Costs of participation will normally be at government expense for the following types of events and programs when they are in the primary interest of the Department of Defense:

(1) Public observances of national holidays.

(2) Official ceremonies and functions.

(3) Speaking engagements.

(4) Programmed, scheduled tours by Navy information activity support units (e.g., an exhibit from the Navy Exhibit Center) when this method of reaching special audiences is considered by the Secretary of the Navy to be the most effective and economical way of accomplishing a priority public affairs program.

(5) Tours by units (e.g., the Navy Band) for which appropriated funds have been specifically provided.

(6) Support of recruiting.

(7) Events considered to be in the national interest, or in the professional, scientific, or technical interests of the Navy or Department of Defense, when approved by the Secretary of Defense or the overseas Unified Commander, as appropriate.
§ 705.20

(c) Navy participation in all other public events will normally be at no additional costs to the government.

(1) Continuing type costs to the government which would have existed had the Navy not participated in the event will not be reimbursed by the sponsor.

(2) Transportation costs may be excluded from the costs to be borne by the sponsor when the transportation can be accomplished by government aircraft on a normal training flight or opportune airlift.

§ 705.20 Use of Navy material and facilities.

(a) The loan of equipment and permission to use facilities will be dependent on the following:

1. The program support must be within the command’s public affairs responsibility.

2. The loan of the equipment must not interfere with the military mission of the command.

3. Equipment must be available within the command or obtainable from another Navy command in the local area.

4. The event must be of the type for which participation is considered appropriate.

5. It must not be in any direct or implied competition with a commercial source.

6. There must be no potential danger to persons or private property that could result in a claim against the government. Safety requirements will be observed.

(b) Use of open mess facilities will be permitted only under one of the following conditions:

1. Incident to the holding of a professional or technical seminar at the command.

2. Incident to an official visit to the command by a civic group.

3. Navy League Council luncheon or dinner meetings (not to exceed one per quarter per group).

4. Incident to group visits by the Boy Scouts of America, Boys Clubs of America, the Navy League Sea Cadets (by virtue of their federal charters), Girl Scouts and the Navy League Shipmates, and a few representative adult leaders.

(c) Use of the official Navy flag will be in accordance with SECNAVINST 10520.2C and of official emblem in accordance with OPNAVINST 5030.11B.

(d) Requests not meeting the criteria cited here, but which are considered by the officer in command to have merit, may be referred to the Chief of Information.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.21 Requests for Navy participation.

(a) Decisions will be made on a case-by-case basis. Events which are inappropriate for one type of participation may be entirely appropriate for another type of participation. A positive and flexible approach should be employed.

(b) Requests by civilian organizations for Navy participation in programs or events they sponsor should be addressed to the nearest naval installation and should be evaluated and authorized at that level if possible. Request exceeding local resources, or requiring authorization from higher authority, should be forwarded through appropriate channels.

(c) Requests for Armed Forces participation in public events are to be submitted on official request forms (§§ 705.33, 705.34 and 705.36) by the sponsors of events occurring outside a command’s area of direct knowledge and local capability, or involving a type or level of participation unavailable locally, or requiring approval of higher authority.

(d) Fact sheets expounding upon normally requested assets are enclosed in §§ 705.33, 705.34 and 705.36 and may be reproduced and distributed locally.

(e) The official request form is to be used on all requests referred to the Chief of Information and to the Office of Assistant Secretary of Defense (Public Affairs).

§ 705.22 Relations with community groups.

(a) Naval commands will cooperate with and assist community groups within their capabilities, to the event authorized by current instructions, and will participate in their activities to the extent feasible.
(b) Navy commands will encourage membership of personnel in community organizations.

(c) Officers in command will withhold approval of requests from community groups, organizations or individuals whose purposes are unclear, pending advice from the Chief of Information.

(d) Commands may make facilities, less housing and messing, available to community groups, at no expense to the government, when it is in the best interest of the Navy to do so. Mess facilities may not be used for meetings of civic groups or other associations unless all the members of the group concerned are authorized participants of the mess as prescribed in NAVPERS 15951, except as provided below:

(i) Requests to make open mess facilities available to professional or technical seminars or civic groups meeting in connection with an official visit to the activity may be submitted to the officer in charge of the mess, or other appropriate authority. Such requests may be approved when it is shown that the inspection of the activity or the holding of a professional seminar is of principal importance and the use of mess facilities is incidental thereto.

(ii) Because of the exceptional nature of the Navy League, as recognized by the Secretary of the Navy, open mess facilities may be used for luncheon or dinner meetings of Navy League Councils, but not more often than once per quarter per group.

(e) Relations with Industry and Labor in the Community (refer to SECNAVINST 5370.2F and DOD Directive 5500.7):

(i) Relations with Navy contractors and with industry and business in general are the responsibility of the officer in command, with the assistance of his public affairs officer.

(ii) Navy commands will cooperate with industry and its representatives in planning and executing community relations projects of mutual interest.

(iii) Visits to commands will be scheduled for industrial and employee groups under the same conditions as for other civilian groups.

(iv) A contractor may be identified in a news release, exhibit, or the like whenever the major responsibility for the product can be clearly and fairly credited to him. In such cases, both the manufacturer's name for the product and the Navy designation of it will be used.

(v) Commands will not solicit, nor authorize others to solicit, contractors to provide advertising, contributions, donations, subscriptions, etc. Where there is a legitimate need for industrial promotion items, such as scale models, the command will contact the Chief of Information for advice as to the procedure for requesting procurement.

(vi) Similarly, if Defense contractors wish to distribute material through official Navy channels, the Office of Information will be queried as to the desirability and feasibility of undertaking the desired distribution.

(vii) Visits to contractor facilities are governed by the provisions of DOD Manual 5520.22-M (Industrial Security Manual for Safeguarding Classified Information). If nationally known press representatives will be involved, prior approval must be obtained both from the contractor (via the Chief of Information) and from the Assistant Secretary of Defense (Public Affairs).

(3) Commands will maintain the same relationship with labor unions as with other community groups and will not take action in connection with labor disputes. Personnel inadvertently or incidentally involved in labor disputes will consult officers in command for guidance.

(f) Emergency Assistance to the Community:

(1) Navy commands will offer and provide assistance to adjacent communities in the event of disaster or other emergency.

(2) The Chief of Information will be advised immediately of action when taken, and copies of subsequent reports to the Chief of Naval Operations will be forwarded to the Chief of Information.

(3) Navy commands will participate in planning by local Civil Defense officials.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.23 Guest cruises.

(a) General policy. (1) The embarkation of civilian guests in Navy ships
§ 705.23

is appropriate in the furtherance of continuing public awareness of the Navy and its mission.

(i) Examples of embarkations for public affairs purposes are (but not limited to): Individuals, community service clubs, civic groups, the Navy League, and trade and professional associations.

(ii) Embarkation of media representatives on assignment is discussed in §705.14.

(iii) Other categories may be established by the Secretary of the Navy, subject to the approval of the Secretary of Defense.

(2) It has also been demonstrated that the occasional embarkation on cruises of families and personal guests of naval personnel has contributed materially to the morale of the family circle and has instilled in each individual a sense of pride in his ship. For further information see OPNAVINST 5720.2G.

(3) Embarkations should be conducted within the framework of regularly scheduled operations; underway periods solely to accommodate guests are not authorized.

(4) Commander-in-Chief, Pacific Fleet, Commander-in-Chief, Atlantic Fleet, Commander-in-Chief, U.S. Naval Forces Europe, Commander Military Sealift Command (and their subordinate commands if so designated), Chief of Naval Education and Training, and District Commandants may authorize the embarkation of female civilians for daylight cruises. Embarkation of civilians for overnight cruises must be authorized by the Chief of Naval Operations via the Chief of Information.

(5) All guest visits are normally authorized on an unclassified basis.

(6) In all instances, due precautions must be taken for the safety of the guests. (See section 0403, pars. 6(b) and, 6(e), of the Navy Public Affairs Regulations, for procedures to be followed in the case of death of, or injury to, civilians embarked on naval ships.)

(7) For further information on policy, procedures, and eligibility criteria, see OPNAVINST 5720.2G.

(b) Authority. (1) Authority to establish procedures for the conduct of the embarkation of guests for public affairs purposes (including the Secretary of the Navy Guest Cruise and Guest of the Navy Cruise programs, which are discussed in §705.24) is vested in the Secretary of the Navy. This authority is limited only insofar as the Chairman of the Joint Chiefs of Staff and the commanders of the Unified and Specified Commands (and their component commanders, if so designated) have the authority to use Navy ships to embark individuals other than news media representatives for public affairs purposes.

(i) Public affairs embarkations originating within the geographical limits of the Unified Command will be approved by and coordinated with the commanders of such commands. This authority may be delegated. Requests for such embarkations originating with the subordinate fleet or force command of a Unified Command will be submitted via the operational chain of command, to the appropriate commander of the Unified Command, unless delegated.

(ii) Requests for public affairs embarkations originating from any Navy source other than the Chairman of the Joint Chiefs of Staff, or the Unified and Specified Commanders or their subordinate commands, will be submitted to the Chief of Information, who will effect coordination with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs) as appropriate.

(iii) When guests debark in a foreign port which is in the geographic area of a Unified Command other than that in which the cruise originated, the Chief of Information will coordinate travel by obtaining concurrence of all appropriate commanders and the approval of the Chief of Naval Operations, and the Assistant secretary of Defense (Public Affairs) as appropriate.

(c) Secretary of the Navy Guest Cruise and Guest of the Navy Cruise Programs.

(1) The objective of these two programs is: To expose top-level and middle-level opinion leaders in the fields of business, industry, science, education, and labor to the operation of the U.S. Navy, in order that they may gain a better understanding of its capabilities and problems, the complicated nature
of modern sea-based equipment, and the high levels of responsibility and training required of Navy men and women.

(2) In addition to policy contained in paragraph (c)(1) of this section, the following policy guidelines apply to the conduct of the Secretary of the Navy Guest Cruise and the Guest of the Navy Cruise Programs.

(i) Secretary of the Navy Guest Cruise Program. (A) Only aircraft carriers and cruisers will be used. 

(B) Cruises will be conducted once each quarter on each coast, contingent upon the availability of appropriate ships.

(C) The optimum number of guests is 15.

(D) Guests will be drawn from top-level executives and leaders who have not had previous exposure to the Navy. “Previous exposure” is defined as active or reserve service in the U.S. Navy or U.S. Marine Corps within the last 10 years; membership in the Navy League or any other Navy-oriented organization; or participation in a cruise on a U.S. Navy ship in the last 10 years.

(E) Whenever feasible, Secretary of the Navy Guests will be greeted by CINCLANTFLT or CINCPACFLT, or in their absence by the SOPA. Comprehensive unclassified briefings will be given dealing with the Navy’s mission, fleet operations, and current problems.

(F) Cruises will vary in length from 3 to 7 days, when appropriate, to conform with the operating schedule of the ship.

(ii) Guests of the Navy Cruise Program. (A) All types of ships will be used. This will include carriers when available, after selection of a cruise for the Secretary of the Navy Guest Cruise Program.

(B) Guest of the Navy Cruise guests will be drawn from middle-level executives and leaders who have not had previous exposure to the Navy. Guests should include persons who have direct impact on recruiting, such as secondary school principals, guidance counselors, coaches and teachers.

(C) Cruises of relatively short duration (3 to 5 days) are preferred, although cruises up to 7 days are authorized. Protracted cruises will not be approved except for special circumstances.

(D) Invitations will be extended by the District of Commandants. Invitations will include:

(1) Statement of the purpose of the Guest of the Navy Cruise Program.

(2) Authorization for embarkation and, if applicable, for COD flights, with instructions for reporting on board.

(3) Name and rank of the commanding officer and, if applicable, name and rank of embarked flag officer.

(4) A caution that guests should not accept the invitation unless they are in good health.

(5) Statement to the effect that the tempo of operations might cause changes in scheduling which could result in the invitation having to be withdrawn.

(E) The following necessary information may be included separately with a letter of invitation: Recommended wardrobe, passport and immunization requirements, availability of emergency medical and dental facilities, ship’s store and laundry facilities, statement that guest’s use of a camera will be authorized subject to certain restrictions, and a listing of those restrictions. In addition, the following statement will be included with each invitation, or form part of the attached information sheets:

The Department of the Navy has no specific authority to use its funds to defray or reimburse any personal expenses of a navy guest. As a result, the Department of the Navy cannot provide you with transportation to the port of embarkation or from the port of debarkation back to your home. Your expenses for meals will be quite nominal while you are on board a naval ship or facility. You should make provision for any extraordinary expense which may arise. For example, if a personal or other emergency arises which necessitates your returning home during the cruise, you should be prepared to take commercial transportation at your own expense from the most distant point on the cruise itinerary.

Navy ships and aircraft, by their very nature, present certain hazards not normally encountered on shore. These hazards require persons on board to exercise a high degree of care for their own safety.

Acceptance of this invitation will be considered your understanding of the above arrangements and limitations.
§ 705.24 Exhibits.

(a) Navy exhibits are representations or collections of naval equipment, models, devices and information and orientation material placed on public display for information purposes before audiences at conventions, conferences, seminars, demonstrations, exhibits, fairs, or similar events. Also included are general purpose displays in public buildings or public locations. Museums also occasionally request a Navy exhibit on a permanent or temporary loan basis.

(1) Exhibits may be displayed in any appropriate location or event (including commercially owned spaces such as shopping centers, malls, etc.) provided...

(ii) Applicable to both programs. (A) Guests will provide their own transportation from home to the ship and return, and must reimburse the Navy for living and incidental expenses while embarked so that the program may be conducted at no additional expense to the government.

(B) Because the number of billets available to accommodate all of the potential guests is limited, the guest’s opportunity to communicate his experience to his associates must be considered. For this reason, one of the criteria for selection of guests will be their level of activity in civic, professional, and social organizations. In nominating and selecting guests, effort will be made to ensure that minority citizens are included as appropriate.

(C) Atlantic cruises will be made on ships operating between East Coast ports, or between CONUS and the U.S. Caribbean ports of San Juan, PR, or Charlotte Amalie (St. Thomas), Virgin Islands. Pacific cruises will be made on ships operating between West Coast ports: Between CONUS and ports in Hawaii, Alaska, Mexico or Canada; or between ports within Hawaii or Alaska.

(D) Guests will be billeted in officers quarters and normally subsisted in the wardroom. It is not necessary that guests be assigned individual rooms. Billeting with ship’s officers promotes mutual understanding, and guests feel more closely identified with the ship’s company. They will be invited to dine at least once in each mess on board, if the length of the cruise permits. Guests will be encouraged to speak freely and mingle with the crew.

(F) Guests will be accorded privileges of the cigar mess commissioned officers mess (open) ashore—with the exception of package store privileges—and the use of ship’s or Navy Exchange laundry and tailor shops. Other Navy Exchange privileges will be limited to purchase of items for immediate personal use.

(G) Only emergency medical and dental care will be provided and then only where civilian care is not conveniently available.

(I) In the event of injury to civilians embarked in Navy ships and aircraft or visiting naval activities, commanding officers will notify the Chief of Information, the appropriate Commandant, and operational commanders, by message, of the injury and action taken.

(2) In the event of an emergency not covered by Navy Regulations, the facts and circumstances will be reported immediately to the Secretary of the Navy.

(H) Guests may be allotted time for side trips at their own expense when an itinerary includes naval activities or ports adjacent to recognized points of interest.

(J) As a souvenir of the cruise, it is suggested that guests be provided with a photograph of the ship, perhaps suitably inscribed by the commanding officer prior to debarkation.

(K) Any publicity will be limited to that initiated by the participants. Navy-sponsored publicity will be avoided unless sought by the participants. At the same time, media inquiries or inquiries from the general public will be answered fully, the purposes of the cruise program outlined and the fact stressed that no cost to the government is incurred.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]
It is clearly established that such areas are places the general public frequents and that the exhibit is not for the purpose of drawing the public to that location, and that it is determined that participation is in the best interests of the Department of Defense and the Department of the Navy.

(2) [Reserved]

(b) Exhibits will be used for the following purposes only:
   (1) To inform the public of the Navy’s mission and operations.
   (2) To disseminate technical and scientific information.
   (3) To assist recruiting of personnel for Navy military service and for civilian employment in the Department of the Navy.

(c) Exhibit requests and procedures:
   (1) Requests for Navy exhibits, other than local exhibits may be forwarded to the Navy Recruiting Exhibit Center via the local Navy recruiter with an information copy to the Chief of Information. The primary mission of the Navy Recruiting Exhibit Center is to support local Navy recruiters. Requests for exhibits for community relations events will be considered favorably only when not in conflict with recruiting requirements.
   (i) Requests for exhibits must be submitted well in advance of their proposed dates of use.
   (ii) Requests for mobile exhibits requiring tractor-trailer transportation should be forwarded prior to November 15th previous to the year desired. A tour itinerary of mobile exhibits will then be established for the following year.
   (iii) The period of time for which an exhibit is authorized will be determined by the nature of the event and the type of exhibit (e.g., equipment from local resources used for a local celebration would normally not be exhibited for more than three days; but, a formal exhibit at an exposition might remain for the duration of the event).

(2) The office of the Assistant Secretary of Defense (Public Affairs) is the approving authority for Navy exhibits in events of international or national scope, or those requiring major coordination among the Armed Forces, or with other agencies of the Federal Government.

(i) All Navy activities will forward such requests to the Chief of Information for coordination with the OASD (PA).

(ii) Subordinate commands of a Unified Command will forward exhibit requests of the above types to the Unified Commander concerned, via the chain of command.

(3) The official OASD(PA) Request Form for Armed Forces Participation will be used. See Armed Forces Request Form, §705.36.

(4) Requests for exceptions to policy for exhibit displays should be forwarded to the Officer in Charge, Navy Recruiting Exhibit Center.

(5) Policy guidance on costs is defined in §705.19.

(6) Occasionally, a project officer will be assigned to coordinate use of the exhibit with the sponsor.

   (i) Project officers are normally commissioned officers, equivalent civilian personnel, local recruiters or reservists, who have been assigned the responsibility of coordinating Service participation in a special event.

   (ii) The project officer should establish immediate liaison with the sponsor.

   (iii) The project officer should assist in determining the actual location of the exhibit, make arrangements for assembling and disassembling the exhibit material, and supervise these operations.

   (iv) The project officer will ensure Navy and Department of Defense policies are followed, and will coordinate local news releases concerning Navy participation.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.25 Navy Exhibit Center.

(a) The center is a field activity of the Chief of Information and is located in the Washington Navy Yard. Its primary mission is to produce, transport and display U.S. Navy exhibits throughout the United States. It also facilitates assignments of Navy combat artists and, additionally, produces exhibits for its own tours and for short-term loans to naval commands.

(b) [Reserved]

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]
§ 705.26 Exhibit availability report.

(a) A center index of exhibits which are available at the local level in each Naval District is maintained by the exhibit center. To achieve maximum effectiveness for an overall integrated program, an up-to-date registry of all exhibits is required.

(b) A current inventory of exhibits headquartered in Washington, DC, and managed by the Navy Recruiting Exhibit Center for scheduling purposes may be obtained by writing to: Officer-in-Charge, Navy Recruiting Exhibit Center, Washington Navy Yard, Washington, DC 20374.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§§ 705.27–705.28 [Reserved]

§ 705.29 Navy Art Collection.

(a) The U.S. Navy has continued to record its military actions, explorations, launchings, etc., in fine art form since before World War II. The present Navy Combat Art Collection contains over 4,000 paintings and sketches. A significant number of new works is being added each year. The combat artists of World War II have been replaced by civilian artists who witness today’s Navy in action, record their impressions, and donate their works of art to the Department of the Navy.

(1) The voluntary services of most of the artists are arranged through the Navy Art Cooperation and Liaison Committee (NACAL) which operates in close cooperation with the Salmagundi Club of New York City and the Municipal Art Department of the City of Los Angeles.

(2) The Chief of Information has established liaison with the Salmagundi Club in order to maintain a continuing historical record of the Navy. Organized in 1871, the Salmagundi Club is the oldest club of professional artists in the United States. The Club appointed a Navy Art Cooperation and Liaison (NACAL) Committee to advise the Navy on art matters and to nominate artists for assignment to paint Navy activities through the world. The Chief of Information reviews the nominations, and issues SECNAV invita-

tional travel orders to each artist approved.

(3) The following policy pertains:

(i) All finished art portraying the Navy and produced by Navy artists on active duty for that purpose and by guest artists working under invitational travel orders becomes the property of the Department of the Navy.

(ii) Civilian artists selected to paint Navy life through cooperation of a private sponsor and the Chief of Information may be authorized by the Chief of Information or the Office of the Secretary of Defense to retain their works.

(iii) Paintings, sketches, drawings and other forms of artwork will not be accepted by the Department of the Navy unless all reproduction rights are surrendered and unless they become the permanent property of the Department of the Navy.

(iv) Requests for reproduction of combat art for use in advertising or publication will be directed to the Chief of Information.

(b) Responsibilities:

(1) The Chief of Information exercises supervision and control of the Navy Art Program and issues SECNAV invitational travel orders and letters of invitation to artists selected for assignment.

(2) When directed by the Chief of Information or other appropriate Navy authority, a NACAL project officer will perform the following functions:

(i) Act as a local liaison officer for the NACAL Program.

(ii) Assist NACAL artists on assignments within his area.

(3) The Curator Navy Combat Art Center, in coordination with the Chief of Information, will:

(i) Plan trips for the NACAL Program.

(ii) Approve requests for art displays.

(iii) Provide logistic support for the maintenance, storage, shipment and display of the Navy Combat Art Program.

(c) Requests for art displays should be forwarded to the Director, Community Relations Division, Office of Information, Navy Department, Washington, DC 20350.

(d) Exhibition of Navy Art:

(1) Operation Palette I” is a carefully selected group of 75 to 100 combat art
paintings depicting Navy and Marine Corps activities during World War II. The schedule of ‘Operation Palette I’ is promulgated by the Officer-in-Charge, Navy Recruiting Exhibit Center and supervised by the Chief of Information, with the concurrence of District Commandants. Schedules are arranged so that the exhibition travels within a particular Naval District for several months at a time. District Commandants designate project officers for each city where ‘Operation Palette I’ is exhibited. The project officer makes all arrangements, including suitable location, publicity and personnel to assist the chief petty officer who travels with the collection. Promotional kits are provided by the Officer-in-Charge, Navy Recruiting Exhibit Center. Requests for exhibitions are not desired, since the collection always travels on a prearranged tour.

(2) ‘Operation Palette II’ consists of 75 to 100 paintings representative of the worldwide operations of the contemporary Navy and Marine Corps *** the Navy today *** , and travels on prearranged tours similar to ‘Operation Palette I.’

(3) Other exhibitions of original paintings from the Combat Art Collection may be scheduled on request by either Navy commands or civilian art groups. Requests should be directed to the Director, Community Relations Division, Office of Information, Navy Department, Washington, DC 20350 and contain the following:

(i) The occasion.
(ii) Inclusive dates. (Not less than 10 days or more than 90 days sub-custody.)
(iii) Expected attendance and type of publicity planned.
(iv) Amount of space allotted.
(v) If Navy-sponsored show, certification that 24-hour security will be provided for the paintings while in custody.
(vi) If civilian-sponsored show, statement that transportation and insurance requirements will be met. (Physical security must be available for exhibit, with an attendant on duty during open hours and locked building or other means of protecting exhibit when closed to the public.)

(e) Navy Combat Art Lithograph Program:
(1) This program makes available full color, high quality lithographs which are faithful reproductions of the original artwork on quality paper of selected works of art from the Navy Art Collection.
(2) Additional information and ordering details are contained in CHINFO NOTICE 5605, which is issued periodically.

§ 705.30 Aerospace Education Workshop.

(a) This program is devised by the Navy to give students at colleges and universities conducting teacher training a comprehensive background in the field of aviation. The teachers in turn integrate this knowledge into their education programs.

(b) Appropriate commands are encouraged to provide assistance to educational institutions sponsoring the workshop program: Provided, That such support does not interfere with the command’s primary mission and that such cooperation involves no additional expense to the government.

(c) The Chief of Naval Operations has cognizance of all assistance provided by the Navy to all Aerospace Education Workshop program. A summary report of local command participation in Aerospace projects will be submitted to the Chief of Naval Operations via the appropriate chain of command. Information copies of such reports will be sent to Commander, Navy Recruiting Command and the Chief of Information. For further information see OPNAVINST 5726.1C.

§ 705.31 USS Arizona Memorial, Pearl Harbor.

(a) Limited space and the desirability of keeping the Memorial simple and dignified require the following practices to be observed:
(1) Rendering of formal ceremonies on the USS Arizona Memorial will be confined to Memorial Day.
(2) Observances on December 7, or any other date, at the request of individuals or organizations, will consist of
§ 705.32 Aviation events and parachute demonstrations.

(a) Armed Forces aircraft and parachutists may be authorized to participate in appropriate in public events which meet basic Department of Defense criteria. This participation may be one of the officially designated military flight or parachute demonstration teams, flyover by aircraft, a general demonstration of capabilities by aircraft, or the static display of aircraft.

(b) Events which are appropriate for aviation participation include: Dedication of airports; aviation shows; aircraft exposition; air fairs; recruiting programs; civic events which contribute to the public knowledge of naval aviation equipment and capabilities and to the advancement of general aviation; public observances of certain national holidays (Armed Forces Day, Veterans Day, Memorial Day and Independence Day); national conventions of major veterans organizations; memorial services for deceased, nationally recognized dignitaries; and receptions for foreign dignitaries.

(c) Support of Armed Forces recruiting is the primary purpose of military flight and parachute demonstration teams. Armed Forces recruiting teams are available to assist sponsors in coordinating advance publicity and information coverage to insure maximum exposure for the demonstration team and the event. This assistance is at no additional expense to the sponsor; however, the sponsor is required to give full support to the recruiting effort and to cooperate fully with local service officials. Such support could include (but is not limited to) the provision of prime space for recruiters at the event site and the provision of courtesy passes in controlled quantities to recruiters for the purpose of bringing recruit prospects and recruiting advisors to view the show.

(d) DOD support of air show fund raising efforts in the form of provision of military flight and parachute demonstration teams is limited to charities recognized by the Federal Services Fund-Raising Program. These include such agencies as the United Givers Fund, Community Chests, National Health Agencies (as a group), International Service Agencies and the military aid societies. Armed Forces support to fund-raising events for a single cause, even though the charity is a member of a federated or joint campaign or donates in part to one or several of the campaigns, is inconsistent with the basic position of Department of Defense. The name of the nearest Combined Federal Campaign coordinator will be supplied to the sponsor, or if he chooses, he might elect to work with the local United Givers Fund (Community Chest). As a minimum, the sponsor must agree to provide at least half of the profit above costs to the Combined Federal or United Givers Campaigns to receive Armed Forces support.

(e) Request form. This form is used to request military flight and parachute demonstration team participation in public events. The information is required to evaluate the event for appropriateness and compliance with Department of Defense policies and for coordination with the units involved.

GENERAL

1. Title of Event
   Town or City: __________________________ State: __________________________
   Date: ____________ Time—From: ____________
   To: __________________________ Place: (Airport, etc.) ____________

2. Sponsor:

3. The sponsor (is) (is not) a civic organization and the event (does) (does not) have the official backing of the mayor.

4. The sponsoring organization (does) (does not) exclude any person from its membership or practice any form of discrimination in its functions, based on race, creed, color or national origin.

5. Sponsor's representative authorized to complete arrangements for Armed Forces
participation and responsible for reimbursing Department of Defense for accrued expenses when required:

Name: ________________________________
Address: _________________________________
City, State: __________________ Zip: ________
Telephone: (Office) (AC) ____________________
(home) (AC) _____________________________

6. Purpose of this event (explain fully):

7. Expected attendance:

8. Is this event being used to promote funds for any purpose?

9. Admission charge:

   Charge for seating:

10. Disposition of profits which may accrue:

11. Will admission, seating and all other accommodations and facilities connected with the event be available to all persons without regard to race, creed, color or national origin?

12. Will the standard Military Services allowance for quarters and meals be provided for any purpose?

13. Will transportation at sponsor’s expense be provided for Armed Forces participants between the site of this event and hotel?

14. Will telephone facilities, at sponsor’s expense, be made available for necessary official communications regarding the event?

15. It may be necessary for representatives of the requested unit to visit the site prior to the event. Will transportation, meals and hotel accommodations be provided by the sponsor?

16. Please describe the space which will be provided to recruiters:

17. Designate charity beneficiary(ies):

FLIGHT TEAM, PARACHUTE TEAM, FLYOVERS, STATICS

1. This request is for (check appropriate line):

   Flight Team Demonstration ......................

   U.S. Navy Blue Angels _______________________

   U.S. Air Force Thunderbirds. (Cost for either team is $3500.00 for each day team scheduled at your event.) ____________________________

   Aircraft Flyover: (No cost to sponsor.) ______

   Static Aircraft: (Cost is $25.00 per day per crew member.) ____________________________

   U.S. Army Silver Eagles: (Cost for this team is $750.00 for each day team scheduled at your event.) __________________________

Parachute Team Demonstration U.S. Army Golden Knights: (Cost is $25.00 per day per man for each day required to support your event. Team consists of 10-14 personnel.) ____________________________

(Other) _________________________________

2. Flight and/or Parachute Team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. Please give the specific location of your event___

If an airport, name of airdrome facility and longest usable landing runway. Airport: __________

Runway data: __________________________ feet.

3. Flyovers, Flight and Parachute Team demonstrations require that sponsors secure FAA clearance or waiver. Will steps be taken by sponsor to accomplish this at least sixty days prior to the event?

4. Flight and Parachute Team demonstrations must adhere to FAA regulations which specify that spectators not be permitted within 1500 feet of an area over which the flight demonstration takes place, or 250 feet of the jump area over which parachutists are performing. What type of crowd control is planned?

5. Flight and Parachute Team demonstrations require that an ambulance and a doctor be on the site during the demonstration. Will this requirement be met?

6. Flight and Parachute Team demonstrations require that the sponsor provide a recent aerial photograph, taken vertically from an altitude of 5,000 feet or higher, to the team(s) giving the demonstration. Will this requirement be met?

7. Flight Team demonstrations and Static Aircraft displays require that the sponsor provide suitable aircraft fuel (JP jet fuel or aviation gas, as appropriate) and pay the cost of transporting and handling this fuel, if it is not available at the staging airport under military contract prices. Will this requirement be met?

8. Flight Team demonstrations and Static Aircraft displays require mobile firefighting, crash and ground-to-air communications equipment at the demonstration site. Will this requirement be met?

9. Flight Teams and Static Aircraft displays require that the sponsor provide guards for the aircraft that land and are parked at the site during their entire stay. Will this requirement be met?

10. Parachute Team demonstrations may require that the sponsor arrange aircraft transportation from the team’s home base to the location of the event, for use as a jump platform and return to the home base. Will this requirement be met, if necessary?

159
§ 705.32

11. Name and address of any Armed Forces representative or government official with whom you have discussed possible participation:

CERTIFICATION

I certify that the information provided above is complete and correct to the best of my knowledge and belief. I understand that representatives of the Military Services will contact me to discuss arrangements and costs involved prior to final commitments.

Signature: ____________________________

(Sponsor’s Representative)

Date of Request: _____________________

Return this form to:

(f) Definitions. A flight team demonstration is an exhibition of precision aerial maneuvers flown by the official Department of Defense military flight demonstration teams, the U.S. Air Force Thunderbirds, the U.S. Navy Blue Angels and the U.S. Army Silver Eagles. An aircraft demonstration is a flight demonstration by aircraft other than those of the teams listed above and designed to portray tactical capabilities of aircraft by a single aircraft (i.e., the U.S. Marine Corps “Harrier”) or group of aircraft, including air-to-air refueling, helicopter hover and pick-up or rappelling capabilities, Low Altitude Parachute Extraction System, maximum performance take-off, etc. A parachute demonstration is an exhibition of free-fall and precision landing techniques by the official DOD parachute team, the U.S. Army Golden Knights. Other parachute demonstrations can be performed by the U.S. Navy Parachute Team, or another unofficial team or sports parachute club representing the Department of Defense. A flyover is a flight of not more than four aircraft over a fixed point at a specific time and does not involve precision maneuvers or demonstrations. Flyovers are authorized for certain events when the presence of Armed Forces aircraft overhead would contribute to the effectiveness of the event based on a direct correlation between the event and the aircraft. Flyovers can also be authorized for occasions primarily designed to encourage the advancement of aviation and which are of more than local interest. Flyovers by any of the official DOD flight teams are not authorized. Parades are not considered an appropriate event for authorizing flyover support. The static display of aircraft is the ground display of any military aircraft and its related equipment, not involving flight, taxiing or starting of engines.

(g) Events which are appropriate for Armed Forces aviation participation in the public domain include such activities as dedication of airports and facilities, aviation shows, expositions, and fairs; and other civic events which contribute to the public knowledge of the U.S. Military Services aviation equipment and capabilities. The number one priority for utilization of military aircraft and parachutists in such events in the public domain is to support the recruiting aspects of the all-volunteer force concept. The approval of any such military demonstration will only be authorized if a maximum recruiting benefit exists at each location.

(h) Costs. (1) The cost for either the United States Air Force Thunderbirds or the United States Navy Blue Angels will be $1500 for each day a demonstration is scheduled. If the United States Army Golden Knights precision parachute team is scheduled for your event, the cost will be $25 per man per day for each day required to support your event, to include the days of travel if required. Under normal conditions, this group is comprised of fourteen members: Nine jumpers, three aircraft crewmen, one ground controller, and a narrator. The sponsor will be advised by the Golden Knights in advance of the costs related to his event for which the government must be reimbursed. The United States Army Silver Eagles helicopter team, composed of seven helicopters, performs precision formation maneuvers and solo helicopter aerobatics to demonstrate the capabilities of modern helicopters and the skill of Army aviators. The Silver Eagles performance lasts about 30 minutes and is conducted entirely in full view of spectators on the crowd line. The cost for the team is $750 for each day a demonstration is scheduled. The sponsor should make a check payable to the Treasurer of the United States for the required amount and present it to the appropriate demonstration team commander in advance of the scheduled event.
(2) Costs associated with static aircraft are normally $25 per day for each crew member plus possible fuel requirements discussed below. Charges for any other military parachuting demonstration (i.e., U.S. Navy Parachute Team, local Armed Forces sport parachute clubs, etc.) will depend on the number of personnel and transportation involved. Checks payable to the Treasurer of the United States should be made available to the appropriate aircraft commander for static displays or parachute team commander upon arrival at the event.

(i) As noted in the Department of Defense request form, the sponsor is required to pay per diem costs for team and static display crew members except for flyovers or aircraft demonstrations not involving landing.

(3) These costs are binding after a team or crew personnel have arrived at the show site, even though weather conditions or other unforeseen circumstances force the event to be cancelled. These funds provided by the sponsor will be utilized by team members or crew personnel for paying housing and subsistence costs. The actual breakdown of the per diem involved is $13.20 for housing, $9.30 for subsistence, and $2.50 for incidental expenses. In those locations where housing and subsistence cannot be procured for these amounts, it will be the responsibility of the sponsor to absorb the additional cost. As stated, these costs will cover participation but does not include certain ground support requirements (i.e., ground transportation, telephone, etc.) to be furnished by a sponsor as outlined in a team support packet.

(4) Other costs that could be incurred by the sponsor are in the area of the sponsor’s agreement to provide suitable aircraft fuel (defined as JP jet fuel or aviation gas and lubricants) at U.S. Government contract prices. Where fuel is available from local military stocks—usually military installations—or when fuel is available from commercial into-plane contract locations, the U.S. Government will pay all fuel costs. If military contract fuel is not available at the show site, the sponsor will be required to pay all costs above the contract price and that price charged by the local supplier. However, the sponsor may choose to transport military contract fuel from a military base or a commercial airport having a U.S. Government into-plane contract. In this case, his cost would be only the transporting and handling of this fuel to the show site.

(5) The Department of Defense no longer requires the sponsor to provide the Department with a public liability and property damage insurance policy. This should in no way deter the sponsor from obtaining such liability and property damage insurance he feels is necessary for his own protection. Due to the costs that could accrue to the sponsor in case of cancellations because of inclement weather, the sponsor may wish to consider rain insurance to protect his investment. Previous sponsors have advised us that such insurance is available from most commercial companies.

(i) Other information. (1) Flight and/or parachute team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. For the U.S. Air Force Thunderbirds or U.S. Navy Blue Angels to operate from an airport show site, the following operational requirements must be met:

(i) Minimum useable runway length for the Thunderbirds is 5000 feet by 150 feet in width.

(ii) Minimum useable runway length for the Blue Angels is 6000 feet by 150 feet in width.

(iii) Minimum single landing gear load bearing capacity for Thunderbirds is 45,000 pounds; for Blue Angels, 21,000 pounds. Tandem landing gear load bearing capacity is 155,000 pounds for Blue Angels and Thunderbirds.

(2) A staged performance may not be given if the location planned for the show site does not meet these minimums. The maximum distance for a staged performance” under normal conditions is 50 nautical miles. It should be noted that staged performances are seldom authorized since the recruiting potential is reduced at such events.

(3) The type and number of static and/or flyover aircraft which may be assigned is entirely dependent upon the Military Services’ capability to provide such resources at the time of your
§ 705.32  

32 CFR Ch. VI (7–1–02 Edition)

event. This capability is affected by operational commitments and sponsors are advised that confirmation of static/flyover aircraft cannot be made by the appropriate Service more than 15–30 days before your event.

(4) The U.S. Army Silver Eagles are normally restricted to performances at airports. Other open land areas may be operationally suitable but require the prior approval of the team commander in each case.

(5) Only one flight demonstration team and a parachute demonstration team may be authorized for any one event. Military aircraft demonstrations may not be authorized for events on the days a flight team is participating. A flyover is not authorized when a flight team is participating unless it can be provided by a locally-based National Guard or Reserve component.

(6) Participation by the U.S. Navy Blue Angels and the U.S. Air Force Thunderbirds is normally limited to two consecutive years in any one event. This usually involves one appearance by each of the two flight teams. This provision may be waived when other appropriate requests have not been received, when the team is performing in the same geographical area and has open dates or when the event is national or international in nature and participation would be in the best interests of Department of Defense. Participation in an event is normally limited to two days unless a third day can be included without pre-empting other requests.

(7) Sponsors are required to obtain a Federal Aviation Agency (FAA) waiver for any demonstration by military aircraft and/or parachutists in the public domain. The final authorization for such Armed Forces participation hinges upon the sponsor securing this waiver far enough in advance to permit adequate planning (normally not later than 60 days prior to the event). Further guidance on the details of obtaining this waiver will be contained in the team support packet or FAA. FAA regulations require that spectators be confined 1500 feet from a flight or aircraft demonstration and 250 feet from a parachute demonstration.

(i) In some cases, parachute demonstrations require that the sponsor arrange for appropriate transportation for the team and equipment from its home station to the event and return.

(ii) Mass parachute jumps, drops of equipment, assault aircraft demonstrations, or tactical helicopter troop landings under simulated tactical conditions, will be limited to military installations. These activities, except those scheduled as part of regular training programs, are not authorized for public events in the civil domain.

(8) When civilian air racing is involved in an event where Armed Forces participation has also been scheduled, prize monies must come from sources other than admission charges.

(9) Flight team, parachute and aircraft demonstrations also require that the sponsor provide: (i) Recent aerial photograph of the site; (ii) an ambulance and doctor at the site; and (iii) Guards for the Armed Forces aircraft during their entire stay. The aerial photograph should be recent, taken vertically from at least 5,000 feet.

(10) Maximum advantage of Armed Forces recruiting will be taken at appropriate events in the public domain where demonstrations by military aircraft and parachutists have been authorized.

(11) Exception to the policies contained herein will only be considered by OASD(PA) on events of national or international significance.

(12) Department of Defense hosts a scheduling conference in mid-December each year to prepare U.S. Air Force Thunderbirds, U.S. Navy Blue Angels, U.S. Army Golden Knights and U.S. Army Silver Eagles participation schedules for the ensuing year. All requests for such demonstrations from sponsors should reach OASD(PA) prior to the middle of November each year to be considered at this conference. In order to accommodate many requests Department of Defense receives for other parachuting demonstrations, aircraft demonstrations, static aircraft displays, and flyovers, each request must be received by OASD(PA) a minimum of 30 days in advance of the event and preferably 60 days in advance.
§ 705.33 Participation by Armed Forces bands, choral groups, and troops in the public domain.

(a) Military musical participation in public events which otherwise meet the criteria outlined herein will be limited to patriotic programs as opposed to pure entertainment and will not duplicate a performance within the capability of a civilian group. For example, music to accompany the presentation of the national colors, or a performance of military or patriotic music by a military band, drum and bugle corps or choral group may be authorized; background, dinner, dance or other social music is considered "entertainment.”

(b) Requests received for military musical participation in appropriate events in the civilian domain must include an indication from the sponsor that there is no conflict with the local civilian musicians concerning the appearance of Navy musicians. A statement to this effect from the cognizant local musicians' union must be obtained by the sponsor and attached to his request.

(c) Armed Forces musical units may be authorized to provide certain specified musical programs in the public domain. The performance must not place military musicians in competition with professional civilian musicians. Background, dinner, dance or other social music cannot be authorized. The specified programs which may be authorized usually include a short opening or closing patriotic presentation. Musical selections normally consist of a medley of military or patriotic songs, honors to the President or Vice President (if he is there), or music to accompany the presentation of colors by a Color Detail.

(1) Armed Forces musical units may be authorized to participate in official government, military and civic functions.

(1) Official government functions include those in which senior officials of the Federal government are involved in the performance of their official duties.

(ii) Official military functions include social activities held on military installations (or off when the Military Service certifies that suitable facilities are not available on post) which are sponsored by the Military Services, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(iii) Official civic functions include such State, county or municipal events as inaugurals, dedication of public buildings and projects, the convening of legislative bodies, and ceremonies for officially invited government visitors.

(2) Armed Forces musical units may also be authorized to provide patriotic and military programs at national conventions and meetings of nationally-recognized civic, patriotic and veterans organizations.

(d) Bands, drill teams and other units can normally participate at no cost to the sponsor if the event is within the installation’s immediate community relations area (approximately 100-mile radius).

(1) Normally, not more than one band or other musical unit will be authorized for a parade in the civilian domain. This guidance intended to assure widest possible participation in public events of local interest (particularly on national holidays) does not apply to national convention of veterans' groups or other events having national significance.

(2) All Armed Forces participation in international and national events, and in the Washington, DC area, must be authorized by the Assistant Secretary of Defense (Public Affairs).

(3) Requests for Armed Forces musical or troop units when no military installation is accessible, or for the Washington, DC-based ceremonial bands or troop units (when the event is outside the Washington, DC area), should be addressed to the parent Service of the unit:
§ 705.34 Other special events.

(a) Ship visits. Requests for visits generally originate with civic groups desiring Navy participation in local events. Often, members of Congress endorse these requests, advising the Navy of their interest in a particular event. Because of the marked increase in requests for ship visits, and in order to give equal consideration to all requests, the Chief of Information has arranged for quarterly meetings of representatives from CHINFO, Commander, Navy Recruiting Command, Chief of Naval Operations and Chief of Legislative Affairs. Based on the importance of the event (nationally, regionally, or locally) location, and prospective audience, recommendations are consolidated and forwarded to the fleet commanders prior to their quarterly scheduling conferences.

(b) Visits to Naval activities—(1) Types of visits. (i) General visits or Open House are occasions when a ship or station acts as host to the general public. These visits will be conducted in accordance with instructions issued by Fleet and Force Commanders, District Commandants, or other cognizant authority.

(ii) Casual visits are visits to ships or stations by individuals or specific groups, as differentiated from the general public. Details and procedures concerning these visits are a matter of command discretion.

(iii) Tours are occasions when a ship or station is host to a specific group on a scheduled date. Some of the larger shore commands also regularly schedule one or more sightseeing type tours daily during seasons when many vacationers ask to visit the command.

(2) General rules. Prior approval for general visiting or Open House at any time other than civic-sponsored public observances and official ceremonies for Armed Forces Day, memorial Day, Independence Day, and Veterans Day, and for observances in overseas areas

(3) Armed Forces units may not be authorized to participate when:

(i) The event directly or indirectly endorses or selectively favors or favors (or appears to do so) any private individual, commercial venture, sect, fraternal organization, political group, or if it is associated with solicitation of votes in a political election.

(ii) Admission, seating and other accommodations or facilities are restricted in any manner with regard to race, creed, color or national origin.

(iii) The sponsoring organization or group excludes any person from its membership or practices any form of discrimination in its functions, based on race, creed, color or national origin.

(iv) An admission charge is levied on the public primarily to see participation by an Armed Forces unit.

(v) There is fund-raising of any type connected with the event, unless all profits are to be donated to a charity which is one of the consolidated programs recognized by the Federal Services Fund-Raising Program. These are the United Givers Fund Community Chest, National Health Agencies (as a group), the International Service Agencies, and the American Red Cross (when not included in a consolidated campaign). The Military Services Welfare Societies (Army Emergency Relief, Navy Relief and Air Force Aid Society) are also included.

(5) Sponsors of an event must agree to reimburse the Military Services concerned for transportation and per diem when participation is authorized at no additional cost to the government.

(6) Participation by Armed Forces musical units in other areas is within the authority of local military commanders, and requests for participation should be made directly to those local military installations. All requests should be submitted no earlier than 60 days and preferably no later than 45 days prior to the event.

32 CFR Ch. VI (7–1–02 Edition)
of similar significant holidays, will be requested as follows: Fleet units visiting U.S. ports, from Senior Officer present Afloat; fleet units visiting foreign ports, from commander ordering the visit; shore stations and district vessels in the United States, from District Commandants; and overseas shore stations, from the naval area commander.

(c) Official functions. (1) Navy units may be authorized by local commanding officers to participate in official government military and civic functions, except in the Washington DC area where OASID(PA) retains authority.

(2) Official government functions include those in which senior officials of the federal government are involved in the performance of their official duties.

(3) Official military functions include social activities held on military installations (or off, when it is certified that suitable facilities are not available on base), which are sponsored by the Navy, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(4) Official civic functions include such state, county or municipal events as inaugurals, dedications of public buildings and projects, and convening of legislative bodies and ceremonies for officially invited government visitors.

(5) Overseas, similar functions attended by comparable host-country officials in their official capacities might also be considered appropriate for Navy participation.

(d) A parade which is sponsored by the community as a whole (rather than by a single commercial venture) and held on a Sunday or holiday or at a time when shops are closed for business may be a public event for which participation could properly be authorized; representation by individual commercial ventures in such parades need not be a bar to Navy participation as long as the emphasis is planned and placed on the civic rather than commercial aspects. Such participation will be at no additional cost to the government.

(e) Fund-raising events. (1) Navy support of fund-raising events must be limited to recognized, joint or other authorized campaigns. Navy support of fund-raising events or projects for a single cause, even though the cause is a member of one of the federated, joint or authorized campaigns, or donates in part to one of several of the recognized campaigns, is not authorized by Department of Defense.

(2) Navy support for a single-cause fund-raising event may be authorized if the event is:

(i) In support of Navy recruiting objectives;
(ii) Supported by a letter indicating the local United Way representative has no objection; and
(iii) Approved by the local Navy Commander as a single-cause charity which has broad local benefit.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§705.35 Armed Forces participation in events in the public domain.

(a) Requests for bands, troops, units, teams, exhibits and other Armed Forces participation should be addressed to the nearest military installation. Local commanders have resources which they can commit to appropriate events if mission requirements permit. If no military installation is accessible, or if resources requested are not available locally or require approval by higher authorities, a standard Department of Defense Request Form should be completed. This form is used to evaluate the request, determine appropriateness of the event and compliance with Department of Defense policies, and eliminate repeated correspondence. The request form should be returned to the office or military command from which it was received unless another address is indicated.

(b) Basic criteria governing Armed Forces participation in public events have been developed by the Department of Defense to ensure compliance with public law, to assure equitable distribution of resources to as many appropriate events as possible, and to avoid excessive disruption of primary training and operational missions of the Military Services. the following
§ 705.36 Government transportation of civilians for public affairs purposes.

(a) General policy. (1) Regulations on transportation of civilians vary according to whether:

(i) The civilians are news media representatives or not.

This section discusses the general rules and information included as an aid to understanding Department of Defense policies and in planning programs of mutual benefit to the Armed Forces and your community.

(1) When evaluating requests for Armed Forces participation in public events, the interests of the Department of Defense and the public at large, operational requirements of the Military services, and availability of resources are prime considerations. Commitment of resources to specific events must be balanced with the above factors and with requests for similar participation received from other sources.

(2) Department of Defense participation and cooperation must not directly or indirectly:

(i) Endorse or selectively benefit or favor or appear to endorse or selectively benefit or favor any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal organization, political organization, or commercial venture.

(ii) Be associated with the solicitation of votes in a political election. Sites such as commercial theaters or department stores, churches or fraternal halls; and events such as testimonials to private individuals or sectarian religious services, are generally inappropriate for Armed Forces participation.

(3) Participation by the Armed Forces in any event or activity may be authorized only if admission, seating and all other accommodations and facilities are available to all without regard to race, creed, color or national origin, and only if the sponsoring organization does not exclude any form of discrimination based on race, creed, color or national origin. This does not bar participation in events sponsored by nationally-recognized veteran’s organizations when the program is oriented toward the veterans’ interests, nor does it bar participation in non-public school events when the program is directed toward education or recruiting.

(i) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit or exhibit. When admission is charged, the Armed Forces activity must not be the sole or primary attraction.

(4) Armed Forces participation is authorized in a fund-raising event only when the sponsor certifies that all net profits in excess of actual operating costs will be donated to one of the consolidated programs recognized by the Federal Services Fund-Raising program. These include such agencies as the United Givers Fund, Community Chests, National Health Agencies (as a group), International Service Agencies and the military aid societies.

(5) When Armed Forces participation in an event is in the mutual interest of the Department of Defense and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government—travel and transportation of military personnel, meals and quarters or standard per diem allowance, etc.—will be borne by the sponsor.

(6) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, connection of electricity, or utility or janitorial costs.

(7) The duration of participation by military units in any one event is limited in the interests of proper utilization and equitable distribution of Armed Forces manpower and resources. While an exhibit might be scheduled for the duration of an event, a unit such as a military band is limited to three days.

(8) Armed Forces participation in professional sports events and post-season bowl games will normally be authorized at no additional cost to the government, will emphasize joint Service activity and must support recruiting programs. Participation in beauty contests, fashion shows, pageants, Christmas parades, and motion picture premieres is not authorized since military support would violate policy and appropriateness.

§ 705.36 Government transportation of civilians for public affairs purposes.

(a) General policy. (1) Regulations on transportation of civilians vary according to whether:

(i) The civilians are news media representatives or not.
(ii) The travel is local or nonlocal (see paragraph (b) of this section).

(iii) The purpose of the travel is to get to a desired destination or is to observe the Navy at first hand.

(2) Authority for embarkation of individuals in naval vessels and military aircraft is vested in the Chief of Naval Operations by §700.710 of this chapter. Nothing in this part shall be construed as limiting his authority in this regard.

(3) The following policy has been established by DOD for providing all types of Navy transportation to non-Navy civilians.

(i) Military transport facilities shall not be placed in a position of competition with U.S. commercial carriers.

(A) When embarkation of a Newman is necessary for him to obtain news material about a ship, aircraft, cargo or embarked personnel, or when he is invited to report on a matter of special interest to the Navy, it is not considered that the transportation furnished him is in competition with commercial transport.

(B) An exception is also made for short trips between an airport (or other transportation center) and the command. Cars and buses within the resources of the command may be used for meeting guests or taking them to make their travel connections.

(ii) When authorization is requested for travel which is of interest to or will affect more than one command or Service, the approving authority will coordinate the request with all other interested commands, Services and Agencies.

(iii) Travel in connection with any public affairs program arranged by the Navy jointly with another Federal Department or Agency or a foreign government will be authorized only by the Assistant Secretary of Defense (Public Affairs, or those to whom he has delegated this authority. Navy commands desiring authorization of such travel will forward the request to the Chief of Information.

(iv) If a request for travel for nonlocal public affairs purposes is disapproved, sufficient reasons should be provided so that the action is clearly understood by the individual or group concerned.

(b) Definition of local v. nonlocal travel. (1) Local travel is travel within the immediate vicinity of the command concerned in connection with a public affairs program of local interest only. (For air travel within the continental U.S., about 150 miles or less is generally considered local.)

(2) Nonlocal travel is that conducted in connection with a public affairs program affecting more than one Service, geographic area or major command, usually of primary concern to higher authority.

(c) Transportation of news media representatives. (1) This section applies to media representatives who are embarked for the purpose of news gathering or of traveling to an area in order to cover a news event. It does not apply to:

(i) Correspondents when members of groups embarked as regular cruise guests of the Navy.

(ii) Casual trips by correspondents to ships in port or to shore stations in CONUS. Such visits may be authorized by officers in command or higher authority in accordance with instructions promulgated by the Chief of Naval Operations. Written orders are not required.

(2) Local travel. Commanding officers at all levels are authorized (under Defense Department policy) to approve local travel for public affairs purposes within the scope of the mission and responsibilities of their command, if:

(i) Public interest in the public affairs purpose involved is confined primarily to the vicinity of that command.

(ii) The travel is being provided for the benefit of local media and meets a naval public affairs objective.

(iii) Scheduled commercial air transportation is not readily available.

(iv) The aircraft to be used is a helicopter, or multiengine dual piloted aircraft, and is within the resources of the host command on a not-to-interfere basis. This provision does not apply to orientation flights.

(3) Nonlocal travel. (i) Requests for nonlocal travel will be submitted to the Chief of Information, who will forward them with his recommendations to the Chief of Naval Operations and/or
§ 705.36

23 CFR Ch. VI (7–1–02 Edition)

the Assistant Secretary of Defense (Public Affairs), as appropriate.

(ii) When the proposed travel is for news coverage of a major emergency nature and the coverage will be impaired or delayed, to the serious detriment of the interests of the Department of Defense, if military transportation is not provided, requests for such travel will be submitted to the Chief of Information, who will forward the request—if approved—to the Assistant Secretary of Defense (Public Affairs). The most expeditious means (including telephone) will be used by commands requesting such emergency travel. Justification will include both the public affairs purpose and the necessity for military carriers.

(4) Travel between the U.S. and overseas area. (i) The Chief of Naval Operations may authorize military transportation for correspondents in unusual circumstances, upon recommendations of the Chief of Information and the Defense Department.

(ii) Requests for government transportation to cover specific assignments overseas should be made at least three weeks prior to the date required and should be addressed to the Assistant Secretary of Defense (Public Affairs) via the Chief of Information or Unified Commander, as appropriate. The requests should include:

(A) A statement that the correspondent is a full-time employee, or has a specific assignment, and that the trip is for the purpose of news gathering.

(B) Appropriate date of entry into area, port of entry, method of travel, proposed duration of visit and travel termination date.

(C) Assurance that the correspondent will observe currency control regulations, and sponsoring agency will guarantee financial obligations incurred.

(5) Embarkation of male correspondents between ports within CONUS. (i) Male correspondents may be embarked in naval ships for passage between ports within the area of a single Fleet command for the purpose of news gathering at the discretion of the Sea Frontier Commander, Commandants of the Naval Districts, the Chief of Naval Air Training, Fleet, Force and Type commanders and flag officers afloat who have been delegated authority to arrange directly with appropriate Fleet, Force and Type commanders for embarkation of civilians on a local cruise basis.

(ii) Invitational travel orders may be issued.

(iii) Privileges equal to those given male correspondents will be accorded female correspondents whenever practicable.

(ii) Female correspondents may not be embarked overnight in a naval ship without prior approval of the appropriate Fleet Commander-in-Chief. This authority may be delegated to the numbered Fleet Commanders.

(7) Travel in ships of the Military Sealift Command. Correspondents may be carried in ships of the Military Sealift Command on either a space-required or space-available basis when travel is in the best interests of the Navy or the Department of Defense.

(i) Space-available travel will be used when practicable. A nominal charge is made by the Military Sealift Command and must be borne by the correspondents.

(ii) Space-required travel may be authorized when sufficiently in the interest of the Navy, and the charge may be borne by the Navy.

(iii) In either case, determination of Navy interests will be made by the Chief of Information, guided by the transportation policy of the Chief of Naval Operations, whose approval of such embarkation is required.

(iv) Requests for such travel will be submitted to the Chief of Information, who will coordinate with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs), as appropriate.

(8) Point to point transportation within the continental United States in naval aircraft other than those operated by the Military Airlift Command.

(i) SECNAVINST 4630.2A contains guidance for travel in military aircraft other than those operated by the Military Airlift Command.

(ii) Naval activities desiring to arrange such transportation will address requests via the chain of command to the operational command of the lowest
(iii) Upon approval of such a request, the naval activity sponsoring the correspondent shall:

(A) Prepare travel orders.
(B) Ensure that any waiver forms, as may be required by governing directives, are executed.

(9) Embarkation of news media representatives of foreign citizenship:

(i) Requests from foreign news media representatives to cruise with units of the U.S. Navy are usually made to the nearest U.S. military installation known to the correspondent, and are often not made in the proper chain of command to the Fleet Commander unless authorized to effect arrangements for an underway cruise.

(A) If the request is received by a command which is not a subordinate of the Fleet Commander concerned, it will be forwarded to the U.S. Naval Attache assigned to the foreign newsman’s country. The Attache will then forward the request to the appropriate Fleet Commander, with his recommendations and the result of a brief background check on the newsman and his employer.

(B) If the request is received by a subordinate of the appropriate Fleet Commander, it may be forwarded directly to the latter, but the U.S. Naval Attache in the newsman’s country will be given the opportunity to comment on the proposed embarkation.

(ii) Naval commands should not introduce an embarked third-party (i.e., a foreign media representative) into a foreign country other than his own without first obtaining appropriate clearance from the country to be visited. Approval for entry should be forwarded via appropriate command channels to the cognizant U.S. Naval Attache.

(iii) Security considerations. (i) No media representative known to be affiliated with a group advocating the overthrow of the U.S. government will be permitted aboard naval ships or stations.

(ii) If security review is directed, the reason will be made clear to the correspondent prior to embarkation. News media people refusing to agree to observe security regulations may have their privileges suspended. Failure to observe security regulations will be reported to CHINFO and interested commands.

(d) Transportation of other civilians. (1) Although groups normally provide their own transportation to Navy commands, Navy transportation may be authorized when:

(i) Commercial transport is not available.

(ii) A professional group visit has been solicited by the Navy, such as participants in the Naval Academy Information Program (“Blue and Gold”) or educators invited to an Aerospace Education Workshop.

(2) Requests for nonlocal transportation under the above circumstances will be made to the Chief of Naval Operations.

(3) Carrier-on-board-delivery (COD) flights and helicopters flights to ships are considered local transportation.

(4) When units or areas of a Unified Command are involved in the public affairs program in connection with which travel authorization is requested by a Navy command which is not a component of the Unified Command concerned, coordination will be effected by the host command, through command channels, via the Chief of Information, to the Assistant Secretary of Defense (Public Affairs), who—as appropriate—will consult with the Unified Commander concerned.

(e) Special programs. (1) Cruises are discussed in Chapter 6, section 0604, para. 1 of the Navy Public Affairs Regulations.

(2) Embarkation of news media representatives, especially on operations and exercises, is discussed in Chapter 4, section 0405, paragraph 4 of the Navy Public Affairs Regulations.

(3) Other programs subject to special requirements or which have had exceptions authorized for them include:

(i) Naval Air Training Command Civilian Orientation Cruise Program, conducted by the Chief of Naval Air Training.

(ii) Joint Civilian Orientation Conference, conducted by the Assistant Secretary of Defense (Public Affairs).

(iii) Orientation flights in government aircraft, conducted in accordance with OPNAVINST 37107H.
§ 705.37 Public affairs and public service awards.

(a) General. (1) A number of public service awards are presented by the Department of Defense and the Navy to business and civic leaders, scientists and other nongovernment civilians. Other awards—military and civilian—are presented to members of the naval establishment.

(2) These awards are of public affairs interest in the locale where they are presented and also in the home towns of those who receive them.

(b) Department of Defense awards. (1) The Department of Defense Medal for Distinguished Public Service is presented to individuals. The Department of Defense Meritorious Award honors organizations.

(2) Details, including nominating procedures, are given in SECNAVINST 5061.12.

(c) Secretary of the Navy awards. (1) The following awards are presented by the Secretary of the Navy: The Navy Distinguished Public Service Award and Navy Meritorious Public Service Citation to individuals; the Navy Certificate of Commendation to members of special committees and groups; and the Navy Certificate of Merit to organizations and associations.

(2) Details are given in SECNAVINST 5061.12.

(3) Nominations for awards to military personnel are considered by the Board of Decorations and Medals, in accordance with SECNAVINST 1650.24A.

(4) Nominations for honorary awards to Department of the Navy civilian employees are considered by the Distinguished Civilian Service Awards Panel. (See Civilian Manpower Management Instruction 451.)

(d) Chief of Information awards—(1) Certificate of Public Relations Achievement. (i) This certificate is signed by the Chief of Information. It honors individuals who are not Navy employees, corporations, or associations.

(ii) It was established to fill the need for a civilian award for public relations achievements which, while not meeting the criteria for public service awards presented by the Secretary of the Navy, are of such Navy-wide significance as to merit recognition at the Department level. Examples of these achievements might be a particularly well done feature article about the Navy in a nationally read newspaper or an outstanding contribution to a locally sponsored event, which ultimately gave national or regional recognition to the Navy.

(iii) The achievement for which the certificate is given shall meet the following criteria:

(A) Contribute to accomplishment of the public information objectives of the Navy.

(B) Be the result of a single outstanding project or program.
(C) Have been accomplished within one year of the date of the official letter of nomination.

(iv) Nominations will be submitted through appropriate administrative channels to the Chief of Information, and will include a description of the service rendered, a statement of its relevance to the accomplishment of the public affairs objectives of the Navy and a draft of the recommended citation. To avoid possible embarrassment, nominations shall be marked “For Official Use Only” and safeguarded until final action has been taken.

(2) CHINFO Merit Awards. (i) These awards, or certificates, are presented quarterly to Navy publications and broadcasts considered to be outstanding or to have shown improvement in meeting professional standards of journalism.

(ii) Publications and broadcasts eligible are those which inform the reader concerning aspects of service life or related matters which contribute to the well-being of naval personnel, their dependents, and civilian employees of the Navy. Civilian enterprise periodicals are included if produced for the exclusive use of a naval installation.

(iii) Nominations are made in two ways:
(A) Selection during regular review periods and broadcast air-checks received by the Internal Relations Activity.
(B) Nominations from the field. Such nominations are informal and may be made by the officer-in-charge, publications editor, broadcast station manager, or public affairs officer to the chief of Information, Navy Department, Washington, DC 20350 (ATTN: OP–0071).

(3) Other awards pertaining to public affairs/internal relations. (i) Silver Anvil award is given by the Public Relations Society of America for outstanding public relations programs carried out during the preceding year. Entry blanks and details may be obtained by writing directly to Public Relations Society of America, 845 Third Ave., New York, NY 10022. All Navy entries will be forwarded via the Chief of Information.

(ii) Freedom Foundation Awards of cash and medals are annually given to service personnel for letters on patriotic themes. Details are carried in ship and station publications, or may be obtained by writing to Freedom Foundations, Valley Forge, PA 19481.

(iii) Thomas Jefferson Awards are the prizes in an annual interservice competition sponsored by civilian media through the Department of Defense’s Office of Information for the Armed Forces. The contest is open to all Armed Forces media—broadcast and print. Details can be obtained by writing to Office of Information, Department of the Navy, Washington, DC 20350.

(iv) Navy League Awards. Several annual awards are presented to naval personnel and civilians who have made a notable contribution to the importance of seapower. The awards are for inspirational leadership, scientific and technical progress, operational competence, literary achievement, etc. Nominations should be forwarded directly to Board of Awards, Navy League of the United States, 818 18th St., NW., Washington, DC 20006.

(v) Nonofficial awards to outstanding Navy students or training units.
(A) Various civilian organizations and private individuals have established awards to be presented to outstanding training units or naval students.
(B) Requests to establish an award for students in the Naval Air Training program should be forwarded to the Chief of Naval Air Training.
(C) Requests to establish an award which will involve more than one school (other than the Naval Air Training Program) will be forwarded to the Chief of Naval Personnel.
(D) All other cases may be decided by the Navy authority at the school concerned.
(E) Directives in the 5061, 1650 and 3590 series issued by pertinent authorities may provide further guidance in individual cases.

(vi) Awards established by a command to honor non-Navy civilians.
(A) Examples of such awards are “Good Neighbor” or “Honorary Crew Member” certificates.
(B) Established to honor persons who have been helpful to the command.
they are a valuable community relations program. They should not be awarded to persons or organizations with which the command is associated in a commercial or governmental business capacity.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

**SUBCHAPTER B—NAVIGATION**

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

Sec.
706.1 Purpose of regulations.
706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.
706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

**AUTHORITY:** 33 U.S.C. 1605.

§ 706.1 Purpose of regulations.

(a) All ships are warned that, when U.S. naval vessels are met in international waters, certain navigational lights and sound-signalling appliances of some naval vessels may vary from the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (33 U.S.C. foll. section 1602 (1982)), as to number, position, range, or arc of visibility of lights, as well as to the disposition and characteristics of sound-signalling appliances. Those differences are necessitated by reason of the special construction or purpose of the naval ships. An example is the aircraft carrier where the two masthead lights are considerably displaced from the center or keel line of the vessel when viewed from ahead. Certain other naval vessels may also have unorthodox navigational light arrangements or characteristics when seen either underway or at anchor.

(b) Naval vessels may also be expected to display certain other lights. These lights include, but are not limited to, different colored rotating beacons, different colored fixed and rotary wing aircraft landing signal lights, red aircraft warning lights, and red or blue contour approach lights on replenishment-type ships. These lights may be shown in combination with the navigational lights.

(c) During peacetime naval maneuvers, naval ships, alone or in company, may also dispense with showing any lights, though efforts will be made to display lights on the approach of shipping.

(d) Executive Order 11964 of January 19, 1977, and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972, as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, shall not apply to a vessel of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel to comply fully with the provisions without interfering with the special function of the vessel.

(e) Executive Order 11964 also provides that the Secretary of the Navy is authorized to exempt, in accordance with Rule 38 of the International Regulations for Preventing Collisions at Sea, 1972, any vessel, or class of vessels, the keel of which is laid, or which is at a corresponding stage of construction, before July 15, 1977, from full compliance with the International Regulations, provided that such vessel, or class of vessels, complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

(f) This part consolidates and codifies certifications and exemptions granted by the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605. It has been determined that, because of their special construction or purpose,
§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

The Secretary of the Navy hereby finds and certifies that each vessel listed in this section is a naval vessel of special construction or purpose, and that, with respect to the position of the navigational lights listed in this section, it is not possible to comply fully with the requirements of the provisions enumerated in the International Regulations for Preventing Collisions at Sea, 1972, without interfering with the special function of the vessel. The Secretary of the Navy further finds and certifies that the navigational lights in this section are in the closest possible compliance with the applicable provisions of the International Regulations for Preventing Collisions at Sea, 1972.

Table One—Continued

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<td>USS HAWES</td>
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### Table Two

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### TABLE TWO—Continued

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<th>Vessel</th>
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<th>Forward anchor light, distance below keel in meters; Rule 21(e)</th>
<th>AFT anchor light, distance below keel in meters; Rule 30(a)(i)</th>
<th>Side lights, distance forward of AFT anchor light in meters; Rule 30(a)(ii)</th>
<th>Side lights, distance forward of masthead light in meters; §3(b), Annex I</th>
<th>Side lights, distance inboard of ship's sides in meters; §3(b), Annex I</th>
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1. [Reserved]
2. The permanent masthead light is 5.26 meters athwartship to port of centerline, at frame 3.549 meters above the main deck.
3. The sidelights are on top of the port and starboard deckhouses 3.28 meters above the hull.
4. The temporary masthead light is 3.96 meters athwartship to starboard of centerline 4.06 meters above the main deck.
5. Port sidelight only.

### TABLE THREE

<table>
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<tr>
<th>Vessel</th>
<th>No.</th>
<th>Masthead lights arc of visibility; rule 21(a)</th>
<th>Side lights arc of visibility; rule 21(b)</th>
<th>Stern light arc of visibility; rule 21(c)</th>
<th>Side lights distance inboard of ship's sides in meters; §3(b), Annex I</th>
<th>Stern light, distance forward of stern in meters; rule 21(c)</th>
<th>Forward anchor light, height above hull in meters; §2(K), Annex I</th>
<th>Anchor lights relationship of aft light to forward light in meters; §2(K), Annex I</th>
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<td>Side lights arc of visibility, rule 21(b)</td>
<td>Stern light arc of visibility, rule 21(c)</td>
<td>Stern light distance forward in board of ship's sides in meters, rule 21(c)</td>
<td>Stern light distance forward in meters, rule 21(c)</td>
<td>Forward anchor light height above hull in meters, rule 21(c)</td>
<td>Anchor lights relation of aft light to forward light in meters, rule 21(c)</td>
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</table>
TABLE FOUR

1. Ships other than aircraft carrier types (CV, CVN, LHA, LHD, and LPD) may not simultaneously exhibit the masthead lights required by Rule 27(b)(i) and the lights required by Rule 27(b)(ii) for vessels restricted in their ability to maneuver when such simultaneous exhibition will present a hazard to their own safe operations. In those instances, the lights required by Rule 27(b)(i) will be exhibited. Ships conducting flight operations also may not exhibit the stern light required by Rule 27(b)(iii).

2. To provide all-round visibility, the lights required by Rules 27(a) and (b) will consist of two lights, one light port and one light starboard on the mast or superstructure at each location in the vertical array.

3. The second masthead light required by Rule 27(a)(ii) and the lights and shapes required by Rules 24, 27, and 30(d)(i) are not displayed by submarines.

4. On mine warfare type ships the masthead lights will not always be above and clear of the minisweeping lights, as is required by Annex I, Section 2(f). The positions of the masthead lights with relation to the minisweeping lights are as follows:

<table>
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<th>Vessel</th>
<th>MSNo.</th>
<th>Relationship of forward masthead light to all minisweeping lights</th>
<th>Relationship of after masthead light to lower minisweeping lights</th>
<th>Relationship of after masthead light to upper minisweeping lights</th>
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<tr>
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1 Only when towing.
5. The masthead light required by Rule 23(a)(i) is not located in the forepart of the vessel on the CSP Class and SLWT Class.

6. [Reserved]

7. On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(ii) may be obstructed through 1.6° arc of visibility at the points 02° and 33° relative to the ship’s head.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Distance of sidelights forward of masthead light in meters</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS MCINERNEY</td>
<td>FFG 8</td>
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<tr>
<td>USS CLARK</td>
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<td>USS GEORGE PHILIP</td>
<td>FFG 12</td>
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<tr>
<td>USS SAMUEL ELIOT MORISON</td>
<td>FFG 13</td>
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<tr>
<td>USS SIDES</td>
<td>FFG 14</td>
<td>2.75</td>
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<tr>
<td>USS ESTOCIN</td>
<td>FFG 15</td>
<td>2.75</td>
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<tr>
<td>USS JOHN A. MOORE</td>
<td>FFG 19</td>
<td>2.75</td>
</tr>
<tr>
<td>USS BOONE</td>
<td>FFG 28</td>
<td>2.75</td>
</tr>
<tr>
<td>USS STEPHEN W. GROVES</td>
<td>FFG 29</td>
<td>2.75</td>
</tr>
<tr>
<td>USS JOHN L. HALL</td>
<td>FFG 32</td>
<td>2.75</td>
</tr>
<tr>
<td>USS JARRETT</td>
<td>FFG 33</td>
<td>2.75</td>
</tr>
<tr>
<td>USS UNDERWOOD</td>
<td>FFG 36</td>
<td>2.75</td>
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<tr>
<td>USS CROMMELIN</td>
<td>FFG 37</td>
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<tr>
<td>USS CURTS</td>
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<td>USS DOYLE</td>
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</tr>
<tr>
<td>USS HALYBURTON</td>
<td>FFG 40</td>
<td>2.75</td>
</tr>
<tr>
<td>USS MCCLUSKY</td>
<td>FFG 41</td>
<td>2.75</td>
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<tr>
<td>USS KLAKRING</td>
<td>FFG 42</td>
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<td>USS SAMUEL ELIOT MORISON</td>
<td>FFG 44</td>
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<td>USS SIDES</td>
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<td>FFG 46</td>
<td>2.75</td>
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<td>USS JOHN A. MOORE</td>
<td>FFG 47</td>
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<tr>
<td>USS BOONE</td>
<td>FFG 48</td>
<td>2.75</td>
</tr>
<tr>
<td>USS STEPHEN W. GROVES</td>
<td>FFG 49</td>
<td>2.75</td>
</tr>
<tr>
<td>USS JOHN L. HALL</td>
<td>FFG 50</td>
<td>2.75</td>
</tr>
<tr>
<td>USS JARRETT</td>
<td>FFG 51</td>
<td>2.75</td>
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<tr>
<td>USS UNDERWOOD</td>
<td>FFG 52</td>
<td>2.75</td>
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<tr>
<td>USS CROMMELIN</td>
<td>FFG 53</td>
<td>2.75</td>
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<tr>
<td>USS CURTS</td>
<td>FFG 54</td>
<td>2.75</td>
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<tr>
<td>USS DOYLE</td>
<td>FFG 55</td>
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<td>USS HALYBURTON</td>
<td>FFG 56</td>
<td>2.75</td>
</tr>
<tr>
<td>USS McCLUSKY</td>
<td>FFG 57</td>
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<tr>
<td>USS GEORGE PHILIP</td>
<td>FFG 58</td>
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<tr>
<td>USS SAMUEL B. ROBERTS</td>
<td>FFG 59</td>
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</tr>
<tr>
<td>USS REUBEN JAMES</td>
<td>FFG 60</td>
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</tr>
<tr>
<td>USS SIMPSON</td>
<td>FFG 61</td>
<td>2.19</td>
</tr>
</tbody>
</table>

8. Sidelights on the following ships do not comply with Annex 1, Section 3(b):

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Distance of sidelights forward of masthead light in meters</th>
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<tr>
<td>USS DEWERT</td>
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<td>2.75</td>
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<td>USS NICHOLAS</td>
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<td>2.75</td>
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<td>USS VANDERGRIFT</td>
<td>FFG 48</td>
<td>2.75</td>
</tr>
<tr>
<td>USS ROBERT G. BRADLEY</td>
<td>FFG 49</td>
<td>2.75</td>
</tr>
<tr>
<td>USS TAYLOR</td>
<td>FFG 50</td>
<td>2.75</td>
</tr>
<tr>
<td>USS GARY</td>
<td>FFG 51</td>
<td>2.75</td>
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<td>USS CROMMELIN</td>
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<td>2.75</td>
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<td>USS DOYLE</td>
<td>FFG 53</td>
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<td>USS RENTZ</td>
<td>FFG 54</td>
<td>2.75</td>
</tr>
<tr>
<td>USS ROBERT G. BRADLEY</td>
<td>FFG 55</td>
<td>2.75</td>
</tr>
<tr>
<td>USS VANDERGRIFT</td>
<td>FFG 56</td>
<td>2.75</td>
</tr>
<tr>
<td>USS ROYDEN M. DAVIS</td>
<td>FFG 57</td>
<td>2.75</td>
</tr>
<tr>
<td>USS INGRAHAM</td>
<td>FFG 58</td>
<td>2.75</td>
</tr>
</tbody>
</table>

9. On LCAC-class amphibious vessels, full compliance with Rules 23(a), 21(b), and 22(b), and Annex 1, section 2(a)(ii), 72 COLREGS, cannot be obtained. Tables One and Two of section 706.2 provide the dimensions of closest possible compliance of LCAC-class amphibious vessels with the aforementioned rules. The following paragraph details the specific dimensions of closest possible compliance and the basis for certification by the Secretary of the Navy that full compliance with the aforementioned rules is not obtainable.

In LCAC-class amphibious vessels, there are permanent and temporary masts. The permanent masthead light is located 5.36 meters athwartship to port of centerline 5.49 meters above the hull. The temporary masthead light is located 3.98 meters athwartship to starboard of centerline 4.06 meters above the hull. The temporary masthead light is displayed in lieu of the permanent masthead light only when LCAC-class amphibious vessels are operating with amphibious assault vehicles. When operating in this mode, the sidelights are displayed at a height greater than three-quarters of the height of the temporary masthead light. The sidelights are located on top of the port and starboard decks to permit the required unobstructed arcs of visibility and are 3.28 meters above the hull, resulting in a vertical separation between those lights and the temporary masthead light of 0.78 meters. Because of the minimal vertical separation between the sidelights and the temporary masthead light and the luminous intensity of the temporary light, the sidelights on these vessels may not be distinguishable by the naked eye at the 2-mile range required by Rule 22(b).
12. (Reserved)

14. The following harbor tugs are equipped with a hinged mast. When the mast is in the lowered position as during a towing alongside or pushing operation, the two masthead lights required by Rule 24(c), and the all around lights required by Rule 27(b)(i) will not be shown; however, an auxiliary masthead light not meeting with Annex I, section 2(a)(i) height requirement will be exhibited.

15. Task (restricted maneuverability) lights on the following ships do not comply with Annex I, section 3(c).

16. On the following ships, the arc of visibility of the forward masthead light, required by rule 21(a), may be obstructed at the following angles relative to ship’s heading:

17. The second masthead light required by Rule 23(a)(ii) will not be displayed on the ‘PC 1 Class.

18. On the following mine warfare type ships, the arc of visibility of the lower all-round mineweep lights required by Rule 27(f), may be obstructed through the following angles relative to the ship’s heading:

---

### Table: Vessel Number, Horizontal Distance from the Fore and Aft Centerline of the Vessel in the Athwartship Direction

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Distance in meters</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS ARLEIGH BURKE</td>
<td>DDG 51</td>
<td>1.85</td>
</tr>
<tr>
<td>USS BARRY</td>
<td>DDG 52</td>
<td>1.94</td>
</tr>
<tr>
<td>USS JOHN PAUL JONES</td>
<td>DDG 53</td>
<td>1.89</td>
</tr>
<tr>
<td>USS CURTIS WILBUR</td>
<td>DDG 54</td>
<td>1.90</td>
</tr>
<tr>
<td>USS STOUT</td>
<td>DDG 55</td>
<td>1.90</td>
</tr>
<tr>
<td>USS JOHN S. MCCAIN</td>
<td>DDG 56</td>
<td>1.88</td>
</tr>
<tr>
<td>USS MITSCHER</td>
<td>DDG 57</td>
<td>1.93</td>
</tr>
<tr>
<td>USS LABOON</td>
<td>DDG 58</td>
<td>1.90</td>
</tr>
<tr>
<td>USS RUSSELL</td>
<td>DDG 59</td>
<td>1.91</td>
</tr>
<tr>
<td>USS PAUL HAMILTON</td>
<td>DDG 60</td>
<td>1.88</td>
</tr>
<tr>
<td>USS RAMAGE</td>
<td>DDG 61</td>
<td>1.91</td>
</tr>
<tr>
<td>USS FITZGERALD</td>
<td>DDG 62</td>
<td>1.90</td>
</tr>
<tr>
<td>USS STETHEM</td>
<td>DDG 63</td>
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<td>USS CARNEY</td>
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<td>USS MATHIS</td>
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<td>1.90</td>
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<tr>
<td>USS COLE</td>
<td>DDG 67</td>
<td>1.90</td>
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<tr>
<td>USS THE SULLIVANS</td>
<td>DDG 68</td>
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<td>USS MILUS</td>
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<td>USS HOPPER</td>
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<td>USS ROSS</td>
<td>DDG 71</td>
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<td>USS DONALD COOK</td>
<td>DDG 75</td>
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<td>USS HIGGINS</td>
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<td>USS O’KANE</td>
<td>DDG 77</td>
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<td>DDG 78</td>
<td>1.92</td>
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<td>USS ROOSEVELT</td>
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<td>USS WINSTON S. CHURCHILL</td>
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<td>USS HOWARD</td>
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<td>DDG 82</td>
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<td>1.90</td>
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<tr>
<td>USS MCCAMPBELL</td>
<td>DDG 84</td>
<td>1.85</td>
</tr>
</tbody>
</table>

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### Table: Vessel Number, Obstruction Angle Relative to Ship’s Headings

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Obstruction Angle</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS ARLEIGH BURKE</td>
<td>DDG 51</td>
<td>100.00° thru 112.50°</td>
</tr>
<tr>
<td>USS BARRY</td>
<td>DDG 52</td>
<td>101.16° thru 112.50°</td>
</tr>
<tr>
<td>USS JOHN PAUL JONES</td>
<td>DDG 53</td>
<td>103.25° thru 112.50°</td>
</tr>
<tr>
<td>USS CURTIS WILBUR</td>
<td>DDG 54</td>
<td>102.61° thru 112.50°</td>
</tr>
<tr>
<td>USS STOUT</td>
<td>DDG 55</td>
<td>102.00° thru 112.50°</td>
</tr>
<tr>
<td>USS JOHN S. MCCAIN</td>
<td>DDG 56</td>
<td>102.53° thru 112.50°</td>
</tr>
<tr>
<td>USS MITSCHER</td>
<td>DDG 57</td>
<td>102.27° thru 112.50°</td>
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<td>USS LABOON</td>
<td>DDG 58</td>
<td>102.80° thru 112.50°</td>
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<td>DDG 61</td>
<td>103.66° thru 112.50°</td>
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<td>USS CARNEY</td>
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<td>USS ROSS</td>
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<tr>
<td>USS SHOUP</td>
<td>DDG 86</td>
<td>190.46° thru 112.50°</td>
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179
<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Masthead lights not over all other lights and obstructions, annex I, sec. 2(f)</th>
<th>Forward masthead light not in forward quarter of ship, annex I, sec. 3(a)</th>
<th>After masthead light less than 1/2 ship's length aft of forward masthead light, annex I, sec. 3(a)</th>
<th>Percentage horizontal separation attained</th>
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<tr>
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<td>98</td>
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<td>USS SHASTA</td>
<td>AE 33</td>
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<td>X</td>
<td>97</td>
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<td>USS CONCORD</td>
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<td>USS SAN JOSE</td>
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<td>54</td>
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<td>USS VALLEY FORGE</td>
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<td>CG 51</td>
<td></td>
<td>X</td>
<td>38</td>
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<tr>
<td>USS BUNKER HILL</td>
<td>CG 52</td>
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<td>X</td>
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</tr>
<tr>
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<td>38</td>
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<td>USS ANTIETAM</td>
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[42 FR 36434, July 14, 1977]

Editorial Note: For Federal Register citations affecting §706.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.
Editorial Note 2: At 66 FR 53532, Oct. 23, 2001, Tables Four and Five were amended by adding entries for the USS WINSTON CHURCHILL. Those tables have entries for the ship.

§ 706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

The Secretary of the Navy hereby exempts, in accordance with Rule 38 of the International Regulations for Preventing Collisions at Sea, 1972, the vessels and classes of vessels listed in this section, from full compliance with the Regulations, where an exemption is allowed by, and for the periods specified in, Rule 38. The Secretary of the Navy further finds that the vessels and classes of vessels listed have had their keels laid or are in corresponding stages of construction before July 15, 1977, and that such vessels and classes of vessels comply with the requirements of the International Regulations for Preventing Collisions at Sea, 1990.

TABLE ONE

[The following vessels and classes of vessels, less than 150 meters in length, are permanently exempted pursuant to rule 38(d)(i) from repositioning of masthead lights resulting from the prescriptions of Annex I, section 3(a)]

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PART 707—SPECIAL RULES WITH RESPECT TO ADDITIONAL STATION AND SIGNAL LIGHTS

Sec.
707.1 Purpose of regulations.
707.2 Man overboard lights.
707.3 Yard arm signaling lights.
707.4 Aircraft warning lights.
707.5 Underway replenishment contour lights.
707.6 Minesweeping station keeping lights.
707.7 Submarine identification light.
707.8 Special operations lights.
707.9 Convoy operations stern light.
707.10 Wake illumination light.
707.11 Flight operations lights.
707.12 Amphibious operations lights.


Source: 42 FR 61586, Dec. 6, 1977, unless otherwise noted.

§ 707.1 Purpose of regulations.

All ships are warned that when U.S. naval vessels are met in international and inland waters, some of the navigational lights displayed by them may be special lights for naval purposes. When used, they may be displayed simultaneously with the ordinary navigational lights required by the International Regulations for Preventing Collisions at Sea, 1972, or the Inland Navigational Rules. The lights are located and characterized in such a fashion that, as far as possible, they cannot be mistaken for any light authorized by either set of rules. This part publishes the special rules with respect to these additional station and signal lights promulgated by the Secretary of the Navy for vessels of the Navy.

§ 707.2 Man overboard lights.

Naval vessels may display, as a means of indicating man overboard, two pulsating, all round red lights in the vertical line located on a mast from where they can best be seen.

§ 707.3 Yard arm signaling lights.

Naval vessels may display, as a means of visual signaling, white all round lights at the ends of the yard arms. These lights will flash in varying sequences to convey the intended signal.

§ 707.4 Aircraft warning lights.

Naval vessels may display, as a means of indicating the presence of an obstruction to low flying aircraft, one all round red light on each obstruction.
§ 707.5 Underway replenishment contour lights.
Naval vessels may display, as a means of outlining the contour of the delivery ship during nighttime underway replenishment operations, either red or blue lights at delivery-ship-deck-edge extremities.
[42 FR 61596, Dec. 6, 1977, as amended at 44 FR 27991, May 14, 1979]

§ 707.6 Minesweeping station keeping lights.
Naval vessels engaged in minesweeping operations may display, as an aid in maintaining prescribed intervals and bearings, two white lights in a vertical line visible from 070° through 290° relative.

§ 707.7 Submarine identification light.
Submarines may display, as a distinctive means of identification, an intermittent flashing amber beacon with a sequence of operation of one flash per second for three (3) seconds followed by a three (3) second off-period. The light will be located where it can best be seen, as near as practicable, all around the horizon. It shall not be located less than two (2) feet above or below the masthead lights.
[48 FR 4284, Jan. 31, 1983]

§ 707.8 Special operations lights.
Naval vessels may display, as a means of coordinating certain special operations, a revolving beam colored red, green, or amber, located on either yard arm or the mast platform from where it can best be seen all around the horizon.

§ 707.9 Convoy operations stern light.
Naval vessels may display, during periods of convoy operations, a blue light located near the stern with the same characteristics as, but in lieu of, the normal white stern light.

§ 707.10 Wake illumination light.
Naval vessels may display a white spot light located near the stern to illuminate the wake.

§ 707.11 Flight operations lights.
Naval vessels engaged in night flight operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of aircraft and enhancing flight safety. These light systems will be located at various points on the vessels, depending on the vessel type and the nature of the flight operations being conducted.

§ 707.12 Amphibious operations lights.
Naval vessels engaged in night amphibious operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of assault craft and enhancing the safety of the amphibious operation. These light systems will be located at various points on the vessel, depending on the vessel type and the nature of the amphibious operations being conducted.

SUBCHAPTER C—PERSONNEL

PART 716—DEATH GRATUITY

Subpart A—Provisions Applicable to the Navy and the Marine Corps

Sec.
716.1 Principal rule.
716.2 Definitions.
716.3 Special situations.
716.4 Eligible survivors.
716.5 Delegation of authority.
716.6 Death occurring after active service.
716.7 Payment of the death gratuity.
716.8 Payments excluded.
716.9 Erroneous payment.

Subpart B—Provisions Applicable to the Navy

716.10 Procedures.

Subpart C—Provisions Applicable to the Marine Corps

716.11 Procedures.
§ 716.3 Special situations.

(a) Service without pay. Any member of a Reserve component who performs active duty, active duty for training, or inactive-duty training without pay shall, for purposes of a death gratuity payment, be considered as being entitled to basic pay, including special pay and incentive pay if appropriate, while performing such duties.

(b) Death occurring while traveling to and from active duty for training and inactive-duty training. Any member of a Reserve component who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive-duty training and who dies from an injury incurred on or after January 1,
§ 716.4 Eligible survivors.

(a) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member first listed below:

1. The lawful spouse. (For purpose of this part, a man or woman shall be considered to be the spouse if legally married to the member at the time of the member’s death.)

2. His children (without regard to their age or marital status) in equal shares.

3. Parent(s), brother(s) or sister(s) or any combination of them, when designated by the deceased member.

4. Undesignated parents in equal shares.

5. Undesignated brothers and sisters in equal shares. In paragraphs (a)(2), (3) and (4), respectively, of this section, the terms “child” and “parent” have the meanings assigned to them by title 10 U.S.C. section 1477 and the term “parents” includes persons in loco parentis as indicated by that section. The terms “brother” and “sister” in paragraphs (a) (3) and (5) of this section include brothers and sisters of the half blood and those through adoption.

(b) Designation of payee by service member. Where the service member has designated a beneficiary and is not survived by a spouse, child, or children, the payment will be made to the specific person designated by him provided the designee falls within the class of beneficiaries permitted as set forth in paragraph (a)(3) of this section. If more than one person is so designated on the Record of Emergency, payment will be made in equal shares unless the member designated a proportionate share to each beneficiary. Frivolous designations, such as one per centum to a particular beneficiary, should not be made.

(c) Death of survivor prior to receipt of gratuity. (1) If a survivor dies before receiving payment, or if a designated beneficiary predeceases the member (and there is no other designated beneficiary) such amount shall be paid to the then living survivor or survivors listed first under paragraph (a) of this section.

(2) In case one of the beneficiaries (parents or brothers or sisters) designated by a member, pursuant to paragraph (a)(3) of this section, to receive death gratuity payment dies prior to the member’s death, or after his death but prior to the time payment is made, the share which would have been paid to the deceased designee may be paid to the other person or persons designated.


§ 716.5 Delegation of authority.

(a) Pursuant to the authority contained in title 10 U.S.C., section 1479, as to deaths described in section 1475 thereof, the Secretary of the Navy has delegated to commanding officers of naval commands, installations, or districts, with respect to naval personnel, and to Marine Corps commanding generals and officers in command of regiments, battalions or equivalent units and of separate or detached commands who have custody of service records, with respect to Marine Corps personnel, authority to certify for the payment of death gratuity the lawful
spouse or designated beneficiary(ies) of the deceased service member who was residing with him at or near his place of duty at the time of his death, except in cases in which a doubt may exist as to the identity of the legal beneficiary. Disbursing officers are authorized to make payment of the death gratuity upon receipt of certification from the Commanding Officer.

(b) The Secretary of the Navy has delegated authority to the Chief of Naval Personnel as to naval personnel, and to the Commandant of the Marine Corps (Code MSPA–1) as to Marine Corps personnel, the authority to certify the beneficiary(ies) for receipt of payment of death gratuity in all appropriate cases of payment of death gratuity under the Servicemen’s and Veterans’ Survivor Benefits Act (now reenacted in 10 U.S.C. 1475–1480), including, but not limited to:

1. Cases in which a doubt may exist as to the identity of the legal beneficiary;

2. Cases in which the widow or designated beneficiary(ies) of the deceased service member was not residing with him at or near his place of duty at the time of his death.

§ 716.7 Payment of the death gratuity.

(a) Claim certification and voucher for the death gratuity payment. The Comptroller General of the United States has approved DD Form 397 as the form to be used hereafter for claim certification and voucher for the death gratuity payment.

(b) Active duty deaths (Navy). To effect immediate payment of death gratuity the following actions will be taken:

1. The commanding officer will ascertain that the deceased member died while on active duty, active duty for training, or inactive-duty training, and will obtain the name, relationship, and address of the eligible survivor from the Service Record of the deceased. The Dependency Application/Record of Emergency Data (NAVPERS 1070/602) or Record of Emergency Data (DD Form 93), will normally contain this information. In addition, in the case of enlisted personnel, the Application for Dependents Allowance (BAQ [Basic Allowance for Quarters]), NAVPERS Form 668, may serve as a source of corroboration. He will, with the cooperation of the disbursing officer, initiate
§ 716.8 Payments excluded.

(a) No payment shall be made if the deceased member suffered death as a result of lawful punishment for a crime or for a military or naval offense, except when death was so inflicted by an hostile force with which the Armed Forces of the United States have engaged in armed conflict.

(b) No payment will be made to a survivor implicated in the homicide of the deceased in the absence of evidence clearly absolving such survivor of any felonious intent.

(c) Unless the laws of the place where a minor beneficiary resides provide that such a payment would grant a valid acquittance of the Government’s obligation to make a payment of death gratuity to or for a minor, a death gratuity of more than $1,000 may not be paid in whole or in part to a parent as natural guardian of a minor or to any other person who is not a legal guardian appointed by the civil court to manage the minor’s financial affairs.


§ 716.9 Erroneous payment.

Where through administrative mistake of fact or law, payment of the death gratuity is made to a person clearly not entitled thereto, and it is equally clear that another person is entitled to the death gratuity, the Chief of Naval Personnel (Pers–732) or the Commandant of the Marine Corps (Code MSPA–1), as appropriate, will certify payment to the proper payee, irrespective of recovery of the erroneous payment. On the other hand, where a payment of the death gratuity has been made to an individual on the basis of representations of record made by the deceased member as to his marital and dependency status, and the Government otherwise has no information which would give rise to doubt that such status is as represented, the payment is not to be regarded as “erroneous.” The Government has a good acquittance in such cases even though it may subsequently develop that the payee is not the proper statutory payee of the gratuity and no second payment is authorized.

(24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979)

Subpart B—Provisions Applicable to the Navy

§ 716.10 Procedures.

(a) Action by commanding officers. See §716.7(b)—(1) Immediate payment—Eligible beneficiary residing with deceased member. Commanding officers, in order to expedite the payment of the death gratuity, will, upon official notification of death, ascertain the duty status of the deceased, and determine the eligibility of the spouse or designated beneficiary who was residing with the deceased member or near his duty station at the time of his death. The services of a staff or district legal officer will be utilized as required. Every effort should be made to effect prompt payment (within 24 hours, if possible). It is the intent that determinations of
entitlement by commands in the field will be confined largely to spouses and parents designated by the service member who were living with him at the time of his death.

(2) Questionable cases. If entitlement to the death gratuity payment is questionable after seeking advice of the staff or district legal officer, such case will be forwarded promptly to the Chief of Naval Personnel (Pers–732) with a brief statement relative to the facts which raised the issue of doubt. Every effort will be made to expedite action by a review of the official records of the decedent in the Bureau of Naval Personnel and the Family Allowance Activity at Cleveland, Ohio. Those cases wherein the service member was in a deserter status, absent without leave, or in the custody of civil authorities at the time of death, wherein guardianship must be provided for the protection of the decedent’s children, or wherein a technicality exists which makes immediate certification legally unsound, will be considered questionable.

(3) Exception. Where the entitlement of the survivor who is living with the deceased at the time of his death is questionable and such survivor is in dire financial circumstances, the Chief of Naval Personnel (Pers–G23) shall be requested by message to make an adjudication of entitlement. If it is determined that the survivor is entitled to the payment, the commanding officer will be authorized by message to execute DD Form 397.

(b) Action by Casualty Assistance Calls Program (CACP) officers; Potential beneficiary not residing with member—(1) Widow(er). The CACP officer, on his or her initial visit to a widow(er), determines, propriety permitting, whether there is an urgent need for financial assistance. If there is an urgent need for financial assistance, the CACP officer should obtain DD Form 397 from any military disbursement office and, on his or her second visit to the widow(er), have him or her sign it and obtain the signatures of two witnesses on the form. It should be noted that the following procedure is confined to cases in which the decedent’s eligible survivor for the death gratuity is a widow(er), and efforts to effect immediate payment in accordance with the intent of the governing statute are appropriate. In such cases, the CACP officer, upon learning that a widow(er), not residing with his or her spouse at or near the spouse’s duty station, is in urgent need of financial assistance, shall advise the Chief of Naval Personnel (Pers–732) of the need by message. The CACP officer shall send a copy of this message to the decedent’s duty station, if known. Upon receipt, the disbursing officer will furnish the Navy Finance Center, Cleveland, Ohio 44199, with the decedent’s basic monthly pay [plus any special (see §716.1), incentive, and proficiency pay] in the event the pay account has not been forwarded previously to that center sufficiently early to have reached there. The CACP officer shall also send a copy of his message to the Navy Finance Center with the request that payment of the death gratuity be made upon receipt of the certification of beneficiary entitlement from the Chief of Naval Personnel (Pers–732).

(2) Navy Relief. In cases where there is immediate need prior to receipt of the death gratuity, the Navy Relief Society will be contacted by the Casualty Assistance Calls Program officer.

(c) Action by the Chief of Naval Personnel. (1) In all cases where death gratuity is not authorized to be paid locally and in cases where authority exists to pay locally but entitlement is questionable (see paragraph (a)(2) of this section), the Chief of Naval Personnel (Pers–732) will expedite adjudication of claims. As indicated in paragraph (b)(1) of this section CACP officers will refer cases of urgent financial need to the Chief of Naval Personnel (Pers–732) by message for action.

(2) If a minor is entitled to a death gratuity under 10 U.S.C. 1477 not exceeding $1,000, such death gratuity may be paid to the father or mother as natural guardian on behalf of the minor, provided a legally appointed guardian has not been appointed, upon substantiation by a sworn (notarized) statement of the natural guardian:

(i) That no legal guardian has been appointed and that such an appointment is not contemplated;
§ 716.11

(ii) The relationship of the natural guardian to the minor;
(iii) That the minor is in the actual custody of the natural guardian;
(iv) That an amount paid to the natural guardian will be held for, or applied to, the use and benefit of the minor.

If the death gratuity to which a minor is entitled exceeds $1,000, the appointment of a legal guardian on behalf of the minor is requested. Certification of the minor eligible to receive the death gratuity is made by the Chief of Naval Personnel (Pers–732) and payment is effected by the Navy Finance Center, Cleveland, OH 44199;

(d) Cross-servicing procedure. Payment of the death gratuity may be made by a disbursing officer who is maintaining the pay record of a member of another service, provided the command to which the member is attached and which maintains his service record is in the immediate vicinity and certifies the beneficiary eligible to receive payment on the proper voucher (DD Form 397). Otherwise the pay record will be sent to the Army Finance Center, Air Force Finance Center, Commandant of the Marine Corps (Code CDB), the Navy Finance Center, of the Commandant, U.S. Coast Guard, as appropriate.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25648, May 2, 1979]

PART 718—MISSING PERSONS ACT

Sec.
718.1 General provisions.
718.2 Allotments.
718.3 Transportation of dependents.
718.4 Delegations.

§ 718.1 General provisions.

(a) Under the provisions of the Missing Persons Act, as amended, a finding of presumptive death is made by the Secretary of the Navy when a survey of all available sources of information indicates beyond doubt that the presumption of continuance of life has been overcome. When a finding of presumptive death is made, a man’s pay accounts are closed as of the day following the expiration of the 12 months’ absence or a longer period when justified, and the various benefits, such as the six months’ gratuity, become payable. A finding of presumptive death concerning an officer or enlisted man of the Navy means simply that as of the date thereof he is for the purposes of Naval administration no longer alive. It does not mean that death occurred on that or on any other certain date.

(b) Findings of presumptive death are never made when the “missing” status has not continued for at least 12 months. Whenever, subsequent to the expiration of the 12th month, cumulative or other evidence establishes by its preponderance that a “missing” person is no longer alive, a prompt finding of presumptive death will be made. Also, such a finding will be made whenever justified by the lapse of time beyond the 12 months’ absence without specific information being received.

(c) The Secretary of the Navy, or such subordinate as he may designate,
§ 718.3 Transportation of dependents.

(a) Whenever a person in active service is officially reported as dead, injured, (Only when the anticipated period of hospitalization or treatment is expected to be of prolonged duration as shown by a statement of the commanding officer at the receiving hospital), missing for a period of 29 days or more, interned in a foreign country, or captured by a hostile force, his dependents, household and personal effects including one privately owned motor vehicle may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with the provisions of paragraph (d) of this section; or, upon application by such dependent, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section, or upon the person’s application if injured, to such location as may have been determined in advance or as may be subsequently approved, except that a reasonable relationship must exist between the condition and circumstances of the dependents and the destination to which transportation is requested. In the case of a person in an injured status, transportation of his dependents or household and personal effects may be authorized only when the hospitalization or treatment of the injured person will be of prolonged duration. Payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of the travel for which transportation in kind is not furnished, may be authorized, when such travel has been completed.

(b) When the Secretary of the Navy or his designee determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such
§ 718.4 Delegations.

The Secretary of the Navy has delegated to the Director, Personal Services Division, Bureau of Naval Personnel with respect to personnel in the Navy, and to the Head, Personal Affairs Branch Manpower Department (Code MSPA), United States Marine Corps, with respect to personnel in the Marine Corps, authority to make all determinations to administer the act.


PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Subparts A–B [Reserved]
§ 719.112 Authority to grant immunity from prosecution.

(a) General. In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) Procedure. The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or to the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, i.e., any officer exercising general court-martial jurisdiction. Such recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have yet been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his defense counsel in the same manner as a grant of immunity.

(c) Civilian witnesses. Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege
§ 719.112

against self-incrimination, then the approval of the Attorney General of the United States, or his designee, must be obtained prior to the execution or issuance of an order to testify to such civilian witness. The cognizant officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a message or letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(d) **Cases involving national security.** In all cases involving national security or foreign relations of the United States, the cognizant officer exercising general court-martial jurisdiction shall forward any proposed grant of immunity to the Judge Advocate General for the purpose of consultation with the Department of Justice. See section 0126 of the Manual of the Judge Advocate General regarding relations between the Departments of Defense and Justice. The cognizant officer exercising general court-martial jurisdiction may obtain approval by the Attorney General of a proposed grant of immunity by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(e) **Content of immunity requests.** In all cases in which approval of the Attorney General of the United States is required prior to the issuance of a grant of immunity, whether under paragraph (c) or (d) of this section, the cognizant officer exercising general court-martial jurisdiction shall forward by message or letter the proposed order to testify and grant of immunity to the Judge Advocate General (Code 20). The order to testify shall be substantially in the form set forth in appendix A-1-i(3) of the Manual of the Judge Advocate General. Requests for assistance shall be in writing, should allow at least three weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information of the proceeding in which the order is to be used.

(2) Name of the witness for whom the immunity is requested.

(3) Name of the employer or company with which a witness is associated or the military unit or organization to which a witness is assigned.

(4) Date and place of birth, if known, of the witness.

(5) FBI or local police file number, if any, and if known.

(6) Whether any State or Federal charges are pending against the witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief resume of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(i) What testimony the witness is expected to give;

(ii) How this testimony will serve the public interest;

(iii) Whether the witness:

(A) Has invoked the privilege against self-incrimination; or

(B) Is likely to invoke the privilege;

(iv) If paragraph (e)(9)(iii)(B) of this section is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(f) **Post-testimony procedure.** After a witness immunized in accordance with paragraphs (c) and (d) of this section has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, DC 20530, via the Judge Advocate General (Code 20).

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.
§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) Release of information—(1) General. There are valid reasons for making information available to the public concerning the administration of military justice. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity pertaining to their cases, public understanding of the problems of controlling misconduct in the military service, and the workings of military justice requires the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused’s trial, or which could reasonably be expected to have such an effect.

(2) Applicability of regulations. These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of trial (court-martial sessions) or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) Release of information. (i) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(ii) Except in unusual circumstances, information which is subject to release under the regulation should be released by the cognizant public affairs officer; requests for information received from representatives of news media should be referred to the public affairs office for action. When an individual is suspected or accused of an offense, care
should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) Information subject to release. On inquiry, the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in paragraph (6) of this section:

(i) The accused's name, grade, age, unit, regularly assigned duties, duty station, and sex.

(ii) The substance of the offenses of which the individual is accused or suspected.

(iii) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(iv) The identity of the apprehending and investigative agency, and the identity of accused's counsel, if any.

(v) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(vi) The type and place of custody, if any.

(vii) Information which has become a part of the record of proceedings of the court-martial in open session.

(viii) The scheduling of any stage in the judicial process.

(ix) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) Prohibited information. The following information concerning a person accused or suspected of an offense or offenses generally may not be released, except as provided in paragraph (a)(6) of this section.

(i) Subjective opinions, observations, or comments concerning the accused's character, demeanor at any time (except as authorized in paragraph (4)(v) of this section), or guilt of the offense or offenses involved.

(ii) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(iii) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(iv) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(v) The identity, testimony, or credibility of possible witnesses, except as authorized in paragraph (4)(iii) of this section.

(vi) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(vii) References to confidential sources or investigative techniques or procedures.

(viii) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) Exceptional cases. The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under paragraph (a)(5) of this section or the non-release of information permitted under paragraph (a)(4) of this section. Attention should be given to the Secretary of the Navy instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5C series). Consultation with the command judge advocate, if one is assigned, or with the cognizant Naval Legal Service Office concerning interpretation and application of these instructions is encouraged.

(b) Spectators. (1) The sessions of courts-martial shall be open to the public, which includes members of both

196
the military and civilian communities. In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, exclude specific persons from the courtroom, and close a session. Video and audio recording and taking of photographs, except for the purpose of preparing the record of trial, in the courtroom during the proceedings and radio or television broadcasting of proceedings from the courtroom shall not be permitted. The military judge may, as a matter of discretion, permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed from the courtroom or by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

(2) At pretrial hearings. In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832 or a court of inquiry or investigation conducted pursuant to the Manual of the Judge Advocate General, the presiding officer, upon motion of the Government or the defense or upon his motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

[38 FR 5997, Mar. 6, 1973, as amended at 47 FR 49644, Nov. 2, 1982; 50 FR 23800, June 6, 1985]

Subpart D [Reserved]

Subpart E—Miscellaneous Matters

§ 719.138 Fees of civilian witnesses.

(a) Method of Payment. The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed public voucher for such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial;
(2) Summary court officer;
(3) Counsel for the court in a court of inquiry;
(4) Recorder or junior member of a board to redress injuries to property, or
(5) Military or civil officer before whom a deposition is taken.

The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 6), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) Obtaining money for advance tender or payment. Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for
§ 719.138 32 CFR Ch. VI (7–1–02 Edition)

the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) Reimbursement. If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) Certificate of person before whom deposition is taken. The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned.

(e) Payment of accrued fees. The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) Computation. Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) Nontransferability of accounts. Accounts of civilian witnesses may not be transferred or assigned.

(h) Signatures. Signatures of witnesses signed by mark must be witnessed by two persons.

(i) Rates for civilian witnesses prescribed by law—(1) Civilian witnesses not in Government employ. A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place or to appear at a place where his deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this paragraph shall be construed as authorizing the payment of attendance fees to witnesses for:

(i) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(ii) For travel which is performed prior to being duly summoned as a witness; or

(iii) For travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this paragraph.

(2) Civilian witnesses in Government employ. When summoned as a witness, a civilian in the employ of the Government shall be paid as authorized by Joint Travel Regulations.

(j) Supplemental construction of section. Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested or whose testimony is determined not to meet the standards of relevancy and materiality set forth in accordance with MCM, 1984, R.C.M. 703.

(k) Expert witnesses. (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in
the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See paragraph (l) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (l) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with MCM, 1984, R.C.M. 703(d), may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(l) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.


§§ 719.139–719.141 [Reserved]

§ 719.142 Suspension of counsel.

(a) Report of Allegations of Misconduct or Disability. When information comes to the attention of a member of a court-martial, a military judge, trial or defense counsel, staff judge advocate, member of the Navy-Marine Corps Court of Military Review or other directly interested or concerned party that a judge advocate or civilian who is acting or is about to act as counsel before a proceeding conducted under the UCMJ or MCM is or has been unable to discharge properly all the duties of his or her position by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a judge advocate or attorney, such information should be reported to the commanding officer of that judge advocate or, in the case of civilian counsel, to the officer exercising general court-martial jurisdiction over the command convening the proceedings or to the Judge Advocate General.

(b) Form of Report. The report shall:

(1) Be in writing, under oath or affirmation, and made and signed by the individual reporting the information;

(2) State that the individual reporting the information has personal knowledge or belief or has otherwise received reliable information indicating that:

(i) The counsel is, or has been, unable to discharge properly all the duties of his or her office by reason of mental or physical disability; or

(ii) The counsel is or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession; or

(iii) The counsel is unworthy or unqualified to perform his or her duties;

(3) Set forth the grounds of the allegation together with all relevant facts; and

(4) Be forwarded to the appropriate authority as set forth in paragraph (a).

(c) Consideration of the Report—(1) Action by the Commanding Officer of a judge advocate. Upon receipt of the report, the commanding officer:

(i) Shall dismiss any report relating to the performance of a judge advocate more properly appealed under law or any report that is frivolous, unfounded, or vague and return it to the reporting individual;

(ii) May make further inquiry into the report at his or her discretion to determine the merits of the report. The commanding officer may appoint an officer to investigate informally the allegations of the report to determine whether further action is warranted.
Any officer so appointed should be a judge advocate senior in rank to the judge advocate being investigated;

(iii) May take appropriate action to address and dispose of the matter being mindful of such measures as warning, counseling, caution, instruction, proceedings in contempt, therapy, and other punitive or administrative action; or

(iv) Shall, if the commanding officer is of the opinion that evidence of disability or professional or personal misconduct exists, and that remedial measures short of suspension or decertification are not appropriate or will not be effective, forward the original complaint, a written report of the inquiry or investigation, all other relevant information, and his or her comments and recommendations to the officer in the chain of command exercising general court-martial authority.

(2) Action by Officer Exercising General Court-Martial Authority. (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the officer exercising general court-martial authority:

(A) May take the action authorized by subsections (c)(1)(i), (ii) or (iii); or

(B) Shall, if he or she considers that evidence of disability or professional or personal misconduct exists and that other remedial measures short of suspension or decertification are not appropriate or will not be effective, appoint a board of officers to investigate the matter and to report its findings and its recommendations. This board shall be comprised of at least three officers, each an Article 27(b), Uniform Code of Military Justice, certified judge advocate. If practicable, each of the officers of the board should be senior to the judge advocate under investigation. If the counsel is a member of the Marine Corps, a majority of the members of the board should be Marine Corps judge advocates. The senior officer of the board shall cause notice to be given to the counsel, judge advocate or civilian (respondent), informing him or her of the misconduct or other disqualification alleged and affording him or her the opportunity to appear before the board for a hearing. The respondent shall be permitted at least ten (10) days' notice prior to the hearing. Failure to appear on a set date after notice shall constitute waiver of appearance, absent good cause shown. The respondent shall be generally afforded the rights of a party as set out in section 0304 of this Manual, except that, in the event the judge advocate respondent wishes to have military counsel appointed, he or she shall not have the right to select or identify a particular military counsel. A civilian respondent may not be represented by military counsel, but may be represented by civilian counsel at no expense to the Government. Upon ascertaining the relevant facts after notice and hearing, a written report of the findings and recommendations of the board shall be made to the officer who convened the board. In all cases, a written copy of the board's findings and recommendations shall be provided to the respondent. The respondent shall be given an opportunity to comment on the report in writing.

(ii) Upon receipt of the report of the board of investigation, the officer exercising general court-martial authority shall:

(A) Return the report to the board for further investigation, if the investigation is determined to be incomplete; or

(B) Forward the report of the board of investigation to the Judge Advocate General together with comments and recommendations concerning suspension of the counsel involved.

(3) Action by the Judge Advocate General. (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the Judge Advocate General:

(A) May take the action authorized by subsections (c)(1)(i), (ii), or (iii);

(B) May appoint a board of officers for investigation and hearing in accordance with subsections (c)(2)(i)(B) or

(C) May request the officer exercising general court-martial jurisdiction over the command of the respondent (if judge advocate counsel) or over the proceedings (if civilian counsel) to take the matter for investigation and hearing in accordance with subsection (c)(2)(i)(B).

(ii) Upon receipt of the report of the investigating board, the Judge Advocate General:
(A) May determine whether the respondent is to be suspended or decertified and, if so, whether for a stated term or indefinitely;

(B) May determine that the findings of the board do not warrant further action; or

(C) May return the report to the sending officer with appropriate instructions for further inquiry or action. The Judge Advocate General may, sua sponte, or upon petition of the respondent, modify or revoke any prior order of suspension or dismissal of a report. Further, if the Judge Advocate General suspends counsel, the Judge Advocates General of the other armed forces will be notified.

(d) Grounds justifying suspension of counsel or suspension or decertification of a Judge Advocate. (1) Suspension or decertification is to be employed only after it has been established that a counsel has been unable to discharge properly all the duties of his or her office by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a counsel. Action to suspend or decertify should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has initiated an aggressive, zealous or novel defense, or the apparent misconduct stems from inexperience or lack of instruction.

(2) Specific grounds for suspension or decertification include, but are not limited to, the following:

(i) Demonstrated incompetence while acting as counsel before, during or after a court-martial.

(ii) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(iii) Fabricating papers or other evidence.

(iv) Tampering with a witness.

(v) Abusive conduct toward the court-martial, the Navy-Marine Corps Court of Military Review, the military judge, or opposing counsel.

(vi) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel in the Manual for Courts-Martial.

(vii) Conviction of an offense involving moral turpitude or conviction for violation of article 48, UCMJ.

(viii) Disbarment by a State Bar, Federal Court, or the United States Court of Military Appeals.

(ix) Suspension as counsel by the Judge Advocate General of the Navy, Army, or Air Force or the General Counsel of the Department of Transportation.


(xi) Flagrant or repeated violations of the provisions of section 0134 of this Manual of the Judge Advocate General dealing with the Release of Information Pertaining to Accused Persons; Spectators at Judicial Sessions.

(xii) Failure to meet the rules set forth in the ABA Code of Professional Responsibility and the ABA Standards on Fair Trial and Free Press and The Prosecution Function and the Defense Function. In view of the unique mission and personal requirements of the military, many of the rules and principles of the ABA Code or Standards are not applicable to the military lawyer. Accordingly, the rules are to be used as a guide only, and a failure to comply with the specific wording of a rule is not to be construed as a violation of the rule where common sense would indicate to a reasonable person that there is a distinction between the civilian context, which the codes were drafted to embrace, and the unique concerns of the military setting, where the codes serve as a general guide.

[50 FR 23801, June 6, 1985]


(a) Statutory provisions. 10 U.S.C. 873, provides, “At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused’s
§ 719.143  

 Submission Procedures: At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court-martial. The petition for new trial may be submitted by the accused personally, or by accused's counsel, regardless of whether the accused has been separated from the service. A petition may not be submitted after the death of the accused.  

 Contents of petitions: The form and contents of petitions for new trial are specified in MCM, 1984, R.C.M. 1210(c). The petition for a new trial shall be written and shall be signed under oath or affirmation by the accused, by a person possessing the power of attorney of the accused for that purpose, or by a person with the authorization of an appropriate court to sign the petition as the representative of the accused. The petition shall contain the following information, or an explanation why such matters are not included:  

 (1) The name, service number, and current address of the accused;  
 (2) The date and location of the trial;  
 (3) The type of court-martial and the title or position of the convening authority;  
 (4) The request for the new trial;  
 (5) The sentence or a description thereof as approved or affirmed, with any later reduction thereof by clemency or otherwise;  
 (6) A brief description of any finding or sentence believed to be unjust;  
 (7) A full statement of the newly discovered evidence or fraud on the court-martial which is relied upon for the remedy sought;  
 (8) Affidavits pertinent to the matters in subsection (6); and  
 (9) Affidavit of each person whom the accused expects to present as a witness in the event of a new trial. Each affidavit should set forth briefly the relevant facts within the personal knowledge of the witness.  

 Who may act on petition: If the accused’s case is pending before a Court of Military Review or the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise, the Judge Advocate shall act on the petition.  

 Ground for New Trial. A new trial may be granted only on grounds of newly discovered evidence or fraud on the court-martial.  

 (1) A new trial shall not be granted on the grounds of newly discovered evidence unless the petition shows that:  
 (i) The evidence was discovered after the trial;  
 (ii) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and  
 (iii) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.  

 (2) No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentence adjudged.  

 Action on the petition: (1) The authority considering the petition may cause such additional investigation to be made and such additional information to be secured as that authority believes appropriate. Upon written request, and in his discretion, the authority considering the petition may permit oral argument on the matter.  

 (2) When a petition is considered by the Judge Advocate General, any hearing may be before the Judge Advocate General or before an officer or officers designated by the Judge Advocate General.  

 (3) If the Judge Advocate General believes meritorious grounds for relief under Article 74, Uniform Code of Military Justice have been established but that a new trial is not appropriate, the Judge Advocate General may act under article 74, Uniform Code of Military Justice, if authorized, or transmit the petition and related papers to the Secretary concerned with a recommendation.
§ 719.144 Application for relief under 10 U.S.C. 869, in cases which have been finally reviewed.

(a) Statutory provisions. 10 U.S.C. 869 provides in pertinent part, “The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.”

(b) Time Limitations. In order to be considered by the Judge Advocate General, an application for relief must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) Submission procedures. Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant’s commanding officer, and the command that convened the court, and the command that reviewed the case under 10 U.S.C. 864(a) or (b). If the original record of trial is held by the command that reviewed the case under 10 U.S.C. 864(a) or (b), it shall be forwarded as an enclosure to the endorsement. If the original record of trial has been filed in the National Personnel Records Center, the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from the receipt returned from the National Personnel Records Center to the sending activity. This endorsement shall also include information and specific comment on the grounds for relief asserted in the application, and an opinion on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) Contents of applications. All applications for relief shall contain:

1. Full name of the applicant;
2. Social Security number and branch of service, if any;
3. Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
4. Address at time the application is forwarded;
5. Date of trial;
6. Place of trial;
7. Command title of the organization at which the court-martial was convened (convening authority);
8. Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;
9. Type of court-martial which convicted the applicant, and sentence adjudged;
10. General grounds for relief which must be one or more of the following:
   i. Newly discovered evidence;
   ii. Fraud on the court;
   iii. Lack of jurisdiction over the accused or the offense;
   iv. Error prejudicial to the substantial rights of the accused;
   v. Appropriateness of the sentence;
11. An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant’s contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.)
§§ 719.145–719.150

(12) Any other matter which the applicant desires to submit;

(13) Relief requested; and

(14) Facts and circumstances to establish “good cause” for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and

(15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant’s copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(e) Signatures on applications. Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant’s spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

[50 FR 23804, June 6, 1985]

§§ 719.145–719.150 [Reserved]

§ 719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee’s right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

§ 719.155 Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.

(a) Statutory provisions. 10 U.S.C. 874(b) provides that the “Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.”

(b) Submission procedures. Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, VA 22332–2400. Except in unusual circumstances, applications will not normally be considered if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under 10 U.S.C. 874(b).

(c) Contents of the application. All applications shall contain:

(1) Full name of the applicant;

(2) Social Security Number, service number (if different), and branch of service of the applicant;

(3) Present age and date of birth of the applicant;

(4) Present residence of the applicant;

(5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;

(6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;

(7) Offense(s) of which the applicant was convicted, and sentence finally approved from the trial which resulted in the punitive discharge or dismissal;

(8) Date the punitive discharge or dismissal was executed;

(9) Applicant’s present marital status, and number and ages of dependents, if any;

(10) Applicant’s civilian criminal record (arrest(s) with disposition, and
§ 719.155 - [Paragraphs (a) through (d) are not shown.]

(b) Application for an administrative discharge.

(1) Conviction(s), both prior and subsequent to the court-martial which resulted in the punitive discharge or dismissal;

(11) Applicant’s entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);

(12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant’s full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to 10 U.S.C. 874(b) (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits. (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant’s character primarily as reflected in the civilian community subsequent to his or her punitive separation. Material submitted by the 10 U.S.C. 874(b) applicant should be consistent with the foregoing.)

(d) Signature on application. Unless incapable of making application himself or herself, the applicant shall personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant’s spouse, next of kin, executor, guardian and other person recognized as a personal representative by the law of the applicant’s domicile. One is considered incapable of executing an application for purposes of this paragraph only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

(e) Privacy Act Statement. Disclosure of personal information requested by paragraph (c) of this section is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

[47 FR 49645, Nov. 2, 1982, as amended at 50 FR 23804, June 6, 1985]
PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

Subpart A—Delivery of Personnel

Sec.
720.1 Delivery of persons requested by State authorities in criminal cases.
720.2 Delivery when persons are within the territorial limits of the requesting State.
720.3 Delivery when persons are beyond territorial limits of the requesting State.
720.4 Persons stationed outside the United States.
720.5 Authority of the Judge Advocate General and the General Counsel.
720.6 Agreement required prior to delivery to State authorities.
720.7 Delivery of persons to Federal authorities.
720.8 Delivery of persons to foreign authorities.
720.9 Circumstances in which delivery is refused.
720.10 Members released by civil authorities on bail or on their own recognizance.
720.11 Interviewing servicemembers or civilian employees by Federal civilian investigative agencies.
720.12 Request for delivery of members serving sentence of court-martial.
720.13 Request for delivery of members serving sentence of a State court.
720.14-720.19 [Reserved]

Subpart B—Service of Process and Subpoenas Upon Personnel

720.20 Service of process upon personnel.
720.21 Members or civilian employees subpoenaed as witnesses in State courts.
720.22 Members or civilian employees subpoenaed as witnesses in Federal courts.
720.23 Naval prisoners as witnesses or parties in civilian courts.
720.24 Interviews and depositions in connection with civil litigation in matters pertaining to official duties.
720.25 Repossession of personal property.
720.26-720.29 [Reserved]

Subpart C—Production of Official Records

720.30 Production of official records in response to court order.
720.31 Production of official records in the absence of court order.
720.32 Certificates of full faith and credit.

Subpart D—Compliance With Court Orders by Department of the Navy Members, Employees, and Family Members Outside the United States

720.40 Purpose.
720.41 Definitions.
720.42 Policy.
720.43 Points of contact.
720.44 Responsible officials.
720.45 Procedures.
720.46 Overseas screening programs.
720.47 Report.


Subpart A—Delivery of Personnel

SOURCE: 57 FR 5228, Feb. 13, 1992, unless otherwise noted.

§ 720.1 Delivery of persons requested by State authorities in criminal cases.

Subpart A of this part deals with requests by State authorities for the surrender of members or civilians pursuant to arrest warrants or similar process, generally in connection with a criminal prosecution. Responding to such requests by a State for delivery of members or civilian employees involves balancing the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation against the right of the State to exercise its jurisdiction. Additionally, by regulation, naval and Marine authorities are limited in the extent to which they can directly assist such an act. Commands should respond to such requests as set out below, generally using the minimum authority necessary to preserve the Federal interests without unduly restricting State jurisdiction.

§ 720.2 Delivery when persons are within the territorial limits of the requesting State.

When the delivery of any member or civilian is requested by local civil authorities of a State for an offense punishable under the laws of that jurisdiction, and such person is located at a Navy or Marine Corps installation within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally
§ 720.3 Delivery when persons are beyond territorial limits of the requesting State.

(a) General. When State civil authorities request delivery of any member of the Navy or Marine Corps for an alleged crime or offense punishable under the law of the jurisdiction making the request, and such member is not attached to a Navy or Marine Corps activity within the requesting State or a ship within the territorial waters thereof, the following action will be taken. Any officer exercising general court-martial jurisdiction, or officer designated by him, or any commanding officer, after consultation with a judge advocate of the Navy or Marine Corps, is authorized (upon compliance with the provisions of this section and §720.6, and subject to the exceptions in §720.9) to deliver such member to make the member amenable to prosecution. The member may be delivered upon formal or informal waiver of extradition in accordance with §720.3(b), or upon presentation of a fugitive warrant, in which case the procedures of §720.3(c) apply. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Department of the Navy installation not within the State, except that compliance with §720.6 and consideration of §720.9 are not required.

(b) Waiver of extradition. (1) Any member may waive formal extradition. A waiver must be in writing and be witnessed. It must include a statement that the member signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in §720.3(c).

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When a member declines to waive extradition, the nearest Naval Legal Service Office or Marine Corps staff judge advocate shall be informed and shall confer with the civil authorities as appropriate. The member concerned shall not be transferred or ordered out of the State in which he is then located without the permission of the Secretary of the Navy (Judge Advocate General), unless a fugitive warrant is obtained as set forth in §720.3(c).

(c) Fugitive warrants. (1) A fugitive warrant, as used in this chapter, is a warrant issued by a State court of competent jurisdiction for the arrest of a member. Normally, a State requesting delivery of a member from another State will issue a fugitive warrant to the State where the member is then located.
§ 720.4

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the member is located, the latter State will normally request delivery of the member to local State authorities. Delivery to local State authorities should be arranged by Navy or Marine Corps officers designated in §720.3(a), upon compliance with the provisions of §720.6, and subject to the conditions of §§720.9 and 720.3(c) (3) and (4).

(3) Upon receipt of a request for delivery of a member under fugitive warrant to State authorities, if the member voluntarily waives extradition, the provisions of §720.3(b) apply. If the member is delivered to local authorities but refuses to waive extradition in the courts of the State in which he is located.

(4) No delivery of a member by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by §720.6 and execution of such agreement either:

(i) By authorities of both the requesting State and the State in which the member is located, or

(ii) By authorities of the State in which the member is located if such authorities, on behalf of the requesting State, accept the full responsibility for returning the number to a command designated by the Department of the Navy.

(d) Members stationed outside the United States. When the member sought by State authorities is not located within the United States, see §720.4.

§ 720.4 Persons stationed outside the United States.

(a) Persons desired by local U.S. authorities. When delivery of any member in the Navy or Marine Corps, or any civilian employee or dependent, is desired for trial by state authorities and the individual whose presence is sought is stationed outside the United States, the provisions of subpart D of this part will be followed. In all such cases, the nearest judge advocate of the Navy or Marine Corps shall be consulted before any action is taken.

(b) Members desired by U.S. Federal authorities. When delivery of any member of the Navy or Marine Corps is desired for trial in a Federal district court, upon appropriate representation by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the member will be returned to the United States at the expense of the Department of the Navy and held at a military facility convenient to the Department of the Navy and to the Department of Justice. Delivery may be accomplished as set forth in §720.7, subject to the exceptions in §720.9.

§ 720.5 Authority of the Judge Advocate General and the General Counsel.

(a) Authority of the Judge Advocate General. The Judge Advocate General, the Deputy Judge Advocate General, and the Assistant Judge Advocates General are authorized to act for the Secretary of the Navy in performance of functions under this chapter.

(b) Authority of the General Counsel. The authority of the General Counsel of the Navy is prescribed by Navy Regulation (32 CFR 700.203 (a) and (g)) and by appropriate departmental directives and instructions (e.g., SECNAVINST 5430.25D). The principal areas of responsibility of the Office of the General Counsel (OGC) are commercial law, including maritime contract matters; civilian employee law; real property law; and Freedom of Information Act and Privacy Act matters as delineated in 32 CFR part 701. The Office of the General Counsel shares responsibility with the Judge Advocate General for environmental law cases.

(c) Points of contact. Commanding officers are advised to contact their local area judge advocates for assistance in referring matters to the appropriate office of the Judge Advocate General or General Counsel.

(d) Coordination with the Commandant of the Marine Corps. Marine Corps commands shall inform the Commandant of the Marine Corps (CMC) of all matters referred to the Judge Advocate General or the Office of General Counsel. Copies of all correspondence and documents shall also be provided to CMC. The

Copies may be obtained if needed, from the Commanding Officer, Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.
Staff Judge Advocate to the Commandant (CMC (JAR)) shall be advised of all matters referred to the Judge Advocate General. Counsel to the Commandant shall be advised of matters referred to the Office of General Counsel.

§ 720.6 Agreement required prior to delivery to State authorities.

(a) Delivery under Article 14, UCMJ. When delivery of any member of the Navy or Marine Corps to the civilian authorities of a State is authorized, the member’s commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement. The State official completing the agreement must show that he is authorized to bind the State to the terms of the agreement. When indicating in the agreement the naval or Marine Corps activity to which the member delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which the member is attached) that possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when:

(1) The member is furnished transportation (under escort in cases of delivery in accordance with §720.12) to a naval or Marine Corps activity as set forth in the agreement;

(2) The member is provided cash to cover incidental expenses en route thereto; and

(3) The Department of the Navy is so informed.

As soon as practicable, a copy of the delivery agreement shall be forwarded to the Judge Advocate General.

(b) Delivery under Interstate Agreement on Detainers Act. Special forms are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See §720.12 for a detailed discussion of the Detainers Act.

§ 720.7 Delivery of persons to Federal authorities.

(a) Authority to deliver. When Federal law enforcement authorities display proper credentials and Federal warrants for the arrest of members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a Department of the Navy installation, commanding officers are authorized to and should allow the arrest of the individual sought. The exceptions in §720.9 may be applied to members. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected.

(b) Agreement not required of Federal authorities. The agreement described in §720.6 is not a condition to the delivery of members to Federal law enforcement authorities. Regardless of whether the member is convicted or acquitted, after final disposition of the case, the member will be returned to the Naval Service (provided that naval authorities desire his return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

§ 720.8 Delivery of persons to foreign authorities.

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver members or civilian employees of the Department of the Navy, or their dependents residing at or located on a naval or Marine Corps installation, to foreign authorities. When a request for delivery of these persons is received in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General. Detailed information concerning the delivery of members, civilian employees, and dependents to foreign authorities when a status of forces agreement is in effect is contained in DoD Directive 5252.1 of 9 April 1985 and SECNAVINST 5220.4F.2

§ 720.9 Circumstances in which delivery is refused.

(a) Disciplinary proceedings pending. When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery.

2See footnote 1 of §720.5(b).
§ 720.10 Members released by civil authorities on bail or on their own recognizance.

A member of the Navy or Marine Corps arrested by Federal or State authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, when a member of the Navy or Marine Corps is arrested by Federal or State authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer, upon verification of the attesting facts, date of trial, and approximate length of time that should be covered by the absence, shall grant liberty or leave to permit appearance for trial, unless this would have a serious negative impact on the command. In the event that liberty or leave is not granted, a judge advocate of the Navy or Marine Corps should immediately be requested to act as liaison with the court. Nothing in this section is to be construed as permitting the member arrested and released to avoid the obligations of bond or recognizance by reason of the member’s being in the military service.

§ 720.11 Interviewing servicemembers or civilian employees by Federal civilian investigative agencies.

Requests by the Federal Bureau of Investigation, Naval Investigative Service Command, or other Federal civilian investigative agencies to interview members or civilian employees of the Department of the Navy suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General, or the Office of General Counsel, as appropriate, by telephone, or by message if telephone is impractical. When the employee in question is a member of an exclusive bargaining unit, a staff judge advocate or General Counsel attorney will be consulted to determine whether the employee has a right to have a bargaining unit representative present during the interview.

§ 720.12 Request for delivery of members serving sentence of court-martial.

(a) General. Article 14, UCMJ (10 U.S.C. 814), provides authority to honor requests for delivery of members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act (18 U.S.C. app. 9, hereinafter “the Act”), which applies to the Federal agency holding the prisoner. The Department of the Navy, as an agency of the Federal Government, shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner’s future. The Act provides a way for a prison to be tried on charges pending before State courts, either at the request of the State where the charges are pending or the prisoner’s request. When refusal of delivery under Article 14, UCMJ, is intended, comply with §720.9(d).

(b) Interstate Agreement on Detainers Act. Upon request under the Act by either State authorities or the prisoner, the cognizant Navy or Marine Corps staff judge advocate, as appropriate,
shall communicate with the appropriate State officials, and monitor and ensure that the cognizant commander acts on all such requests. The Act provides that court-martial sentences continue to run during temporary custody. This section does not cover requests between Federal authorities. The procedure set forth in §720.12(c) shall be applied in such cases.

(1) State request. State officials may request delivery of prisoners in military custody under section 2, Article IV, of the Act. Where a detainer has been lodged against the prisoner, and the prisoner is serving a sentence (regardless of whether an appeal is in process), delivery is mandatory unless the request is disapproved by the Director of the Bureau of Prisons, Washington, DC, 20537 as the designee of the Attorney General for this purpose. 28 CFR 0.96(n). There has been no further delegation to military authority. The prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, DC 20537, within 30 days after such request is received, to deny the request. Upon the expiration of such 30-day period or upon the Director of the Bureau of Prisons' denial of the prisoner's request, whichever occurs first, the prisoner shall be delivered to the requesting authority.

(2) Prisoner request. The obligation to grant temporary custody under the Act also applies to prisoners' requests to be delivered to State authority. Section 2, Article III(c) of the Act requires the custodial official to inform the prisoner of the existence of any detainer and of the prisoner's right to request disposition. The prisoner's request is directed to the custodial official who must forward it to the appropriate prosecuting official and court, with a certificate of prisoner status as provided by Article III of the Act.

(c) Article 14, UCMJ. When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by Article 14, UCMJ, and §§720.2 through 720.9. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. Execution of the agreement discussed in §720.6 is a condition precedent to delivery to State authorities. It is not required before delivery to Federal authorities. See §720.7. Unlike delivery under the Act, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.

§720.13 Request for delivery of members serving sentence of a State court.

(a) General. Ordinarily, members serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. It may, however, be in the best interest of the Naval Service to retain a member charged with a serious offense, subject to military jurisdiction, to try the member by court-martial. The Navy may obtain temporary custody of incarcerated members for prosecution with a request to the State under the Interstate Agreement on Detainers Act. 18 U.S.C. app. 9. The Department of the Navy may use the Act in the same manner in which State authorities may request members pursuant to §720.12.

(b) Interstate Agreement on Detainers Act. Military authorities may use the Act to obtain temporary custody of a member incarcerated in a State institution, pursuant to conviction by a State court, to resolve criminal charges against the member before a court-martial.

(1) Detainer. If a command requests temporary custody under the Act, the commanding officer of the cognizant naval legal service office or the Marine Corps staff judge advocate, shall file a detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending, and request the command be notified in advance of any intention to release the member from confinement.

(2) Request for delivery. As soon as practical after filing the detainer, the commanding officer of the cognizant
nal legal service office or the Marine Corps staff judge advocate, shall prepare a written request for temporary custody of the member addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides the State with a 30-day period after receipt of the request before the request is to be honored. Within that period of time, the governor of the State may disapprove the request, either unilaterally or upon the prisoner's request. If the governor disapproves the request, the command should coordinate any further action with the Judge Advocate General.

(3) Responsibilities. The cognizant command shall ensure that the responsibilities of a receiving jurisdiction, delineated in section 2, Article IV of the Act, are discharged. In particular, the Act requires that the receiving jurisdiction:

(i) Commence the prisoner's trial within 120 days of the prisoner's arrival, unless the court, for good cause shown during an Article 39(a), UCMJ, session, grants a continuance necessary or reasonable to promote the ends of justice;

(ii) Hold the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for periods during which the prisoner attends court or travels to or from any place at which his presence may be required;

(iii) Return the prisoner to the sending jurisdiction at the earliest practical time, but not before the charges that underlie the request have been resolved (prematurely returning the prisoner will result in dismissal of the charges); and

(iv) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the sending jurisdiction, unless the command and the State agree on some other allocation of the costs or responsibilities.
permitted, an appropriate location should be designated (for example, the command legal office) where the process server and the member or employee can meet privately in order that process may be served away from the workplace. A member may be directed to report to the designated location. A civilian may be invited to the designated location. If the civilian does not cooperate, the process server may be escorted to the location of the civilian in order that process may be served. A civilian may be required to leave a classified area in order that the process server may have access to the civilian. If unusual circumstances require that the command not permit service, see §720.20(e).

(2) Out-of-State process. In those cases where the process is to be served by authority of a jurisdiction other than that where the command is located, the person named is not required to accept process. Accordingly, the process server from the out-of-State jurisdiction need not be brought face-to-face with the person named in the process. Rather, the process server should report to the designated command location while the person named is contacted, apprised of the situation, and advised that he may accept service, but also may refuse. In the event that the person named refuses service, the process server should be so notified. If service of process is attempted from out-of-State by mail and refused, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local naval legal service office.

(b) Service of process arising from official duties. (1) Whenever a member or civilian employee of the Department of the Navy is served with process because of his official position, the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, shall be notified by telephone, or by message if telephone is impractical. Notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action.

(2) Any member or civilian employee served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts and notify the Judge Advocate General or Associate General Counsel (Litigation), as appropriate, by telephone or by message if telephone is impractical, of the service and immediately forward the pleadings and process to the relevant office. The member or civilian employee will be advised of the right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442, 1442a, rights under the Federal Employees Liability Reform and Tort Compensation Act (28 U.S.C. 2679b), if applicable, and the right of a Federal employee to request representation by Department of Justice attorneys in Federal (civil) or State (civil or criminal) proceedings and in congressional proceedings in which that person is sued in an individual capacity, as delineated in 28 CFR 50.15. Requests for representation shall be addressed to the Judge Advocate General or Associate General Counsel (Litigation), as appropriate, and shall be endorsed by the commanding officer, who shall provide all necessary data relating to the questions of whether the person was acting within the course of official duty or scope of employment at the time of the incident out of which the suit arose.

(3) If the service of process involves a potential claim against the Government, see 32 CFR 750.12(a), 750.12(b), and 750.24. The right to remove to Federal Court under 28 U.S.C. 1442 and 1442a must be considered where the outcome of the State court action may influence a claim or potential claim against the United States. Questions should be directed to the Judge Advocate General or the Associate General Counsel (Litigation).

(c) Service of process of foreign courts.

(1) Usually, the amenability of members, civilian employees, and their dependents stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between
the United States and the foreign country concerned (for example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846). When service of process on a person described above is attempted within the command in a country in which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate. When service of process is upon the United States Government or one of its agencies or instrumentalities as the named defendant, the doctrine of sovereign immunity may allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, regardless of whether the suit involves acts performed in the course of official duties. The Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, will arrange through the Department of Justice for defense of the suit against the United States or an official acting within the scope of official duties, or make other arrangements, and will issue instructions.

(2) Usually, the persons described in §720.20(c)(1) are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases, acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with §720.20(b). In exceptional cases when the United States has agreed that service of process will be accepted by such persons when located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of §720.20(a) will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal documents. Therefore, if a commanding officer or other officer in the military service personally hands, or attempts to hand, that person the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a person described in §720.20(c)(1), a commanding officer shall notify the person of the fact that a particular foreign court is attempting to serve process and also inform that person that the process may be ignored or received. If the person to be served chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the commanding officer had the document, that the person chose to ignore it, and that no physical offer of service had been made. The commanding officer will advise the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, of all requests for service of process from a foreign court and the details thereof.

(d) Leave or liberty to be granted persons served with process. When members or civilian employees are either served with process, or voluntarily accept service of process, in cases where the United States is not a party to the litigation, the commanding officer normally will grant leave or liberty to the person served to permit compliance with the process, unless to do so would have an adverse impact on naval operations. When a member or civilian employee is a witness for a nongovernmental party because of performance of official duties, the commanding officer may issue the person concerned permissive orders authorizing attendance at the trial at no expense to the Government. The provisions of 32 CFR part 725 must also be considered in such cases. Members or civilian employees may accept allowances and mileage tendered; however, any fees tendered for testimony must be paid to the Department of the Navy unless the member or employee is on authorized leave while attending the judicial proceeding. When it would be in the best
interests of the United States Government (for example, in State criminal trials), travel funds may be used to provide members and civilian employees as witnesses as provided in the Joint Federal Travel Regulations. Responsibility for the payment of the member’s mileage and allowances will be determined pursuant to the Joint Federal Travel Regulations, Volume 1, paragraph M6300, subsections 1–3.3

(e) Report where service not allowed. Where service of process is not permitted, or where the member or civilian employee is not given leave, liberty, or orders to attend a judicial proceeding, a report of such refusal and the reasons therefor shall be made by telephone, or message if telephone is impractical, to the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate.

§ 720.21 Members or civilian employees subpoenaed as witnesses in State courts.

Where members or civilian employees are subpoenaed to appear as witnesses in State courts, and are served as described in §§720.20, 720.20(d) applies. If these persons are requested to appear as witnesses in State courts when the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases), follow the procedures described in §720.22. If State authorities are attempting to obtain the presence of a member or a civilian employee as a witness in a civil or criminal case, and such person is unavailable because of an overseas assignment, the command should immediately contact the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate.

§ 720.22 Members or civilian employees subpoenaed as witnesses in Federal courts.

(a) Witnesses on behalf of Federal Government. When members or civilian employees of the Department of the Navy are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in cases involving Department of the Navy activities, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will issue temporary additional duty orders to that person. The charges for such orders will be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Federal Travel Regulations and U.S. Navy travel instructions. If the required witness is to appear in a case in which the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046268.

(b) Witnesses on behalf of nongovernmental parties—(1) Criminal actions. When members or civilian employees are served with a subpoena to appear as a witness for a defendant in a criminal action and the fees and mileage required by rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer may issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the person’s absence would have an adverse impact on naval operations. In such a case, a full report of the circumstances will be made to the Judge Advocate General or, in the case of civilian employees, to the Associate General Counsel (Litigation). In those cases where fees and mileage are not tendered as required by rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer also may issue permissive orders at no cost to the Government. Such persons, however, should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) Civil actions. When members or civilian employees are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of §720.20 apply.

3See footnote 1 of §720.5(b).
§ 720.23 Naval prisoners as witnesses or parties in civilian courts.

(a) Criminal actions. When Federal or State authorities desire the attendance of a naval prisoner as a witness in a criminal case, they should submit a written request for such person’s attendance to the Judge Advocate General. The civilian authority should include the following averments in its request:

1. That the evidence to be derived from the prisoner’s testimony is unavailable from any other source:
2. That the civilian authority will provide adequate security arrangements for the prisoner and assume responsibility for the prisoner while he is in its custody; and
3. That the civilian authority will assume all costs of transporting the prisoner from the brig, of maintaining that prisoner while in civilian custody, and of returning the prisoner to the brig from which he was removed.

The civilian authority should also include in its request an estimate of the length of time the prisoner’s services will be required, and should specify the mode of transport by which it intends to return the prisoner. Upon receipt of such a request, authority by the Judge Advocate General will be given, in a proper case, for the production of the requested naval prisoner in court without resort to a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) Civil actions. The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness, in private litigation pending before such a court. The deposition of a naval prisoner may be taken in such a case, subject to reasonable conditions or limitations imposed by the command concerned.

§ 720.24 Interviews and depositions in connection with civil litigation in matters pertaining to official duties.

Requests to interview, depose, or call as witnesses, current or former members or civilian employees of the Department of the Navy, regarding information obtained in the course of their official duties, including expert testimony related thereto, shall be processed in accordance with 32 CFR part 725.

§ 720.25 Repossession of personal property.

Repossession of personal property, located on a Navy or Marine Corps installation, belonging to a member or to any dependent residing at or located on a Department of the Navy installation, may be permitted in the discretion of the commanding officer of the installation where the property is located, subject to the following. The documents purporting to authorize repossession and the procedures for repossessing the property must comply with State law. Prior to permitting physical repossession of any property, the commanding officer shall cause an informal inquiry into the circumstances and then determine whether to allow the repossession. If repossession is to be allowed, the person whose property is to be repossessed should be asked if he wishes to relinquish the property voluntarily. Repossession must be carried out in a manner prescribed by the commanding officer. In the case of property owned by civilian employees of the Department of the Navy or civilian contractors or their employees or dependents, the commanding officer should direct that the disputed property be removed from the installation until the commanding officer is satisfied that the dispute is resolved.

§§ 720.26–720.29 [Reserved]

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) General. Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, DC, or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected
by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in the Secretary of the Navy Instruction 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a system of records as defined in the Secretary of the Navy Instruction 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order when such records are not in a "system of records" as defined by the Privacy Act (5 U.S.C. 552a) except as noted in paragraphs (b) and (c) of this section. In determining whether or not a record contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of the Secretary of the Navy Instruction 5720.42 series. If the record is in a "system of records," it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and the Secretary of the Navy Instruction 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with the Chief of Naval Operations Instruction 5510.1 series.

(b) Records in the custody of National Personnel Records Center. Court orders, subpoenas duces tecum, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy;

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) Exceptions. Where not in conflict with the foregoing restrictions relative to personal information, the release of which would result in a clearly unwarranted invasion of personal privacy, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area. Where travel is involved, it must be without expense to the Government.

(d) Medical and other records of civilian employees. Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive
§ 720.31 Production of official records in the absence of court order.

(a) General. Release of official records outside the Department of the Navy in the absence of a court order is governed by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). The following sources pertain: SECNAVINST 5211.5 series (Privacy) and SECNAVINST 5720.42 series (Freedom of Information).

(b) Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs. Except as provided in this section, only the Assistant Judge Advocates General (Civil Law) and (Military Law) shall make determinations concerning the release of the records covered herein if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records. Local record holders are reminded that the authority to release records does not necessarily include denial authority.

(1) JAG Manual Investigations (including enclosures). Any request for release outside the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination, except that Privacy Act requests for release shall be forwarded to the Assistant Judge Advocate General (Civil Law) for determination.

(2) Court-martial records and Articles 69 and 73 petitions. These are matters of public record and may be released by any local holder. Court-martial records should be released only following proper authentication.

(3) Article 138 Complaints of Wrongs. Forward as in paragraph (b)(1) of this section.

(c) Affirmative claims files. Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party’s and the Government’s interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility for the area.

(d) Accounting for disclosures of records from systems of records. When records located in a “system of records” are released, the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a of the Manual of the Judge
Advocate General is recommended for this purpose.

(1 CFR 18.14, and part 21, subpart B)


§ 720.42 Policy.

(a) It is Department of the Navy policy to cooperate, as prescribed in this instruction, with courts and federal, state and local officials in enforcing court orders. The Department of the Navy will cooperate with requests when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense (DoD) investigations and courts-martial.

(b) Every reasonable effort will be made to resolve the matter without the respondent returning to the United States, or other action being taken against the respondent under this instruction.

(c) Requests to return members for felonies or for contempt involving unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person

$720.42$
awarded custody by a court order will normally be granted, but only if the member cannot resolve the issue with the court without return to the United States. When the member’s return is inconsistent with mission requirements, applicable international agreements, or ongoing DoD investigations or courts-martial, DoD approval of denial will be requested.

(d) For all other requests involving members, return will be based on the circumstances of the individual case as provided in this instruction.

(e) Members will normally be returned on a temporary additional duty (TAD) basis unless there are compelling reasons the return should be a permanent change of duty station (PCS).

(f) The involuntary return of employees or family members in response to a request for return is not authorized. However, the following action will be taken:

(1) Employees will be strongly urged to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally require processing for adverse action, up to and including removal from federal service. Failure to comply with other court orders may require adverse action, depending on the circumstances of the individual case.

(2) Family members will be strongly encouraged to comply with court orders. Family members who fail to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally have their command sponsorship removed. Failure to comply with other court orders may also result in removal of command sponsorship, depending on the circumstances of the individual case.

(g) To facilitate prompt resolution of requests for return of members, minimize the burden on operating units, and to provide consistency during initial implementation of this new program, a limited number of responsible officials, designated in §720.44, will respond to requesting officials.

§ 720.43 Points of contact.

(a) Authorities issuing requests for return or for other action under this instruction may contact the following activities:

(1) Chief of Naval Personnel (Pers–14), Washington, DC 20370–5000 (For Navy members and their family members).

(2) Commandant, U.S. Marine Corps (Code JAR), Washington, DC 20380–0001 (For Marine Corps members and their family members).

(3) Director, Office of Civilian Personnel Management (Code OOL), 800 N. Quincy Street, Arlington, VA 22203–1998 (For civilian personnel, including non-appropriated fund employees and their family members).

(b) Upon receipt of a request for action under this instruction, the Office of Civilian Personnel Management will forward the request to the appropriate responsible official for action in accordance with §720.44.

§ 720.44 Responsible officials.

The following officials are designated responsible officials for acting on requests to return or to take other action affecting members, employees or family members to the United States.

(a) The Chief of Naval Personnel (CHNAVPERS) for requests involving Navy members and their family members who are not employees. The CHNAVPERS may delegate this authority within his headquarters, not below the 0–6 level for routine matters and not lower than the flag officer level for decisions to deny the request for return.

(b) The Commandant of the Marine Corps (CMC) for requests involving Marine Corps members and their family members who are not employees. The CMC may delegate this authority within his headquarters, not below the 0–6 level for routine matters and no lower that the general officer level for decisions to deny the request for return.

(c) The local commanding officer or officer in charge for requests involving employees and their family members who are not active duty military members.
(d) The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) for requests not covered by §§ 720.44 (a) through (c).

§ 720.45 Procedures.

(a) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the respondent returning to the United States:

(1) For members: The responsible official shall direct the commanding officer or officer in charge to order the member to return to the United States. Failure to comply will normally be the basis for disciplinary action against the member.

(2) For employees, military and civilian family members: The responsible official shall strongly encourage the respondent to comply. Failure to comply may subject employees to adverse action, to include removal from the Federal service, and subject military and civilian family members to withdrawal of command sponsorship.

(b) For all other requests when the matter cannot be resolved with the court without returning the respondent to the United States, the responsible official shall take the action described in this instruction when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(c) When a member’s return is inconsistent with mission requirements, the provisions of applicable international agreements, or ongoing DoD investigations and courts-martial, the Department of the Navy will ask DoD to approve denial of the request for the military member’s return. To initiate this action, there must be an affirmative showing of articulable harm to the unit’s mission or violation of an international agreement.

(d) When a responsible official has determined a request for return is apparently based on an order issued by a court of competent jurisdiction, the responsible official shall complete action on the request for return within 30 days of receipt of the request for return by the responsible official, unless a delay is authorized by the ASN(M&RA).

(e) When a delay to complete the action is warranted, the ASN(M&RA) will grant a 45 day delay, and provide a copy of that approval to the Assistant Secretary of Defense (Force Management & Personnel (ASD(FM&P)) and the General Counsel, DoD. The 45 day period begins upon request by the responsible official of the request for return. Conditions which, when accompanied by full supporting justification, will warrant the granting of the 45 day delay are:

(1) Efforts are in progress to resolve the matter to the satisfaction of the court without the respondent’s return to the United States.

(2) To provide sufficient time for the respondent to provide evidence to show legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) To provide commanding officers an opportunity to detail the specific effect on command mission and operational readiness anticipated from the loss of the member or Department of the Navy employee, and to present facts relating to any international agreement, or ongoing DoD investigation or courts-martial.

(f) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee not of his/her command will forward the request to the appropriate commanding officer or officer in charge, copy to the responsible official, and advise both of them by message that a request for return or other action has been forwarded to them.

(g) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee of his/her command will:

(1) Notify the respondent of the right to provide evidence to show legal efforts to resist the request, or to show legitimate cause for noncompliance for inclusion in the submission to the responsible official.

(2) For members and their family members who are not employees, forward the request immediately to the
§720.45

appropriate responsible official, together with:

(i) Any information the individual desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(ii) Facts detailing the specific impacts on command missions and readiness anticipated from loss of the member.

(iii) Facts relating to any international agreements or ongoing DoD investigations or courts-martial involving the respondent.

(iv) Information regarding conditions expected to interfere with a member’s return to the command after completion of proceedings. If, in the opinion of the commanding officer, there are compelling reasons for the member to be returned to the United States PCS, provide full justification to support that recommendation to the cognizant officer.

(3) If a delay in processing is warranted under §720.42 or §720.45(e), make a recommendation with supporting justification to the responsible official.

(4) Monitor, and update as necessary, information provided to the responsible official.

(a) The responsible official shall:

(1) Determine whether the request is based on an order issued by a court of apparent competent jurisdiction and if so, complete action on the request no later than 30 days after its receipt by the responsible official. If a conflict of law issue is presented between competing state interests, or between a state and a foreign host-nation, or between two different foreign nations, the matter shall be referred to the ASN(M&RA) on the first issue and to the Judge Advocate General (Code 10) on the second and third issues.

(2) Encourage the respondent to attempt to resolve the matter to the satisfaction of the court or other requesting authority without return of or other action affecting the member, employee, or family member.

(3) When a delay to complete action under this section is warranted, request the delay from ASN(M&RA) with full supporting justification.

(4) Examine all information the respondent desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(5) Requests for exception from the requirements of this instruction shall be submitted, with supporting justification, to the ASD(FM&P) for submission to the ASD(FM&P).

(6) If a member will be ordered to return to the United States, determine if the member will be ordered TAD or PCS and advise the member’s commanding officer of the determination.

(7) If a member will be ordered to return to an appropriate port of entry to comply with a request, ensure:

(i) The requesting officer has given official notification to the responsible official that the requesting official or other appropriate party will initiate action with the receiving jurisdiction to secure the member’s delivery/extraision, as appropriate, per chapter 6 of the Manual of the Judge Advocate General, and provide for all costs incident thereto, including any escort if desired.

(ii) If applicable, the necessary accounting data are provided to the commanding officer of the member or orders are issued.

(iii) The member has arranged satisfactory foster care for any lawful minor dependents who will be left unaccompanied overseas upon the member’s return to the United States.

(8) Notify the requesting official at least 10 days before the member’s return to the selected port of entry.

(9) In the case of an employee or of a family member, the commanding officer or officer in charge of the activity to which the family member’s sponsor is attached, or by which the employee is employed, will carry out the following steps:

(i) An employee shall be strongly encouraged to comply with the court order or other request for return. Failure to comply may be the basis for adverse action to include removal from Federal service. Adverse action should only be taken after coordination with the cognizant civilian personnel office and legal counsel and in compliance with Civilian Personnel Instruction 752.

(ii) If a family member of either a member or an employee is the subject of a request for return, the family

222
member shall be strongly encouraged to comply with the court order. Failure to respond may be the basis for withdrawal of command sponsorship of the family member.

(10) Report promptly to the ASN(M&RA) any actions taken under §720.45 (a) or (b).

(i) The ASN(M&RA):

(1) May grant delays of up to 45 days from the date of a request for delay in accordance with §720.45(e).

(2) Will report promptly all delays of requests for the return of members to the ASD(FM&P) and to the General Counsel of the Department of Defense.

(3) Will request from the ASD(FM&P), when warranted, exception to the policies and procedures of DoD Directive 5525.9 of December 27, 1988.

(4) Consolidate and forward reports of action taken under §720.45 (a) or (b) to the ASD(FM&P) and the General Counsel, DoD as required by DoD Directive 5525.9 of December 27, 1988.

§ 720.46 Overseas screening programs.
The Chief of Naval Operations (CNO) and the CMC shall incorporate procedures requiring members and employees to certify they have legal custody of all minor dependents accompanying them outside the United States into service overseas screening programs.

§ 720.47 Report.
The report requirement in this instruction is exempt from reports control by SECNAVINST 5214.2B.

PARTS 721–722 [RESERVED]

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Sec.

723.1 General provisions.

723.2 Establishment, function and jurisdiction of the Board.

723.3 Application for correction.

723.4 Appearance before the board; notice; counsel; witnesses; access to records.

723.5 Hearing.

723.6 Action by the Board.

723.7 Action by the Secretary.

723.8 Staff action.

723.9 Reconsideration.

723.10 Settlement of claims.

723.11 Miscellaneous provisions.

AUTHORITY: 10 U.S.C. 1034, 1552.
SOURCE: 62 FR 8166, Feb. 24, 1997, unless otherwise noted.

§ 723.3 Application for correction.

(a) General requirements. (1) The application for correction must be submitted on DD 149 (Application for Correction of Military Record) or exact
§ 723.3 facsimile thereof, and should be addressed to: Board for Correction of Navy, 2 Navy Annex, Washington, DC 20370-5100. Forms and other explanatory matter may be obtained from the Board upon request.

(2) Except as provided in paragraph (a)(3) of this section, the application shall be signed by the person requesting corrective action with respect to his/her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (18 U.S.C. 287 and 1001)

(3) When the record in question is that of a person who is incapable of making application, or whose whereabouts is unknown, or when such person is deceased, the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted with the application.

(b) Time limit for filing application. Applications for correction of a record must be filed within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the application is filed more than 3 years after discovery of the error or injustice, the application must set forth the reason why the Board should find it in the interest of justice to excuse the failure to file the application within the time prescribed.

(c) Acceptance of applications. An application will be accepted for consideration unless:

(1) The Board lacks jurisdiction.

(2) The Board lacks authority to grant effective relief.

(3) The applicant has failed to comply with the filing requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(4) The applicant has failed to exhaust all available administrative remedies.

(5) The applicant has failed to file an application within 3 years after discovery of the alleged error or injustice and has not provided a reason or reasons why the Board should find it in the interest of justice to excuse the failure to file the application within the prescribed 3-year period.

(d) Other proceedings not stayed. Filing an application with the Board shall not operate as a stay of any other proceedings being taken with respect to the person involved.

(e) Consideration of application. (1) Each application accepted for consideration and all pertinent evidence of record will be reviewed by a three member panel sitting in executive session, to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. This determination will be made by majority vote.

(2) The Board may deny an application in executive session if it determines that the evidence of record fails to demonstrate the existence of probable material error or injustice. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Applicants have the burden of overcoming this presumption but the Board will not deny an application solely because the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for the correction of military or naval records. Denial of an application on the grounds of insufficient evidence to demonstrate the existence of probable material error or injustice is final subject to the provisions for reconsideration contained in §723.9.

(3) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board’s determination shall be made in writing and include a brief statement of the grounds for denial.

(4) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant’s claims of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which
the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reason for discharge. Further the Board shall make a determination as to the applicability of the provisions of the Military Whistleblower Protection Act (10 U.S.C. 1034) if it is invoked by the applicant or reasonably raised by the evidence. Attached to the statement shall be any advisory opinion considered by the Board which is not fully set out in the statement. The applicant will also be advised of reconsideration procedures.

(5) The statement of the grounds for denial, together with all attachments, shall be furnished promptly to the applicant and counsel, who shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. Classified or privileged material will not be incorporated or attached to the Board statement; rather, unclassified or non-privileged summaries of such material will be so used and written explanations for the substitution will be provided to the applicant and counsel.

§ 723.4 Appearance before the board; notice; counsel; witnesses; access to records.

(a) General. In each case in which the Board determines a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his/her selection or in person with counsel. Additional provisions apply to cases processed under the Military Whistleblower Protection Act (10 U.S.C. 1034).

(b) Notice. (1) In each case in which a hearing is authorized, the Board’s staff will transmit to the applicant a written notice stating the time and place of hearing. The notice will be mailed to the applicant, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his/her right to such notice in writing.

(2) Upon receipt of the notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he/she will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he/she intends to call. Cases in which the applicant notifies the Board that he/she does not desire to be present at the hearing will be considered in accordance with §723.5(b)(2).

(c) Counsel. As used in this part, the term “counsel” will be construed to include members in good standing of the federal bar or the bar of any state, accredited representatives of veterans’ organizations recognized by the Secretary of Veterans Affairs under 38 U.S.C. 3402, or such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law. Representation by counsel will be at no cost to the government.

(d) Witnesses. The applicant will be permitted to present witnesses in his/her behalf at hearings before the Board. It will be the responsibility of the applicant to notify his/her witnesses and to arrange for their appearance at the time and place set for hearing. Appearance of witnesses will be at no cost to the government.

(e) Access to records. (1) It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he/she desires to present in support of his/her case.

(2) Classified or privileged information may be released to applicants only by proper authorities in accordance with applicable regulations.

(3) Nothing in this part authorizes the furnishing of copies of official records by the Board. Requests for copies of these records should be submitted in accordance with applicable regulations governing the release of information. The BCNR can provide a requestor with information regarding procedures for requesting copies of these records from the appropriate retention agency.

§ 723.5 Hearing.

(a) Convening of board. The Board will convene, recess and adjourn at the call of the Chair or Acting Chair.

(b) Conduct of hearing. (1) The hearing shall be conducted by the Chair or Acting Chair, and shall be subject to his/
§ 723.6 Action by the Board.

(a) Deliberations, findings, conclusions, and recommendations. (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of an application, it appears to the Board’s satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before it, the Board may require the applicant or military authorities to provide such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, the Board will make written findings, conclusions and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in §723.3(e)(4). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication. Additionally, in Military Whistleblower Protection Act cases, any recommendation by the Board to the Secretary that disciplinary or administrative action be taken against any Navy official based on the Board’s determination that the official took reprisal action against the applicant will not be made part of the Board’s record of proceedings or furnished the applicant but will be transmitted to the Secretary as a separate communication.

(b) Minority report. In case of a disagreement between members of the Board a minority report will be submitted, either as to the findings, conclusions or recommendation, including the reasons therefor.

(c) Record of proceedings. Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, a record of proceedings will be prepared. Such record shall indicate whether or not a quorum was present, and the name and vote of each member present. The record shall include the application for relief, a verbatim transcript of any testimony, affidavits, papers and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any,
§ 723.8 Staff action.

(a) Transmittal of final decisions granting relief. (1) If the final decision of the Secretary is to grant the applicant’s request for relief the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the finalized record of proceedings to proper naval authority for appropriate action. Similarly final decisions of the Board granting the applicant’s request for relief under the authority...
§ 723.9 Delegation of authority for records review.

(2) The Board shall transmit a copy of the record of proceedings to the proper naval authority for filing in the applicant’s service record except where the effect of such action would be to nullify the relief granted. In such cases no reference to the Board’s decision shall be made in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and retained in a file maintained for this purpose.

(3) The addressees of such decisions shall report compliance therewith to the Executive Director.

(4) Upon receipt of the record of proceedings after final action by the Secretary, or by the Board acting under the authority contained in §723.6(e), the Board shall communicate the decision to the applicant. The applicant is entitled, upon request, to receive a copy of the Board’s findings, conclusions and recommendations.

§ 723.10 Settlement of claims.

(a) Authority. (1) The Department of the Navy is authorized under 10 U.S.C. 1552 to pay claims for amounts due to applicants as a result of corrections to their naval records.

(2) The Department of the Navy is not authorized to pay any claim here-tofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(b) Application for settlement. (1) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) When the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir or beneficiaries, in the order prescribed by the law applicable to that kind of payment, or if there is no such law covering order of payment, in the order set forth in 10 U.S.C. 2771; or as otherwise prescribed by the law applicable to that kind of payment.
(3) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

c. Settlement. (1) Settlement of claims shall be upon the basis of the decision and recommendation of the Board, as approved by the Secretary or his designee. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment, self employment or any income protection plan for such employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulation, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from military service.

(2) Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the disbursing activity of the nature and amount of the various benefits represented by the total settlement and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

d. Report of settlement. In every case where payment is made, the amount of such payment and the names of the payee or payees shall be reported to the Executive Director.

§ 723.11 Miscellaneous provisions.

(a) Expenses. No expenses of any nature whatsoever voluntarily incurred by the applicant, counsel, witnesses, or by any other person in the applicant’s behalf, will be paid by the Government.

(b) Indexing of decisions. (1) Documents sent to each applicant and counsel in accordance with §723.3(e)(5) and §723.8(a)(4), together with the record of the votes of Board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary will be indexed and promptly made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC.

(2) All documents made available for public inspection and copying shall be indexed in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the Board and/or Secretary have granted or denied relief. The index shall be published quarterly and shall be available for public inspection and distribution by sale at the Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC. Inquiries concerning the index or the Reading Room may be addressed to the Chief, Microfomation Branch/Armed Forces Discharge Review/Correction Boards Reading Room, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia 22202.

(3) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which is privileged or classified may be made only if a written statement of the basis for such deletion is made available for public inspection.

PART 724—NAVAL DISCHARGE REVIEW BOARD

Subpart A—Definitions

Sec. 724.101 Naval Service.
724.102 Naval Discharge Review Board.
724.103 NDRB panel.
724.104 NDRB Traveling Panel.
724.105 President of the NDRB.
724.106 Presiding Officer, NDRB Panel.
724.107 Discharge.
724.108 Administrative discharge.
724.109 Types of administrative discharges.
724.110 Reason/basis for administrative discharge.
724.111 Punitive discharge.
724.112 Clemency discharge.
724.113 Application.
724.114 Applicant.
724.115 Next of kin.
724.116 Council/representative.
724.117 Discharge review.
724.118 Documentary discharge review.
724.119 Personal appearance discharge review.
724.120 National Capital Region (NCR).
724.121 Decisional document.
724.122 Recorder, NDRB Panel.
724.123 Complainant.

Subpart B—Authority/Policy for Departmental Discharge Review

724.201 Authority.
724.203 Broad objectives of naval discharge review.
724.204 Eligibility for naval discharge review.
724.205 Authority for review of naval discharges; jurisdictional limitations.
724.206 Jurisdictional determinations.
724.207 Disposition of applications for discharge review.
724.208 Implementation of NDRB decisions.
724.209 Evidence supporting applications.
724.210 Review action in instances of unavailable records.
724.211 Regularity of government affairs.
724.212 Availability of records.
724.213 Attendance of witnesses.
724.214 Applicant’s expenses.
724.215 Military representation.
724.216 Failure to appear at a hearing or respond to a scheduling notice.
724.217 Limitation—Reconsiderations.
724.218 Limitation—Continuance and Postponements.
724.219 Withdrawal of application.
724.220 Review on motion of the NDRB.
724.221 Scheduling of discharge reviews.
724.222 Personal appearance discharge hearing sites.
724.223 NDRB support and augmentation by regular and reserve activities.
724.224 Court-martial specifications, presumption concerning.

Subpart C—Director, Naval Council of Personnel Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

724.301 Mission.
724.302 Functions: Director, Naval Council of Personnel Boards.
724.303 Functions: President, Naval Discharge Review Board.
724.304 Responsibility for Department of the Navy support of the Naval Discharge Review Board.
724.305 Functions of the CMC and CNO.
724.306 Functions of the Commander, Naval Medical Command.
724.307 Functions of the Commander, Naval Reserve Force.

Subpart D—Principal Elements of the Navy Department Discharge Review System

724.401 Applicants.
724.402 Naval Discharge Review Board.
724.403 President, Naval Discharge Review Board.
724.404 Director, Naval Council of Personnel Boards.
724.405 Commandant of the Marine Corps or the Commander, Naval Military Personnel Command.
724.406 Commander, Naval Medical Command.
724.407 Commander, Naval Reserve Force.
724.408 Secretary of the Navy.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

724.501 Procedural rights of the applicant.
724.502 Actions to be taken by the applicant preliminary to discharge review.
724.503 NDRB response to application for discharge review.
724.504 NDRB actions preliminary to discharge review.

Subpart F—Naval Discharge Review Board Mission and Functions

724.601 General.
724.602 Mission.
724.603 Functions.

Subpart G—Organization of the Naval Discharge Review Board

724.701 Composition.
724.702 Executive management.
724.703 Legal counsel.

Subpart H—Procedures of the Naval Discharge Review Board

724.801 Matters to be considered in discharge review.
724.802 Applicant’s responsibilities.
724.803 The decisional document.
724.804 Decision process.
724.805 Response to items submitted as issues by the applicant.
724.806 Decisional issues.
724.807 Record of NDRB proceedings.
724.808 Issuance of decisions following discharge review.
724.108 Final disposition of the record of proceedings.
724.810 Availability of Naval Discharge Review Board documents for public inspection and copying.
724.811 Privacy Act information.
724.812 Responsibilities of the Reading Room.
724.813 The recommendation of the NDRB president.
724.814 Secretarial Review Authority (SRA).
724.815 Complaints.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.
§ 724.902 Propriety of the discharge.
§ 724.903 Equity of the discharge.

APPENDIX A TO PART 724—POLICY STATEMENT
BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES
APPENDIX B TO PART 724—OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS
APPENDIX C TO PART 724—SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD
APPENDIX D TO PART 724—VETERANS’ BENEFITS

SOURCE: 50 FR 10943, Mar. 19, 1985, unless otherwise noted.

Subpart A—Definitions

§ 724.101 Naval Service.
The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

§ 724.102 Naval Discharge Review Board.
An administrative board, referred to as the “NDRB” established by the Secretary of the Navy pursuant to title 10 U.S.C., section 1553, for the review of discharges of former members of the Naval Service.

§ 724.103 NDRB panel.
An element of the NDRB, consisting of five members, authorized to review discharges. In plenary review session, an NDRB panel acts with the authority delegated by the Secretary of the Navy to the Naval Discharge Review Board.

§ 724.104 NDRB Traveling Panel.
An NDRB Panel that travels for the purpose of conducting personal appearances discharge review hearings at locations outside of the National Capital Region (NCR).

§ 724.105 President of the NDRB.
A senior officer of the Naval Service designated by the Secretary of the Navy who is responsible for the direct supervision of the discharge review function within the Naval Service. (See subpart E).

§ 724.106 Presiding Officer, NDRB Panel.
The senior member of an NDRB Panel shall normally be the Presiding Officer. He/she shall convene, recess and adjourn the NDRB Panel as appropriate.

§ 724.107 Discharge.
In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the Naval Service, other than one pursuant to the sentence of a general court-martial. By reason of usage, the term “discharge” is predominantly applicable to the separation of enlisted personnel for any reason, and the term “dismissal” to the separation of officers as a result of Secretarial or general court-martial action. In the context of the mission of the NDRB, the term “discharge” used here shall, for purpose of ease of expression, include any complete separation from the naval service other than that pursuant to the sentence of general court-martial. The term “discharge” also includes the type of discharge and the reason/basis for that discharge, e.g., Other Than Honorable/Misconduct (Civil Conviction).

§ 724.108 Administrative discharge.
A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Commander, Naval Personnel Command, but specifically excluding separation by sentence of a general court-martial.

[65 FR 62616, Oct. 19, 2000]
§ 724.109 Types of administrative discharges.

(a) A determination reflecting a member’s military behavior and performance of duty during a specific period of service. The three characterizations are:

(1) Honorable. A separation from the naval service with honor. The issuance of an Honorable Discharge is contingent upon proper military behavior and performance of duty.

(2) Under Honorable Conditions (also termed General Discharge). A separation from the naval service under honorable conditions. The issuance of a discharge under honorable conditions is contingent upon military behavior and performance of duty which is not sufficiently meritorious to warrant an Honorable Discharge.

(3) Under Other Than Honorable Conditions (formerly termed Undesirable Discharge). A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

(b) [Reserved]


§ 724.110 Reason/basis for administrative discharge.

The terms “reason for discharge” and “basis for discharge” have the same meaning. The first is a Navy term and the second is a Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government, Misconduct. Reasons/basis for discharge are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

§ 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) Bad conduct. A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) Dishonorable. A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

§ 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, “Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters.” Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President’s program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the

VerDate Jul<25>2002 12:39 Jul 27, 2002 Jkt 197121 PO 00000 Frm 00232 Fmt 8010 Sfmt 8010 Y:\SGML\197121T.XXX 197121T
§ 724.119  Personal appearance discharge review.

A formal session of the NDRB convened for the purpose of reviewing an applicant’s discharge on the basis of a personal appearance, as well as documentary data. The personal appearance
§ 724.120  may be by the applicant or by a representative of the applicant, or both.

§ 724.120 National Capital Region (NCR).

The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

§ 724.121 Decisional document.

The written recordation of the applicant’s summary of service, the issue or issues presented together with any evidence offered in support of the application, the NDRB’s response to the issue or issues, the votes of the members of the panel, and any recommendations or responses by the President of the NDRB or the Secretarial Reviewing Authority (SRA). The decisional document is promulgated by the “en bloc letter”.

§ 724.122 Recorder, NDRB Panel.

A panel member responsible for briefing an applicant’s case from the documentary evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance discharge hearings, and drafting the decisional document subsequent to the hearing.

§ 724.123 Complainant.

A former member of the Armed Forces (or the former member’s counsel) who submits a complaint under 32 CFR Part 70 with respect to the decisional document issued in the former member’s own case; or a former member of the Armed Forces (or the former member’s counsel) who submits a complaint under reference (b) stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member’s own discharge will be at issue.

Subpart B—Authority/Policy for Departmental Discharge Review

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Naval Council of Personnel Boards. By SECNAVINST 5730.7 series, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Naval Council of Personnel Boards. SECNAVINST 5420.135 series of July 15, 1983 states the organization, mission, duties and responsibilities of the Naval Council of Personnel Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09B26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 09B26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission statement:

To administer and supervise assigned boards and councils.


The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, and manuals and directives of the Department of the Navy, and other written public expressions of policy by competent authority:

(a) 10 U.S.C. 1553, Review of discharge or dismissal:

(1) “The Secretary concerned shall, after consulting the Administrator of Veterans’ Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force
§ 724.206

under the jurisdiction of his/her department upon its own motion or upon the request of the former member or, if he/she is dead, his/her surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(2) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(3) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative or an organization recognized by the Administrator of Veterans’ Affairs under title 38 U.S.C. 3401 et seq.”.

(b) Pub. L. 95–126. See appendix D.

(c) 32 CFR part 70. This provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of 32 CFR part 70 are incorporated in this Manual.

(d) The Secretary of Defense memoranda dated August 13, 1971 and April 28, 1972 (NOTAL). These directed a review for recharacterization of administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (2) punitive discharges and dismissals issued solely for conviction of personal use of drugs and possession for the purpose of such use for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See appendix B).

(e) 32 CFR part 41. This prescribes policy, standards and procedures which govern the administrative separation of enlisted persons from the Armed Forces.

§ 724.203 Broad objectives of naval discharge review.

Naval discharge review shall have as its broad objectives:

(a) The furtherance of good order and discipline.
(b) The correction of injustice or inequity in the discharge issued.
(c) The correction of administrative or clerical errors.

§ 724.204 Eligibility for naval discharge review.

Any former member of the Naval Service, eligible for review under reference (a) or surviving spouse, next of kin or legal representative, shall upon submission of an application be afforded a review of the member’s discharge from the Naval Service as provided in §§ 724.205 and 724.206. Discharge review may also be initiated on the motion of the NDRB (See § 724.220).

§ 724.205 Authority for review of naval discharges; jurisdictional limitations.

(a) The Board shall have no authority to:
(1) Review a discharge or dismissal resulting from a general court-martial;
(2) Alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency;
(3) Revoke any discharge or dismissal;
(4) Reinstatement of a person in the naval service;
(5) Recall a former member to active duty;
(6) Change a reenlistment code;
(7) Make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces;
(8) Cancel or void enlistment contracts; or
(9) Change the reason for discharge from or to a physical disability
(b) Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years.

§ 724.206 Jurisdictional determinations.

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in § 724.205. Decisions shall be made by
§ 724.207 Disposition of applications for discharge review.

One of three dispositions will be made of an application for review of a discharge:

(a) The application may be rejected for reason of:
   (1) Absence of jurisdiction;
   (2) Previous review on the same evidence; or
   (b) The application may be withdrawn by the applicant; or
   (c) The application may be accepted and the discharge reviewed by the NDRB, resulting in,
      (1) Change to the discharge, or
      (2) No change.

§ 724.208 Implementation of NDRB decisions.

The Commandant of the Marine Corps and the Chief of Naval Operations are responsible for implementing Naval Discharge Review Board decisions within their respective services. The Commandant of the Marine Corps shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The Commander, Naval Military Personnel Command, acting for the Chief of Naval Operations and Chief of Naval Personnel, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

§ 724.209 Evidence supporting applications.

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper as issued. When hearings are scheduled, applicants must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

§ 724.210 Review action in instances of unavailable records.

(a) In the event that Department of the Navy personnel or health records associated with a requested review of discharge are not located at the custodial activity, the following action shall be taken by the NDRB prior to consideration of the request for discharge review.

   (1) A certification that the records are unavailable shall be obtained from the custodial activity.
   (2) The applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 60 days shall be allowed for such documents to be submitted. At the expiration of this time period, the review may be conducted with information available to the NDRB.

   (3) The presumption of regularity in the conduct of government affairs may be applicable in instances of unavailable records depending on the circumstances of the case. (See § 724.211)

(b) [Reserved]


§ 724.211 Regularity of government affairs.

There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

§ 724.212 Availability of records.

(a) Before applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, “Request Pertaining to Military Records,” to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132. Once the application for discharge review (DD Form 293) is submitted, an applicant’s military records are forwarded to the
NDRB where they cannot be reproduced. Submission of a request for an applicant’s military records, including a request under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act (5 U.S.C. 552a) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the headquarters of the NDRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review before the hearing. The NDRB shall notify applicants of the dates the records are available for examination in their standard scheduling information.

(b) If the NDRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity, applications for such information must be made by the applicant to the cognizant authority. The NDRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) [Reserved]

(d) The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on request of an applicant, the NDRB shall provide the applicant and counsel or representative, if any, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The NDRB shall also notify the applicant or counsel or representative: (a) of the right to examine such documents or to be provided with copies of the documents upon request; (b) of the date by which such requests must be received; and (c) of the opportunity to respond within a reasonable period of time to be set by the NDRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

(e) Regulations of a military department may be obtained at many installations under the jurisdiction of the Military Department concerned or by writing to the following address: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

§724.213 Attendance of witnesses.

Arrangement for attendance of witnesses testifying in behalf of the applicant at discharge review hearings is the responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

§724.214 Applicant’s expenses.

Unless otherwise specified by law or regulation, expenses incurred by the
applicant, witnesses, or counsel/representative will not be paid by the Department of Defense. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

§ 724.215 Military representation.

Military officers, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before an NDRB Panel are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by 18 U.S.C. 205.

§ 724.216 Failure to appear at a hearing or respond to a scheduling notice.

(a) Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(2) When the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

(b) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the NDRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant’s control.

§ 724.217 Limitation—Reconsiderations.

A discharge review shall not be subject to reconsideration except:

(a) When the only previous consideration of the case was on the motion of the NDRB;

(b) When the original discharge review did not involve a personal hearing and a hearing is now desired, and the provisions of § 724.216 do not apply;

(c) When changes in discharge policy are announced after an earlier review of an applicant’s discharge, and the new policy is made expressly retroactive;

(d) When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

(e) When an individual is to be represented by counsel or representative, and was not so represented in any previous consideration of the case by the NDRB;

(f) When the case was not previously considered under uniform standards published pursuant to Pub. L. 95–126 and such application is made within 15 years after the date of discharge; or

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 724.218 Limitation—Continuance and Postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the NDRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.
§ 724.224 Court-martial specifications, presumption concerning.

(a) Relevant and material facts stated in a court-martial specification, shall be presumed by the NDRB Panel as established facts. With respect to a discharge or dismissal adjudged by a court-martial case tried under the Uniform Code of Military Justice, the action may extend only to change in the discharge or dismissal for purposes of clemency. This policy only applies to cases filed with the discharge review board after December 6, 1983.

(b) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial,
shall be considered in accordance with the following:

(1) If the applicant/accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the stated facts were true, then the NDRB can presume the truth of such facts, unless there is a substantial credible evidence to rebut this presumption; or

(2) If the discharge in lieu of court-martial only required a valid preferral, the NDRB may presume that the signer either had personal knowledge of, or had investigated the matters set forth, and that the charges were true in fact to the best of the signer’s knowledge and belief. The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the NDRB. To the extent that the discharge proceeding reflects an official determination that the facts stated in the charge sheet are true; that the applicant/accused admitted the facts stated in the charge sheet; or that the applicant/accused admitted guilt of the offense(s), then the presumption is strengthened. In accordance with paragraph B12f of enclosure (3) to 32 CFR part 70 the presumption may be rebutted by “substantial credible evidence.”

Subpart C—Director, Naval Council of Personnel Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

§ 724.301 Mission.

To administer and supervise assigned boards and councils within the Department of the Navy.

1Charges may be preferred by any person subject to the Uniform Code of Military Justice. The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state that the signer has personal knowledge of, or has investigated the matters set forth therein; and that the charges are true in fact to the best of the signer’s knowledge and belief. 10 U.S.C. § 830 (1976) (Art. 30 Uniform Code of Military Justice).

§ 724.302 Functions: Director, Naval Council of Personnel Boards.

(a) Make recommendations to the Secretary of the Navy regarding organization, tasking and resources of the NDRB and its associated administrative support.

(b) Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.

(c) Provide administrative and clerical support for NDRB.

(d) Inform the Secretary of the Navy of matters of interest to him.

(e) Maintain a system of records, including as a minimum:

(1) Records specified for the NDRB as stipulated in the procedures prescribed in subpart H of this Manual.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

(f) Establish billet/position assignment criteria for the NDRB.

§ 724.303 Functions: President, Naval Discharge Review Board.

(a) Exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

(b) Supervise and direct the activities of the NDRB.

(c) Maintain appropriate liaison with discharge review activities in other services (use Army Discharge Review Board as focal point for service coordination).

(d) Maintain coordination with the Commandant of the Marine Corps (Code M) and the Commander, Naval Military Personnel Command in matters associated with discharge review.

(e) In conformance with SECNAVINST 5211.5C, protect the privacy of individuals in connection with discharge review.

(f) Assist in discharging the NDRB functions as administered in accordance with the
appropriate Secretary of the Navy instructions dealing with privacy and access to information.

(g) Convene the NDRB as authorized by the Secretary of the Navy.

(h) Direct the movement of the NDRB Traveling Panel(s) on the basis of regional hearing requests.

(i) Monitor the performance of the naval discharge review system. Make recommendations for changes and improvements. Take action to avoid delays in processing of individual discharge review actions.

(j) Provide NDRB inputs for the maintenance of a public reading file and maintain associated NDRB indexes updated quarterly.

§ 724.304 Responsibility for Department of the Navy support of the Naval Discharge Review Board.

The Commandant of the Marine Corps; Commander, Naval Military Personnel Command; Commander, Naval Reserve Force; Commander, Naval Medical Command; and chiefs of other bureaus and offices of the Department of the Navy shall provide support, as requested, to the Naval discharge review process.

§ 724.305 Functions of the CMC and CNO.

In the case of Navy, CNMPC, under the CNP, shall discharge responsibilities of the CNO.

(a) Provide and facilitate access by the NDRB to service/health records and other data associated with performance of duty of applicants.

(b) Advise the NDRB of developments in personnel management which may have a bearing on discharge review judgments.

(c) Implement the discharge review decisions of the NDRB and those of higher authority within respective areas of cognizance.

(d) Include the record of NDRB proceedings as a permanent part of the service record of the applicant in each case.

(e) Where appropriate, recommend cases for the NDRB to review on its own motion.

(f) Provide qualified personnel as NDRB members, recorders and administrative staff.

(g) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

1. The right to a review of his or her discharge under provisions of 10 U.S.C. 1553, and

2. The procedures for applying for such a review.

(h) Provide Navy and Marine Corps units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administration directives.

§ 724.306 Functions of the Commander, Naval Medical Command.

Under the CNO the COMNAVMEDCOM shall facilitate, as required, access by the NDRB to health records of applicants.

§ 724.307 Functions of the Commander, Naval Reserve Force.

In the case of Navy, the COMNAVRESFOR shall discharge the responsibilities of the CNO—

(a) Upon request and within available resources, provide qualified inactive duty reservists to serve as members of the NDRB.

(b) Upon request, provide appropriate accommodations to the NDRB Traveling Panels for purposes of conducting reviews at Naval and Marine Corps Reserve Centers and aviation facilities.

Subpart D—Principal Elements of the Navy Department Discharge Review System

§ 724.401 Applicants.

As defined in §724.114.

§ 724.402 Naval Discharge Review Board.

As defined in §724.102.

§ 724.403 President, Naval Discharge Review Board.

Supervises the Naval Discharge Review Board. (See subpart C).
§ 724.404 Director, Naval Council of Personnel Boards.
Exercises administrative control and oversight of the Naval discharge review process. (See subpart C).

§ 724.405 Commandant of the Marine Corps or the Commander, Naval Military Personnel Command.
Personnel managers of the Marine Corps and the Navy; responsible for providing limited support to the Naval Discharge Review Board and for implementation of departmental discharge review decisions. (See subpart C).

§ 724.406 Commander, Naval Medical Command.
Custodian of Navy and Marine Corps health records. (See subpart C).

§ 724.407 Commander, Naval Reserve Force.
Manages Naval Reserve resources. Responsible for providing limited support to the Naval Discharge Review Board. (See subpart C).

§ 724.408 Secretary of the Navy.
The final authority within the Department of the Navy in discharge review.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

§ 724.501 Procedural rights of the applicant.
Each applicant has the following procedural rights:
(a) Within 15 years after the date of discharge, to make a written request for review of the applicant’s discharge if the discharge was other than the result of a general court-martial. The request may include such other statements, affidavits, or documentation as desired.
(b) To have that review conducted by the NDRB either in the NCR or other designated location, when a personal appearance discharge review is desired.
(c) To appear before the NDRB in person, with or without counsel/representative, with counsel/representative concurrence, to have counsel/representative present the applicant’s case in the absence of the applicant; or to have the review conducted based on records and any additional documentation submitted by the applicant or counsel/representative.
(d) To request copies of any documents or other evidence to be considered by the NDRB in the review of the applicant’s discharge or dismissal other than the documents or evidence contained in the official record or submitted by the applicant prior to the conduct of the formal review and to be afforded an opportunity to examine such other documents or evidence or to be provided with copies of them.
(e) To withdraw the request for discharge review without prejudice at any time prior to the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.
(f) To request a continuance of the review when the continuance is of a reasonable duration and essential to achieving a full and fair hearing. The request must indicate the reason why the continuance is required.
(g) To request postponement of the discharge review for good and sufficient reason set forth in a timely manner.
(h) To request reconsideration of the discharge review under the conditions set forth in §724.217.
(i) To have access to the information to be considered by the NDRB prior to the actual review of the applicant’s case.
(j) To have the applicant’s right to privacy protected in any review conducted by the NDRB.
(k) When appearing personally before the NDRB:
(1) To introduce witnesses, documents, and sworn or unsworn testimony.
(2) To present oral or written arguments personally or through counsel/representative.
(l) To submit documents, affidavits, briefs or arguments in writing. When the counsel/representative appears in person before the NDRB, arguments may be presented orally.
(m) To state clearly and specifically the issue or issues which the applicant desires the NDRB to answer in writing.
§ 724.504 NDRB actions preliminary to discharge review.

(a) When each application for discharge review is received by the NDRB, the service record and health record of the applicant will be requested from the appropriate record custodian.

(b) Upon receipt, each record of service will be reviewed to determine whether or not the applicant appears to have been discharged under circumstances which might act as a bar to Veterans' Administration benefits under 38 U.S.C. 3103. These circumstances of discharge are:

(1) Discharge or dismissal by reason of the sentence of a general court-martial.

(2) Discharge as a conscientious objector who refused to perform military duty, to wear the uniform or otherwise to comply with lawful orders of competent military authority.

(3) Discharge as a deserter.

(4) Discharge on the basis, or as part of the basis, of an absence without authority from active duty for a continuous period of at least 180 days, if such discharge was under conditions other than honorable. Additionally, such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(5) Discharge or dismissal of an officer based on acceptance of the officer’s resignation for the good of the service.

(6) Discharge, on his/her own application, during a period of hostilities, as an alien.
§ 724.601 General.

The NDRB is a component of the Naval Council of Personnel Boards and has its offices located in the NCR. The NDRB conducts documentary reviews and personal appearance reviews in the NCR and, on a traveling basis, at selected sites within the 48 contiguous states. Regional site selection is predicated on the number of pending applications accumulated from a given geographical area and the resources available to support distant personal appearance reviews. The NDRB does not maintain facilities other than at its NCR offices. The primary sites of NCR are: Chicago, IL; Dallas, TX; and San Francisco, CA.

§ 724.602 Mission.

To decide, in accordance with standards of naval law and discipline and the standards for discharge review set forth in subpart I, whether a discharge or dismissal from the naval service is proper and equitable, or whether it should be changed.

§ 724.603 Functions.

(a) Meet as frequently as necessary to provide expeditious review of naval discharges.
(b) Meet at locations within the 48 contiguous states as determined appropriate on the basis of the number of discharge review applications received from various geographical areas and of available resources and facilities.
(c) Review applications for review of discharges.
(d) In consonance with directives of higher authority and the policies set forth in this Manual, grant or deny change of discharges.
(e) Promulgate decisions in a timely manner.
(f) Maintain a system of records.
(g) Maintain liaison in discharge review matters with:
   (1) General Counsel of the Navy.
   (2) Commandant of the Marine Corps.
   (3) Chief of Naval Operations.
   (4) Commander, Naval Reserve Force.
   (5) Commander, Naval Medical Command.
   (6) Commander, Naval Military Personnel Command, under the Chief of Naval Personnel.
   (7) Judge Advocate General of the Navy.
   (8) Veterans' service organizations.
   (9) Discharge review boards of the other services, using the Army Discharge Review Board as the focal point for service coordination.
   (h) Protect the privacy of individuals whose records are reviewed.
   (i) Maintain for public access a reading file and associated index of records of NDRB proceedings in all reviews undertaken subsequent to July 1, 1975.

Subpart G—Organization of the Naval Discharge Review Board

§ 724.701 Composition.

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

(a) Presiding officers of the NDRB shall normally be Navy or Marine Corps officers in the grade of Captain/Colonel or above.
(b) The remaining NDRB membership shall normally be not less than the grade of Lieutenant Commander/Major
with preference being given to senior grades.

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

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

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

§ 724.702 Executive management.

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

§ 724.703 Legal counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Subpart H—Procedures of Naval Discharge Review Board

§ 724.801 Matters to be considered in discharge review.

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

(a) The application for discharge review;

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

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

(d) Service and health records;

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

§ 724.802 Applicant's responsibilities.

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

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

(2) Reason for discharge. Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the NDRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the NDRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the NDRB are consistent with the request for change in discharge set forth in block 7 of the DD Form 293. If an ambiguity is created by a difference between and applicant's issue and the request in block 7, the NDRB will respond to the issue in the context of the action requested in block 7. In the case of a personal appearance hearing, the NDRB will attempt to resolve the ambiguity under §724.802(c).
§ 724.802  32 CFR Ch. VI (7–1–02 Edition)

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

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

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

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

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

(A) Provides a means for an applicant to set forth clearly and specifically those matters that, in the option of the applicant, provide a basis for changing the discharge;

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

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

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

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

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

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

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

(3) Relationship of issues to the standards for discharge review. The NDRB reviews discharges on the basis of issues of propriety and equity. The standards used by the NDRB are set forth in § 724.804. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based.
§ 724.802

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

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

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

(4) Citation of matter from decisions. The primary function of the NDRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB’s attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant’s intention to submit an issue that sets forth specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant’s case.

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

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

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

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

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

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

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or
§ 724.803 The decisional document.

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

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

(1) Information concerning the discharge under review, including:
(i) Date (YMMDD) of discharge;
(ii) Character of discharge;
(iii) Reason for discharge;
(iv) The specific regulatory authority under which the discharge was issued;
(v) Date (YMMDD) of enlistment;
(vi) Period of enlistment;
(vii) Age at enlistment;
(viii) Length of service;
(ix) Periods of unauthorized absence;
(x) Conduct and efficiency ratings (numerical or narrative);
(xi) Highest rank achieved;
(xii) Awards and decorations;
(xiii) Educational level;
(xiv) Aptitude test scores;
(xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YMMDD) of offense or punishment);
(xvi) Convictions by court-martial;
(xvii) Prior military service and type of discharge received.

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

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

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

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

(e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been withdrawn or modified with the written consent of the applicant need not be listed.

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

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

(h) NDRB’s conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.
(2) The specific changes to be made, if any.

(i) A record of the voting, including:

(1) The number of votes for the NDRB’s decision and the number of votes in the minority, if any.
(2) The NDRB members’ names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant’s request.

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

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

(l) The addendum of the SRA when required.

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

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

§ 724.804 Decision process.

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

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

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

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

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

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

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

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

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

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

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

(k) The preliminary determinations required by 38 U.S.C. 3103(e) shall be made upon majority vote of the NDRB concerned on an expedited basis. Such
§ 724.805 Response to items submitted as issues by the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

§ 724.806 Decisional issues.

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

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

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

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

(ii) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in §724.806(a)(3)(d), the NDRB is not required to consider such an issue under the equity standards.

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

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

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

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

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

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

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

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

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

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

(iii) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in §724.806(c)(2)(a) and (b):

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

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

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

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

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

(F) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the NDRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(d) Denial of the full change in discharge requested when propriety is not at issue. If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the propriety of the discharge.
(e) Change of discharge: issues of equity. If the NDRB concludes that a change in the discharge is warranted under the equity standards, the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed.

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

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

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

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

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

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

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

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

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

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

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

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

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

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

§ 724.807 Record of NDRB proceedings.

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

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

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

§ 724.808 Issuance of decisions following discharge review.

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

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

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

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

§ 724.809 Final disposition of the record of proceedings.

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

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

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

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

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

(c) Any other privileged or classified material contained in or appended to any documents required by this Manual to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted only if a written statement on the basis for the deletions is provided the applicant and counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

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

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

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

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

§ 724.811 Privacy Act information.

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

§ 724.812 Responsibilities of the Reading Room.

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

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

§ 724.813 The recommendation of the NDRB president.
(a) General. The president of the NDRB may forward cases for consideration by the Secretarial Review Authority (SRA). There is no requirement that the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in § 724.813b.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Processing the decisional document.

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

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

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

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

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

(d) The addendum of the SRA. The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

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

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

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

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

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

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

(A) A list of the issues on which the SRA’s decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant’s favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA’s decision. Such issues shall be addressed under the principles in §724.806(f).

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

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

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

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in §724.806.
(B) If the matter adopted by the SRA provides a basis for the SRA’s rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

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

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

§ 724.815 Complaints.

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

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.

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

§ 724.902 Propriety of the discharge.

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

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

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

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

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

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

A discharge shall be deemed to be equitable unless:

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

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

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

(b) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

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

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

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

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

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

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

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

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

(xi) Convictions by court-martial;

(xii) Records of nonjudicial punishment;

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

(xiv) Records of periods of unauthorized absence;

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

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

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

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

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

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

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

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

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

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

“The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

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

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

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

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

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

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

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

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

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

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

Oath/Affirmation

I, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

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

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Form</th>
<th>Title</th>
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<tr>
<td>1</td>
<td>Letter</td>
<td>En Block Notification of Decision to Commander, Naval Military Personnel Command (No Change).</td>
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<tr>
<td>2</td>
<td>...do...</td>
<td>En Block Notification of Decision to Commander, Naval Military Personnel Command (Change).</td>
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<tr>
<td>3</td>
<td>...do...</td>
<td>En Block Notification of Decision to Commandant, Marine Corps (No Change).</td>
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<tr>
<td>4</td>
<td>...do...</td>
<td>En Block Notification of Decision to Commandant, Marine Corps (Change).</td>
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NOTE: The Forms appearing in appendix C are not carried in the Code of Federal Regulations.

APPENDIX D TO PART 724—VETERANS’ BENEFITS

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

An Act

To deny entitlement to veterans’ benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans’ benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) Inserting “or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence.” after “deserter,” in subsection (a), and by inserting a coma and “notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10” before the period at the end of such subsection; and

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

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

“(2) Notwithstanding any other provision of law—

“(A) No person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President’s directive of January 19, 1977, initiating further action with respect to the President’s Proclamation 4315 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense’s special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Veterans’ Administration except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharged under such standards;

“(B) Such determination shall be made by such board, (i) on an expedited basis after notification by the Veterans’ Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (ii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

“If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such personal shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of

Department of the Navy, DoD
Pt. 724, App. D

261
Section 2. Notwithstanding any other provision of law, the Administrator of Veterans Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits under laws administered by the Veterans Administration, except that, notwithstanding any other provision of law, (A) retirement from the active military, naval, or air service from which such person was discharged or released from active military, naval, or air service in line of duty by a person other than dishonorable, the Administrator of Veterans Affairs shall provide the type of health care and related benefits under laws administered by the Veterans Administration only through the action of a board for the correction of military records under section 1552 of such title or the action of the Administrator of Veterans Affairs under section 3103 of such title and of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

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

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

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

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

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

(2) The amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans Administration only through the action of a board for the correction of military records under section 1552 of such title or the action of the Administrator of Veterans Affairs under section 3103 of such title and of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

Section 6. Notwithstanding any other provision of law, in promulgating, or making any regulations or establishing any procedures pursuant to such section 1552 board for such purpose and to the Administrator of Veterans Affairs for such purpose, the Administrator of Veterans Affairs shall—

(A) apply retroactively to deny benefits under laws administered by the Veterans Administration, except that, notwithstanding any other provision of law, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as added by section 1(a)(2) of this Act, until, (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest date; and

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

Section 7. This Act shall become effective on the date of its enactment.
PART 725—RELEASE OF OFFICIAL INFORMATION FOR LITIGATION PURPOSES AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL

§ 725.1 Purpose.

This instruction implements 32 CFR part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates the information contained in Secretary of the Navy Instruction 5820.8A of 27 August 1991, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

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

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

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

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

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

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates

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

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

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

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

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

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

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

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

(e) Official information. All information of any kind, however stored, in the custody and control of the DOD and its components including the DON; relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components, while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces (determining whether "official information" is sought, as opposed to non-DOD information, rests with the determining authority identified in §725.6, rather than the requester).

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

§725.5 Applicability.

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

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

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

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

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

(f) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. This instruction does not preclude treating any written request for DON records as a request under the FOIA or Privacy Acts. Activities are encouraged to treat such requests for documents under the FOIA or the Privacy Act if they are invoked by the requestor either explicitly or by fair implication. See 32 CFR 701.3(a), 701.10(a). Activities are reminded that such treatment does not absolve them of the responsibility to respond in a timely fashion to legal
§ 725.5

process. In any event, if the official information requested pertains to a litigation matter which the United States is a present or potential party, the release authority should notify the delegate of the General Counsel or the Judge Advocate General, under §725.6.

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

1. Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such component;
2. Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;
3. In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party), but the regulation does apply to an action brought under the qui tam provisions of the False Claims Act in which a private party brings an action in the name of the United States but in which the Department of Justice either has not yet determined to intervene in the litigation or has declined to intervene;
4. As part of the assistance required by the Defense Industrial Personnel Security Clearance Review Program under DOD Directive 5220.6;
5. Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent naval personnel;
6. Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure (in the latter event, compliance with 32 CFR part 97 and this part is required);
7. Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR 581 and SECNAVINST 7200.16; or,
8. Release of information to Federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization.

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

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

(j) Relationship with Federal Rules of Procedure. The requirements imposed by this instruction are intended, among other things, to provide adequate notice to DON regarding the scope of proposed discovery. This will assure that certain DON information, which properly should be withheld, is not inadvertently released in response to a litigation request or demand, including a subpoena or other request for discovery issued under Federal rules of procedure. When the United States is a party to Federal litigation and the party opponent uses discovery methods (e.g., request for interrogatories and admissions, depositions) set forth in Federal rules of procedure, the Judge Advocate General or General Counsel, in consultation with representatives of the Department of Justice or the cognizant United States Attorney, may

2 See footnote 1 to §725.1.
3 See footnote 1 to §725.1.
determine whether the requirement for a separate written request in accordance with §725.7 should be waived. Even if this requirement is waived, however, DON personnel who are subpoenaed to testify still will be required to obtain the written permission described in §725.2.

§ 725.6 Authority to determine and respond.

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

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

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

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

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

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

(d) Litigation matters in which the United States is not, and is reasonably

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1 See footnote 1 to §725.1.
2 See footnote 1 to §725.1.
not expected to become, a party—(1) Matters within the cognizance of the Judge Advocate General—(i) Fact witnesses. Requests to interview, depose, or obtain testimony of any present or former DON personnel as defined in §725.4(b) about purely factual matters shall be forwarded to the Navy or Marine Corps officer exercising general court-martial jurisdiction (OEGCMJ) in whose chain of command the prospective witness or requested documents lie. That determining authority will respond for the Judge Advocate General under criteria set forth in §725.8. (A) If the request pertains to personnel assigned to the Office of the Chief of Naval Operations, the Office of the Vice Chief of Naval Operations, or an Echelon 2 command located in the Washington, DC, area, it shall be forwarded to that office which will likewise respond for the Judge Advocate General under the criteria set forth in §725.8. (B) If a request pertains to Marine Corps personnel assigned to Headquarters Battalion, Headquarters Marine Corps, or to other Marine Corps commands located in the Washington, DC, area, it shall be forwarded to the Commandant of the Marine Corps (JAR), Headquarters, U.S. Marine Corps, Washington, DC 20380-0001, which will respond for the Judge Advocate General under criteria set forth in §725.8. (C) Nothing here shall prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester shall be notified of the referral. Further, each determining authority specified in this paragraph may further delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor. (D) In the alternative, the requester may forward the request to the Deputy Assistant Judge Advocate General (General Litigation), who may refer the matter to another determining authority for response, and so notify the requester. (ii) Visits and views. A request to visit a DON activity, ship, or unit, or to inspect material or spaces located there will be forwarded to one of the authorities stated in §725.6(d)(1)(i), who will respond on behalf of the Judge Advocate General. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit at issue, or with his or her staff judge advocate (if applicable). The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography. (iii) Documents. 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all DON books, records, and property. Under DOD Directive 5530.1, the Secretary of the Navy’s sole delegate for service of process is the General Counsel of the Navy. See 32 CFR 237.5(c). All process for such documents shall be served upon the General Counsel at the Department of the Navy, Washington, DC, 20350-1000, who will refer the matter to the proper delegate for action. Matters referred to the Judge Advocate General will normally be provided to the determining authorities described in §725.6(c) and (d). That authority will respond per criteria in §725.8. Process not properly served on the General Counsel is insufficient to constitute a legal demand and shall be processed as a request by counsel. Requests for documents maintained by the National Personnel Records Center will be determined by the official provided in §725.8(b)(2)(iii). (iv) Expert or opinion requests. Any request for expert or opinion consultations, interviews, depositions, or testimony will be referred to the Deputy Assistant Judge Advocate General (General Litigation) who will respond for the Judge Advocate General, or transmit the request to the appropriate DAJAG for response. Matters not clearly within the purview of a particular Deputy Assistant Judge Advocate General will be retained by the
Deputy Assistant Judge Advocate General (General Litigation), who may either respond or refer the matter to another determining authority for response.

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

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

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

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

§ 725.7 Contents of a proper request or demand.

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

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

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

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

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

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

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

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

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

(iii) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances exist justifying such testimony, including why it is not reasonably available from any other source.

(b) Additional considerations. The circumstances surrounding the underlying litigation, including whether the United States is a party, and the nature and expense of the requests made by a party may require additional information before a determination can be made. Providing the following information or stipulations in the original request may expedite review and eliminate the need for additional correspondence with the determining authority.
§ 725.7 32 CFR Ch. VI (7–1–02 Edition)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The DON policy regarding disclosure in §725.2;
(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;
(3) Whether disclosure, including release in camera (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;
(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction, or notice;
(5) Whether disclosure, in the absence of a court order or written consent, would violate 5 U.S.C. 552, 552a;
(6) Whether disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, or physician-patient in the case of civilian personnel);
(7) Whether disclosure, except when in camera (i.e., before the judge alone) and necessary to assert a claim of privilege, would reveal information properly classified under the DOD Information Security Program under DOD 5200.1-R, withholding of unclassified technical data from public disclosure following OPNAVINST 5510.161; privileged Naval Aviation Safety Program information (OPNAVINST 3750.6Q (NOTAL)), or other matters exempt from unrestricted disclosure under 5 U.S.C. 552, 552a;
(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate constitutional rights, reveal the identity of an intelligence source or source of confidential information, conflict with U.S. obligations under international agreement, or be otherwise inappropriate under the circumstances;
(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command; and
(10) Whether, in a criminal case, requiring disclosure by a defendant of detailed information about the relevance of documents or testimony as a condition for release would conflict with the defendant’s constitutional rights.

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

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

(A) If the determining authority to whom the matter is referred determines to comply with the order or subpoena, compliance will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of an unusual circumstance, an original record must be produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence.

(B) Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order signed by a judge as set forth above may be furnished without a court order, but only upon a request complying with §725.7 and only when such records are not in a “system of records” as defined by the Privacy Act (5 U.S.C. 552a). In determining whether a record not contained in a “system of
§ 725.8 32 CFR Ch. VI (7–1–02 Edition)

records” will be furnished in response to a Freedom of Information Act (FOIA) request. SECNAVINST 5720.42E9 controls.

(C) Generally, a record in a Privacy Act “system of records” may not be released under a litigation request except with the written consent of the person to whom the record pertains or in response to a court order signed by a judge. See SECNAVINST 5211.5C10 and 5 U.S.C. 532, 552a for further guidance.

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

(ii) Classified Navy and Marine Corps records. Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP-06N) per OPNAVINST 5510.1H.11

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

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

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

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9 See footnote 1 to §725.1.
10 See footnote 1 to §725.1.
11 See footnote 1 to §725.1.
12 See footnote 1 to §725.1.
(vi) **Affirmative claims files.** Affirmative claims files (including Medical Care Recovery Act files), except to the extent they contain copies of JAGMAN investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by the commanding officer of the Naval Legal Service Office having cognizance over the claim at issue, without compliance with this instruction, to: insurance companies to support claims; to civilian attorneys representing injured service persons, their dependents, and the Government's interests; and to other DOD components. When a request for production involves material related to claims in favor of the Government, either the cognizant Command Counsel or the Naval Legal Service Office having territorial responsibility for the area should be notified.

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

(viii) **Pay records.** Official pay records of active-duty, reserve, retired, or former Navy members should be requested from Director, Defense Finance and Accounting Service (DFAS), Cleveland Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. Official pay records of active-duty, reserve, retired, or former Marines should be requested from Director, Defense Finance and Accounting Service, Kansas City Center (Code G), Kansas City, MO 64197-0001.

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

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

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

(iv) **Non-DOD information.** A request for disclosure under this part, particularly through the testimony of a witness, may involve both official information and non-DOD information (e.g., in the case of a person who has acquired additional and separate knowledge or expertise wholly apart from Government employment). Determining whether or not official information is at issue is within the purview of the determining authority, not the requester. A requester’s contention that only non-DOD information is at issue
§ 725.9 Action to grant or deny a request.

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

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

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

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

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

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

(g) In cases in which a subpoena has been received and the requester refuses to pay fees or otherwise comply with the guidance and requirements imposed by this part, or if the determining authority declines to make some or all of the subpoenaed information available, or if the determining authority has had insufficient time to complete its determination as to how to respond to the request, the determining authority must promptly notify the General Litigation Division of the Office of the Judge Advocate General or the Navy Litigation Office of the Office of the General Counsel, which offices will determine, in consultation with the Department of Justice, the appropriate response to be made to the tribunal which issued the subpoena. Because the Federal Rules of Civil Procedure require that some objections to subpoenas must be made either within 10 days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require consultation with the Department of Justice, timely notice is essential.

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

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

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

(c) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under §725.10(b), or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly. The witness shall, if directed by the appropriate DON official, respectfully decline to comply with the demand. Legal counsel for the command concerned should accompany and advise DON personnel during any court proceedings involving the foregoing circumstances.

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

§725.11 Fees.

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

(1) When DON is a party. No fees normally shall be charged when the DON is a party to the proceedings, and the activity holding the requested information or employing the witness shall bear the expense of complying with the request.

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

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

(b) Special circumstances—(1) Refusal to pay fees. In cases in which a subpoena has been received and the requester refuses to pay appropriate fees, it may become necessary to request the Department of Justice to take appropriate legal action before the court issuing the subpoena. Determining authorities should consult promptly with the OJAG General Litigation Division or the Navy Litigation Office of the General Counsel if this course of action appears necessary, because some objections to subpoenas must be made either within ten days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require timely consultation with the Department of Justice. If no subpoena has been issued, the determining authority must decide whether to deny the request or, if appropriate, waive the fees.

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

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

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

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

Sec. 726.1 Purpose.
726.2 Scope.
726.3 Authority to appoint trustees.
726.4 Procedures for convening competency boards.
726.5 Procedures for designation of a trustee.
726.6 Travel orders.
726.7 Status of pay account.
726.8 Emergency funds.
726.9 Reports and supervision of trustees.


15 See footnote 1 to §725.1.
§ 726.1 Purpose.

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

§ 726.2 Scope.

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

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

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

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

§ 726.3 Authority to appoint trustees.

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

§ 726.4 Procedures for convening competency boards.

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

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

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

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

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

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

(2) In the case of a finding that a member is not mentally capable of managing his affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s), of the member’s next of kin.
§ 726.5 Procedures for designation of a trustee.

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

(b) The interviewing officer will:

(1) Determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or his designee;

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

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

§ 726.6 Travel orders.

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

§ 726.7 Status of pay account.

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

(1) The appointed trustee;

(2) The legal representative appointed by a State court of competent jurisdiction;

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

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

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

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

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

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

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

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

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

§ 726.9 Reports and supervision of trustees.

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

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

PART 727—LEGAL ASSISTANCE

§ 727.1 Purpose.

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

§§ 727.2–727.4 [Reserved]

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. Legal assistance is intended primarily for the benefit of active duty personnel during active service, including reservists (and members of the National Guard) on active duty for 30 days or more. As resources permit, legal assistance may be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, reservists on active duty for single periods of 29 days or less, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible, and other persons authorized by the Judge Advocate General of the Navy.

(65 FR 26748, May 9, 2000)

§ 727.6 Functions of legal assistance officers.

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

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

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

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

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

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

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

(c) Duty to client. A legal assistance officer shall exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

(d) Professional legal advice. Legal assistance is authorized for personal legal affairs only, as contrasted with military justice problems, business ventures, or matters that are not of a personal nature. Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Only
legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under the Code of Professional Responsibility of the American Bar Association.

§ 727.7 Limitations on service provided.
(a) Assistance in official military matters. Legal Assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a service member accused or suspected of an offense or conduct leading to an administrative proceeding will request advice from the legal assistance officer. In such a case, the service member should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for respondent, or counsel for a party.
(b) Domestic-relations cases. In domestic-relations cases, a legal assistance officer may provide advice concerning the legal and practical implications of divorce, legal separation, annulment, custody, and paternity. Assistance and advice in domestic violence cases will be consistent with the Department of the Navy family advocacy program. If two or more eligible persons with conflicting interests seek legal assistance from the same office on the same matter, the party first establishing an attorney-client relationship will be provided representation. Other parties shall be advised that they are also eligible for assistance, but that it must be obtained from another source, with the assistance of and referral by the first office.
(c) Nonlegal advice. The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.
(d) Proceedings involving the United States. A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General.
(e) Telephone inquiries. In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone. This does not prohibit appropriate follow-up telephone discussions between the legal assistance attorney and the client.

§ 727.8 Confidential and privileged character of service provided.
All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by
§ 727.9 Referrals to civilian lawyers.

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

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

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

(a) General. Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity.

(b) Solicitation. Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this part retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office space; Provided that nothing herein shall prevent such person from being referred to civilian counsel as provided in §727.9.

(c) Representation before civilian courts or agencies. No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of §727.6, or
§ 727.15 Liberal construction of part.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.
PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

Subpart A—General

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

Subpart B—Members of the Uniformed Services on Active Duty

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

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

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

Subpart D—Retired Members and Dependents of the Uniformed Services

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

Subpart E—Members of Foreign Military Services and Their Dependents

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

Subpart F—Beneficiaries of Other Federal Agencies

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

Subpart G—Other Persons

728.71 Ex-service maternity care.
728.72 Applicants for enrollment in the Senior Reserve Officers’ Training Program.
728.73 Applicants for enlistment or reenlistment in the Armed Forces, and applicants for enlistment in the reserve components.
728.74 Applicants for appointment in the regular Navy or Marine Corps and reserve components, including members of the reserve components who apply for active duty.
728.75 Applicants for cadetship at service academies and applicants for the Uniformed Services University of Health Sciences (USUHS).
728.76 Naval Home residents.
728.77 Secretarial designees.
728.78 American Red Cross representatives and their dependents.
728.79 Employees of Federal contractors and subcontractors.
728.80 U.S. Government employees.
728.81 Other civilians.
728.82 Individuals whose military records are being considered for correction.
728.83 Persons in military custody and non-military Federal prisoners.

Subpart H—Adjuncts to Medical Care

728.91 General.
728.92 Policy.
728.93 Chart of adjuncts.

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

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

Subpart J—Initiating Collection Action on Pay Patients

§ 728.111 General.

§ 728.112 Responsibilities.

§ 728.113 Categories of pay patients.


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

Subpart A—General

§ 728.2 Definitions.

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

§ 728.2 Definitions.

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

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

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

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

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

(e) Chronic condition. Any medical or surgical condition marked by long duration or frequent recurrence—or likely to be so marked—which, in light of medical information available, will ordinarily resist efforts to eradicate it completely; a condition which needs health benefits to achieve or maintain stability that can be provided safely only by, or under the supervision of, physicians, nurses, or persons authorized by physicians.

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

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

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

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

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

(k) Designated USTFs. The following former U.S. Public Health Service (USPHS) facilities operate as “designated USTFs” for the purpose of rendering dental and medical care to active duty members and to all CHAMPUS-eligible individuals.

(l) Sisters of Charity of the Incarnate Word Health Care System, 6400 Lawndale, Houston, TX 77058 (713) 928-2901 operates the following facilities:

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

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

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

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

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


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

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

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

(2) Inpatient care in a medical treatment facility.

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

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

(m) Elective care. Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of other cognizant professional authority, can be performed at another place or time without jeopardizing life, limb, health, or well-being of the patient, e.g., surgery for cosmetic purposes and nonessential dental prosthetic appliances.

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

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

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

§ 728.2

32 CFR Ch. VI (7–1–02 Edition)
(q) Inactive duty training. Duty prescribed for Reserves by the Secretary concerned under section 206 of title 37, U.S.C. or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. It includes those duties when performed by Reserves in their status as members of the National Guard.

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

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

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

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

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

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

(x) Member or former member. Includes:

1. Members of the uniformed services ordered to active duty for more than 30 days.
2. Retired members as defined in §728.2(bb).
3. Members of a uniformed service ordered to active duty for more than 30 days who died while on that duty.
4. Deceased retired members.

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

(z) Occupational health services. Includes medical examinations and tests related to preemployment, preplacement, periodic, and pretermination; tests required for protecting the health and safety of naval personnel; job-related immunizations and chemoprophylaxis; education and training related to occupational health; and other services provided to avoid lost time or to improve effectiveness of employees. The latter will include the furnishing of emergency treatment of illnesses or injuries occurring at work. Furnish such health services to both active duty military personnel and naval civilian employees per current directives.

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

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

(cc) Supplemental care or services. When medical or dental management is
§ 728.3 General restrictions and priorities.

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

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

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

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

<table>
<thead>
<tr>
<th>Priority</th>
<th>Category</th>
<th>Degree of entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 .......</td>
<td>A. Members of the uniformed services on active duty (including active duty for training and inactive duty training) and comparable personnel of the NATO nations meeting the conditions prescribed in this part.</td>
<td>See subpart B.</td>
</tr>
<tr>
<td></td>
<td>B. Members of a Reserve Component of the Armed Forces and National Guard personnel under orders.</td>
<td>See subpart C.</td>
</tr>
<tr>
<td>2 .......</td>
<td>Dependants of active duty members of the uniformed services, dependents of persons who died while in such a status, and the dependents of active duty members of NATO nations meeting the conditions prescribed in subpart E of this part.</td>
<td>See subparts D and E.</td>
</tr>
<tr>
<td>3 .......</td>
<td>Members of the Senior Reserve Officers’ Training Corps of the Armed Forces.</td>
<td>See § 728.23.</td>
</tr>
<tr>
<td>4 .......</td>
<td>Retired members of the uniformed services and their dependents and dependents of deceased retired members.</td>
<td>See subpart D.</td>
</tr>
<tr>
<td>5 .......</td>
<td>Civilian employees of the Federal Government under the limited circumstances covered by the Federal Employees’ Health Service program.</td>
<td>See § 728.80.</td>
</tr>
<tr>
<td>6 .......</td>
<td>All others, including ex-service maternity eligibles</td>
<td>See subparts F and G.</td>
</tr>
</tbody>
</table>
§ 728.4 Policies.

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

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

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

(d) Convalescent leave. Convalescent leave, a period of authorized absence of active duty members under medical care when such persons are not yet fit for duty, may be granted by a member’s commanding officer (CO) or the hospital’s CO per the following:

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

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

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

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

(iii) Medical officer in charge:

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

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

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

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

(5) Upon return from convalescent leave:

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

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

(6) If considered beneficial to the patient’s health, commanding officers of hospitals may grant convalescent leave
§ 728.4  32 CFR Ch. VI (7–1–02 Edition)

as a delay in reporting back to the parent command.

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

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

(i) Certain cosmetic procedures are a necessary part of training and retention of skills to meet the requirements of certification and recertification.

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

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

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

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

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

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

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

(1) General. Disengagement is accomplished only after alternative sources of care (i.e., transfer to another USMTF, a USTF, or other Federal source via the aeromedical evacuation system, if appropriate) and attendant costs, if applicable, have been fully explained to patient or responsible family member. Counselors may arrange for counseling by other appropriate sources when the patient is or may be eligible for VA, Medicare, MEDICAID, etc. benefits. With the individual’s permission, counselors may also contact State programs, local health organizations, or health foundations to determine if care is available for the condition upon which disengagement is based. After the disengagement decision is made, the patient to be disengaged or the responsible family member should be advised to return to the naval MTF for any care required subsequent to receiving the care that necessitated disengagement.

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

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

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

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

(iii) After obtaining the signature of the patient or responsible family member, the counselor will file a copy of the DD 2161 and the original of the NAVMED 6320/30 in the patient’s Health Record.

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

(A) Medicare-eligible individuals.

(B) MEDICAID-eligible individuals.

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

(D) Secretarial designees.

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

(ii) Disengagement decision. Disengage such individuals when:

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

(B) The MTF cannot, within the facility’s capability, effectively provide required care or manage the overall course of treatment even if augmented by services procured from other Government sources or through procure-
started and that providers and counselors under their commands are apprised of their individual responsibilities for counseling and documenting each disengagement. Failure to properly counsel and document counseling may result in the naval MTF having to absorb the cost of the entire episode of care. Document counseling on a NAVMED 6320/30. Disengagement for Civilian Medical Care. Completion of all items on the form assures documentation and written acknowledgement of appropriate disengagement and counseling. If the patient or responsible family member refuses to acknowledge receipt of counseling by signing the form, state this fact on the bottom of the form and have it witnessed by an officer. Give the patient or responsible family member a copy and immediately file the original in the patient’s Health Record.

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

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

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

(j) Evaluation after admission. Evaluate each patient as soon as possible after admission and continue reevaluation until disposition is made. Anticipate each patient’s probable type and date of disposition. Necessary processing by the various medical and administrative entities will take place concurrently with treatment of the patient. Make the medical disposition decision as early as possible for U.S. military patients inasmuch as immediate transfer to a specialized VA center or to a VA spinal cord injury center may be in their best interest (see NAVMEDCOMINST 6320.1.2). Make disposition decisions for military personnel of NATO nations in conformance with §728.42(d).

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

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

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

(3) Care authorized in §728.4(k)(2) will normally be accomplished in the naval MTF. However, when such action is not feasible, supplementation may be obtained outside the facility. Patients may be sent to other Federal or civilian facilities for specific treatment or services under §728.4(k)(3) provided they remain under medical management of the CO of the sending facility during the entire period of care.
(l) Family planning services. Provide family planning services following the provisions of SECNAVINST 6300.2A.

(m) Grouping of patients. Group hospitalized patients according to their requirements for housing, medical, or dental care. Provide gender identified quarters, facilities, and professional supervision on that basis when appropriate. Individuals who must be retained under limited medical supervision (medical hold) solely for administrative reasons or for medical conditions which can be treated on a clinic basis will be provided quarters and messing facilities, where practicable, separately from those hospitalized. Provide medical care for such patients on a periodic clinic appointment basis (see § 728.4(p) for handling convalescent patients). Make maximum use of administrative versus medical personnel in the supervision of such patients.

(n) Health benefits advising—(1) General. A Health Benefits Advising program must be started at all shore commands having one or more medical officers. While health benefits advisors are not required aboard every ship with a medical officer, the medical department representative can usually provide services to personnel requiring help. The number of health benefits advisors (HBAs) of a command will be commensurate with counseling and assistance requirements. The program provides health benefits information and counseling to beneficiaries of the Uniformed Services Health Benefits Program (USHBP) and to others who may or may not qualify for care in USMTFs. Office location of HBAs, their names, and telephone numbers will be widely publicized locally. In addition, help is required, contact MEDCOM-333 on AUTOVON 294-1127 or commercial (202) 659-1127. In addition to the duties described in § 728.4(n)(2), HBAs will:

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

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

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

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

(B) Provided the services and counseling outlined in § 728.4(n)(2) or § 728.3(g)(3)(ii), as appropriate, prior to their departure from the facility when such beneficiaries are referred or disengaged because care required is beyond the naval MTF’s capability. In an emergency, or when the patient or sponsor cannot be seen by the HBA prior to leaving, provide these benefits as soon thereafter as possible.

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

(i) Explain alternatives available to the patient.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Privacy Act. The right to privacy of individuals for whom hospitalization reports and other notifications are made will be safeguarded as required by the Privacy Act, implemented in the Department of the Navy by SECNAVINST 5211.5C, U.S. Navy Regulations, the Manual of the Judge Advocate General, the Marine Corps Casualty Procedures Manual, and the Manual of the Medical Department.

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

(i) Initial. Include in the initial report:

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

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

(C) Date of admission.

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


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

(iii) Termination report. Make a termination of hospitalization report to provide appropriate details for informational purposes.
(iv) Additional commands to apprise. The geographic naval medical region serving the hospital and, if different, the one serving the officer’s command will also be apprised of such admissions.

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

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

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

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

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

(i) In the contiguous 48 states. Patient administration department personnel will notify the NOK in person, by telephone, telegraph, or by other expeditious means. Included are notifications of the NOK upon arrival of all Navy patients received in the medical air-evacuation system.

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

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

(i) In the contiguous 48 states. The commander of the unit or activity to which the casualty member is assigned is responsible for initiating notification procedures to the NOK of seriously or very seriously ill or injured Marine Corps personnel. Patient administration department personnel will assure that liaison is established with the appropriate command or activity when such personnel are admitted. Patient administration personnel will notify the Marine’s command by telephone and request that cognizance be assumed for in-person initial notification of the NOK of Marine Corps patients admitted with an incapacity that makes personal and timely communication impractical and for those arriving via the medical air-evacuation system. If a member’s command is unknown or cannot be contacted, inform CMC (MHP–10) on AUTOVON 224–1787 or commercial (202) 684–1787.

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

(iii) In and outside the United States. In life-threatening situations, the Commandant of the Marine Corps desires and encourages medical officers to communicate with the next of kin. In other circumstances, request that the Marine Corps member communicate with the NOK if able. If unable, the medical officer should communicate with the NOK after personal notification has been effected.

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

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

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

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

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

(4) Messages—(1) Content. Phrase contents of messages (and telephonic notifications) in lay terms and provide sufficient details concerning the patient’s condition, prognosis, and diagnosis. Messages will also contain the name and telephone number of the facility’s point of contact. When appropriate for addressal, psychiatric and other sensitive diagnoses will be related with discretion. When indicated, also include specific comment as to whether the presence of the next of kin is medically warranted. NOTE: In making notification to the NOK of patients diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV), use one of the symptoms of the disease as the diagnosis (e.g., pneumonia) rather than “HIV”, “AIDS”, or the diagnostic code for AIDS.

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

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

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

(t) Prolonged definitive medical care. Prolonged definitive medical care in naval MTFs will not be provided for U.S. military patients who are unlikely to return to duty. The time at which a patient should be processed for disability separation must be determined on an individual basis, taking into consideration the interests of the patient as well as those of the Government. A long-term patient roster will be maintained and updated at least once monthly to enable commanding officers and other appropriate staff members to monitor the progress of all patients with 30 or more continuous days of hospitalization. Include on the roster basic patient identification data (name, grade or rate, register number, ward or absent status, clinic service, and whether assigned to a medical holding company), projected disposition (date, type, and profile), diagnosis, and cumulative hospital days (present facility and total).

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

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

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

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

(iii) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Refusal of major surgical operations may be reasonable or unreasonable, according to the circumstances. The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks should all be taken into consideration.

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

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

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

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

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

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

(vii) If a medical board decides that a diagnostic, medical, dental, or surgical procedure is indicated, these findings must be made known to the patient. The board’s report will show that the patient was afforded an opportunity to submit a written statement explaining
§ 728.4

the grounds for refusal. Forward any statement with the board’s report. Advise the patient that even if the disability originally arose in line of duty, its continuance may be attributable to the member’s unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member’s separation without benefits.

(vii) Also advise the patient that:

(A) Title 10 U.S.C. 1207 precludes disposition under chapter 61 of 10 U.S.C. if such a member’s disability is due to intentional misconduct, willful neglect, or if it was incurred during a period of unauthorized absence. A member’s refusal to complete a recommended therapy regimen or diagnostic procedure may be interpreted as willful neglect.

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

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

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

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

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

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

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

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

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

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

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

(ii) Implementing control measures to ensure that:

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

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

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

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

(E) Uniform criteria are applied in determining cooperative care situations without consideration of rate, grade, or uniformed service affiliation.
§ 728.4

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

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

(w) Sick call. A regularly scheduled assembly of sick and injured military personnel established to provide routine medical care. Subsequent to examination, personnel medically unfit for duty will be admitted to an MTF or placed in quarters; personnel not admitted or placed in quarters will be given such treatment as is deemed necessary. When excused from duty for medical reasons which do not require hospitalization, military personnel may be authorized to remain in quarters, not to exceed 72 hours.

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

(y) Subsisting out. A category in which officer and enlisted patients on the sicklist of a naval MTF may be placed when their daily presence is not required for treatment or examination, but who are not yet ready for return to duty. As a general rule, patients placed in this category should reside in the area of the facility and should be examined by the attending physician at least weekly. Enlisted personnel in a subsisting out status should be granted commuted rations.

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

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

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

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

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

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

(iii) CHAMPUS-authorized providers. CHAMPUS contractors are responsible for determining whether a civilian provider is CHAMPUS-authorized and for providing such information, upon request, to USMTFs.
§ 728.4

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

(v) Forms and documentation. A DD 2161, Referral For Civilian Medical Care, will be provided to each patient who is to receive supplemental or cooperative care or services. When supplemental care is required under the provisions of §728.4(z)(3) and (4), the provisions of §728.4(z)(3)(iii) apply. When cooperative care or services are required under the provisions of §728.4(z)(5) and (6), the provisions of §728.4(z)(5)(iv) apply.

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

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

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

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

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

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

(v) Obtain such cooperative care or services as delineated in §728.4(z)(6) from a civilian source under the terms of CHAMPUS.

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

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

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

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

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

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

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

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

(iii) Prescription drugs and medical supplies.

(iv) Civilian ambulance service ordered by USMTF personnel.

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

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

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

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

(B) Payment consideration for all care or services meeting CHAMPUS cooperative care criteria will not be considered under the terms of CHAMPUS. The DD 2161 will be marked by the health benefits advisor, or other designated individual, to show CHAMPUS as the source of payment consideration. All such DD 2161's must be approved by the commanding officer or designee. Give the patient sufficient copies to ensure a copy of the DD 2161 accompanies each CHAMPUS claim. Advise patients that CHAMPUS contractors will return claims received without the DD 2161. Also advise patients to arrange for return of a completed copy of the DD 2161 to the naval MTF for inclusion in their medical record.

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

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

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

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

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

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

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

(i) Authorized nondiagnostic medical services such as physical therapy, speech therapy, radiation therapy, and private duty (special) nursing.

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

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

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

(v) Optical devices (limited benefit).

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

(vii) All CHAMPUS Program for the Handicapped care.

(viii) Psychotherapeutic or psychiatric care.

(ix) Except for those types of care or services delineated in §728.4(2)(4), all other CHAMPUS authorized medical services not available in the naval MTF (for example, neonatal intensive care).

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

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

(2) Submission—(i) Naval patients. For naval patients, submit the completed front side of the NAVJAG 5890/12 to the appropriate action JAG designee listed in section 2401 of the JAG Manual at the following times:

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

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

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

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

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

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

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

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

(E) Veterans Administration. Director of the Veterans Administration hospital responsible for medical care of the patient being provided treatment.

(F) Department of Health and Human Services (DHHS). Regional attorney’s office in the area where the incident occurred.

(3) Supplementary documents. An SF 502 should accompany the final submission in all cases involving inpatient care. Additionally, when Government care exceeds $1,000, inpatient facilities should complete and submit the back side of NAVJAG 5890/12 to the action JAG designee. On this side of the form, the determination of ‘‘patient status’’ may be used on local hospital usage.

(4) Health record entries. Retain copies of all NAVJAG 5890/12’s in the Health Record of the patient. Immediately notify action JAG designee when a patient receives additional treatment subsequent to the issuance of a final NAVJAG 5890/12 if the subsequent treatment is related to the condition which gave rise to the claim.

(5) No-fault insurance. When no-fault insurance is or may be involved, the naval legal service office at which the JAG designee is located is responsible for apprising the insurance carrier that the Federal payment for the benefits of this part is secondary to any no-fault insurance coverage available to the injured individual.

(6) Additional guidance. Chapter 24 of the JAG Manual and BUMEDINST 5890.1A contain supplemental information.

(bb) Transfer of patients—(1) General. Treat all patients at the lowest echelon equipped and staffed to provide necessary care; however, when transfer to another MTF is considered necessary, use Government transportation when available. Accomplish medical regulating per the provisions of OPNAVINST 4630.25B and BUMEDINST 6320.1D.

(2) U.S. military patients. Do not retain U.S. military patients in acute care MTFs longer than the minimum time necessary to attain the mental or physical state required for return to duty or separation from the service. When required care is not available at the facility providing area inpatient care, transfer patients to the most readily accessible USMTF or designated USTF possessing the required capability. Transportation of the patient and a medical attendant or attendants, if required, is authorized at Government expense. Since the VA is staffed and equipped to provide care in the most expeditious manner, follow the administrative procedures outlined in NAVMEDCOMINST 6320.12 when:

(i) A patient has received the maximum benefit of hospitalization in a naval MTF but requires a protracted period of nursing home type care. The VA can provide this type care or arrange for it from a civilian source for individuals so entitled.

(ii) Determined that there is or may be spinal cord injury necessitating immediate medical and psychological attention.

(iii) A patient has sustained an apparently severe head injury or has been blinded necessitating immediate intervention beyond the capabilities of naval MTFs.

(iv) A determination has been made by the Secretary concerned that a member on active duty has an alcohol or drug dependency or drug abuse disability.

(3) Retired members and dependents. When a retired member of a dependent requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF located in an overlapping inpatient catchment area of the transferring facility if either has the required capability.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest
USMTF or designated USTF with required capability, regardless of its location.

(iii) Arrange for transfer of retired members to the Veterans Administration MTF nearest the patient’s residence.

(iv) Provide aid in releasing the patient to a civilian provider of the patient’s choice under the terms of Medicare, if the patient is entitled. Beneficiaries entitled to Medicare, Part A, because they are 65 years of age or older or because of a disability or chronic renal disease, lose CHAMPUS eligibility but remain eligible for care in USMTFs and designated USTFs.

(v) If the patient is authorized benefits under CHAMPUS, disengage from medical management and issue a Non-availability Statement (DD 1251) per the provisions of §728.33, for care under CHAMPUS. This step should only be taken after due consideration is made of the supplemental/cooperative care policy addressed in §728.4(z).

(4) Dependents of members of NATO nations. When a dependent, as defined in §728.41, of a member of a NATO nation requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF with required capability if either is located in an overlapping inpatient catchment area of the transferring facility.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF with required capability, regardless of its location.

(iii) Effect disposition per §728.42(d).

(5) Others—(i) Medical care. Section 34 of title 24, United States Code, provides that hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor’s subcontractor, to dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: Provided, such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities. Hospitalization of such persons in a naval MTF is further limited by 24 U.S.C. 35 to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care.

(ii) Dental care. Section 35 of title 24 provides for space available routine dental care, other than dental prosthesis and orthodontia, for the categories of individuals enumerated in §728.4(bb)(5)(i): Provided, that such services are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(iii) Transfer. Accomplish transfer and subsequent treatment of individuals in §728.4(bb)(5)(i) per the provisions of law enumerated in §728.4(bb)(5) (i) and (ii).

(cc) Verification of patient eligibility—

(1) DEERS. (i) The Defense Enrollment Eligibility Reporting System (DEERS) was implemented by OPNAVINST 1750.2. Where DEERS has been started at naval medical and dental treatment facilities, commanding officers will appoint, in writing, a DEERS project officer to perform at the base level. The project officer’s responsibilities and functions include coordinating, executing, and maintaining base-level DEERS policies and procedures; providing liaison with line activities, base-level personnel project officers, and base-level public affairs project officers; meeting and helping the contractor field representative on site visits to each facility under the project officer’s cognizance; and compiling and submitting reports required within the command and by higher authority.

(ii) Commanding officers of afloat and deployable units are encouraged to appoint a unit DEERS medical project officer as a liaison with the hospital project officer providing services to local medical and dental treatment facilities. Distribute notice of such appointments to all concerned facilities.

(iii) When a DEERS project officer has been appointed by a naval MTF or DTF, submit a message (report control symbol MED 6320–42) to COMNAVMEDCOM, with information
copies to appropriate chain of command activities, no later than 10 October annually, and situationally when changes occur. As a minimum, the report will provide:

(A) Name of reporting facility. If the project officer is responsible for more than one facility, list all such facilities.

(B) Mailing address including complete zip code (zip + 4) and unit identification code (UIC). Include this information for all facilities listed in §728.4(cc)(1)(ii)(A).

(C) Name, grade, and corps of the DEERS project officer designated.

(D) Position title within parent facility.

(E) AUTOVON and commercial telephone numbers.

(2) DEERS and the identification card. This subpart includes DEERS procedures for eligibility verification checks to be used in conjunction with the identification card system as a basis for verifying eligibility for medical and dental care in USMTFs and uniformed services dental treatment facilities (USDTS). For other than emergency care, certain patients are required to have a valid ID card in their possession and, under the circumstances described in §728.4(cc)(3), are also required to meet DEERS criteria before treatment or services are rendered. Although DEERS and the ID card system are interrelated, there will be instances where a beneficiary is in possession of an apparently valid ID card and the DEERS verification check shows that eligibility has terminated or vice versa. Eligibility verification via an ID card does not override an indication of eligibility in DEERS without some other collateral documentation. Dependents (in possession of or without ID cards) who undergo DEERS checking will be considered ineligible for the reasons stated in §728.4(cc)(4)(v) (A) through (G). For problem resolution, refer dependents of active duty members to the personnel support detachment (PSD) servicing the sponsor’s command; refer retirees, their dependents, and survivors to the local PSD.

(3) Identification cards and procedures. All individuals, including members of uniformed services in uniform, must provide valid identification when requesting health benefits. Although the most widely recognized and acceptable forms of identification are DD 1173, DD 2, Form PHS–1866–1, and Form PHS–1866–3 (Ret), individuals presenting for care without such identification may be rendered care upon presentation of other identification as outlined in this part. Under the circumstances indicated, the following procedures will be followed when individuals present without the required ID card.

(i) Children under 10. Although a DD 1173 (Uniformed Services Identification and Privilege Card) may be issued to children under 10 years of age, under normal circumstances they are not. Accordingly, certification and identification of children under 10 years of age are the responsibility of the member, retired member, accompanying parent, legal guardian, or acting guardian. Either the DD 1173 issued the spouse of a member or former member or the identification card of the member or former member (DD 2, DD 2 (Ret), Form PHS–1866–1, or Form PHS–1866–3 (Ret)) is acceptable for the purpose of verifying eligibility of a child under 10 years of age.

(ii) Indefinite expiration. The fact that the word “indefinite” may appear in the space for the expiration date on a member’s card does not lessen its acceptability for identification of a child. See §728.4(cc)(3)(ii) for dependent’s cards with an indefinite expiration date.

(iii) Expiration date. To be valid, a dependent’s DD 1173 must have an expiration date. Do not honor a dependent’s DD 1173 with an expiration date of “indefinite”. Furthermore, such a card should be confiscated, per NAVMILPERSCOMINST 1750.1A, and forwarded to the local PSD. The PSD may then forward it to the Commander, Naval Military Personnel Command, (NMPC (641D)/Pers 7312), Department of the Navy, Washington, DC 20370–5000 for investigation and final disposition. Render necessary emergency treatment to such a person. The patient administration department must determine such a patient’s beneficiary status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing
§ 728.4

32 CFR Ch. VI (7–1–02 Edition)

action for treatment will then proceed following NAVMED P–5020.

(iv) Without cards or with expired cards. (A) When parents or parents-in-law (including step-parents and step-parents-in-law) request care in naval MTFs or DTFs without a DD 1173 in their possession or with expired DD 1173’s, render care if they or their sponsor sign a statement that the individual requiring care has a valid ID card or that an application has been submitted for a renewal DD 1173. In the latter instance, include in the statement the allegation that: (1) The beneficiary is dependent upon the service member for over one-half of his or her support, and (2) that there has been no material change in the beneficiary’s circumstances since the previous determination of dependency and issuance of the expired card. Place the statement in the beneficiary’s medical record. Inform the patient or sponsor that if eligibility is not verified by presentation of a valid ID card to the patient administration department within 30 calendar days, the facility will initiate action to recoup the cost of care. If indicated, billing action for the cost of treatment will then proceed following NAVMED P–5020.

(B) When recent accessions, National Guard, reservists, or Reserve units are called to active duty for a period greater than 30 days and neither the members nor their dependents are at yet in receipt of their identification cards, satisfactory collateral identification may be accepted in lieu thereof, i.e., official documents such as orders, along with a marriage license, or birth certificate which establish the individual’s status as a dependent of a member called to duty for a period which is not specified as 30 days or less. For a child, the collateral documentation must include satisfactory evidence that the child is within the age limiting criteria outlined in §728.31(b)(4).

An eligible dependent’s entitlement, under the provisions of this subpart, starts on the first day of the sponsor’s active service and ends as of midnight on the last day of active service.

(A) DEERS checking. Unless otherwise indicated, all DEERS verification procedures will be accomplished in conjunction with possession of a valid ID card.

(i) Prospective DEERS processing.—(A) Appointments. To minimize difficulties for MTFs, DTFs, and patients, DEERS checks are necessary for prospective patients with future appointments made through a central or clinic appointment desk. Without advance DEERS checking, patients could arrive at a facility with valid ID cards but may fail the DEERS check, or may arrive without ID cards but be identified by the DEERS check as eligible. Records, including full social security numbers, of central and clinic appointment systems will be passed daily to the DEERS representative for a prospective DEERS check. This enables appointment clerks to notify individuals with appointments of any apparent problem with the DEERS or ID card system and refer those with problems to appropriate authorities prior to the appointment.

(B) Prescriptions. Minimum checking requirements of the program require prospective DEERS checks on all individuals presenting prescriptions of civilian providers (see §728.4(cc)(4)(iv)(D)).

(ii) Retrospective DEERS processing. Pass daily logs (for walk-in patients, patients presenting in emergencies, or patients replacing last minute appointment cancellations) to the DEERS representative for retrospective batch processing if necessary for the facility to meet the minimum checking requirements in §728.4(cc)(4)(iv). For DEERS processing, the last four digits of a social security number are insufficient. Accordingly, when retrospective processing is necessary, the full social security number of each patient must be included on daily logs.

(iii) Priorities. With the following initial priorities, conduct DEERS eligibility checks using a CRT terminal, single-number dialer telephone, or 800 number access provided for the specific purpose of DEERS checking to:

(A) Determine whether a beneficiary is enrolled.

(B) Verify beneficiary eligibility. Establishment of eligibility is under the cognizance of personnel support activities and detachments.
(C) Identify any errors on the data base.

(iv) Minimum checking requirements. Process patients presenting at USMTFs and DTFs in the 50 States for DEERS eligibility verification per the following minimum checking requirements.

(A) Twenty five percent of all outpatient visits.

(B) One hundred percent of all admissions.

(C) One hundred percent of all dental visits at all DTFs for other than active duty members, retired members, and dependents.

(I) Active duty members are exempt from DEERS eligibility verification checking at DTFs.

(2) Retired members will receive a DEERS verification check at the initial visit to any DTF and annually thereafter at time of treatment at the same facility. To qualify for care as a result of the annually performed verification check, the individual performing the eligibility check will make a notation to this effect on an SF 603, Health Record—Dental. Include in the notation the date and result of the check.

(3) Dependents will have a DEERS eligibility verification check upon initial presentation for evaluation or treatment. This check will be valid for up to 30 days if, when the check is conducted, the period of eligibility requested is 30 days. A 30-day eligibility check may be accomplished online or via telephone by filling in or requesting the operator to fill in a 30 day period in the requested treatment dates on the DEERS eligibility inquiry screen. Each service or clinic is expected to establish auditable procedures to trace the date of the last eligibility verification on a particular dependent.

(D) One hundred percent of pharmacy outpatients presenting new prescriptions written by a civilian provider. Prospective DEERS checks are required for all patients presenting prescriptions of civilian providers. A DEERS check is not required upon presentation of a request for refill of a prescription of a civilian provider if the original prescription was filled by a USMTF within the past 120 days.

(E) One hundred percent of all individuals requesting treatment without a valid ID card if they represent themselves as individuals who are eligible to be included in the DEERS data base.

(v) Ineligibility determinations. When a DEERS verification check is performed and eligibility cannot be verified for any of the following reasons, deny routine nonemergency care unless the beneficiary meets the criteria for a DEERS eligibility override as noted in §728.4(cc)(4)(viii).

(A) Sponsor not enrolled in DEERS.

(B) Dependent not enrolled in DEERS.

(C) ''End eligibility date'' has passed. Each individual in the DEERS data base has a date assigned on which eligibility is scheduled to end.

(D) Sponsor has separated from active duty and is no longer entitled to benefits.

(E) Spouse has a final divorce decree from sponsor and is not entitled to continued eligibility as a former spouse.

(F) Dependent child is married.

(G) Dependent becomes an active duty member of a uniformed service. (Applies only to CHAMPUS benefits since the former dependent becomes entitled to direct care benefits in his or her own right as an active duty member and must enroll in DEERS.)

(vi) Emergency situations. When a physician determines that emergency care is necessary, initiate treatment. If admitted after emergency treatment has been provided, a retrospective DEERS check is required. If an emergency admission or emergency outpatient treatment is accomplished for an individual whose proof of eligibility is in question, the patient administration department must determine the individual’s beneficiary status within 30 calendar days of treatment and forward such determination to the fiscal department. Eligibility verifications will normally consist of presentation of a valid ID card along with either a positive DEERS check or a DEERS override as noted in §728.4(cc)(4)(viii). If indicated, billing action for treatment will then proceed per NAVMED P-5020.

(vii) Eligibility verification for non-emergency care. When a prospective patient presents without a valid ID card and:
§ 728.4 32 CFR Ch. VI (7–1–02 Edition)

(A) DEERS does not verify eligibility, deny nonemergency care. Care denial will only be accomplished by supervisory personnel designated by the commanding officer.

(B) The individual is on the DEERS data base, do not provide nonemergency care until a NAVMED 6320/9. Dependent’s Eligibility for Medical Care, is signed by the member, patient, patient’s parent, or patient’s legal or acting guardian. This form attests the fact that eligibility has been established per appropriate directives and includes the reason a valid ID card is not in the prospective patient’s possession. Apprise the aforementioned responsible individual of the provisions on the form NAVMED 6320/9 now requiring presentation of a valid ID card within 30 calendar days. Deny treatment or admission in physician determined nonemergency situations of persons refusing to sign the certification on the NAVMED 6320/9. For persons rendered treatment, patient administration department personnel must determine their eligibility status within 30 calendar days and forward such determination to the fiscal department. If indicated, billing action for treatment will then proceed following NAVMED P–5020.

(viii) DEERS overrides. Possession of an ID card alone does not constitute sufficient proof of eligibility when the DEERS check does not verify eligibility. What constitutes sufficient proof will be determined by the reason the patient failed the DEERS check. For example, groups most expected to fail DEERS eligibility checks are recent accession members and their dependents, Guard or Reserve members recently activated for training periods of greater than 30 days and their dependents, and parents and parents-in-law with expired ID cards. Upon presentation of a valid ID card, the following are reasons to “override” a DEERS check either showing the individual as ineligible or when an individual does not appear in the DEERS database.

(A) DD 1172. Patient presents an original of a copy of a DD 1172, Application for Uniformed Services Identification and Privilege Card, which is also used to enroll beneficiaries in DEERS.

If the original is used, the personnel support detachment (PSD) furnishing the original will list the telephone number of the verifying officer to aid in verification. Any copy presented must have an original signature in section III; printed name of verifying officer, his or her grade, title, and telephone number; and the date the copy was issued. For treatment purposes, this override expires 120 days from the date issued.

(B) Recently issued identification cards—(1) DD 1173. Patient presents a recently issued DD 1173. Uniformed Services Identification and Privilege Card. Examples are spouses recently married to sponsor, newly eligible stepchildren, family members of sponsors recently entering on active duty for a period greater than 30 days, parents or parents-in-law, and unmarried spouses recently determined eligible. For treatment purposes, this override expires 120 days from the date issued.

(2) Other ID cards. Patient presents any of the following ID cards with a date of issue within the previous 120 days: DD 2, DD 2 (Ret), Form PHS 1866–1, or Form PHS 1866–3 (Ret). When these ID cards are used for the purpose of verifying eligibility for a child, collateral documentation is necessary to ensure the child is actually the alleged sponsor’s dependent and in determining whether the child is within the age limiting criteria outlined in §728.31(b)(4).

(C) Active duty orders. Patient or sponsor presents recently issued orders to active duty for a period greater than 30 days. Copies of such orders may be accepted up to 120 days of their issue date.

(D) Newborn infants. Newborn infants for a period of 1 year after birth provided the sponsor presents a valid ID card.

(E) Recently expired ID cards. If the DEERS data base shows an individual as ineligible due to an ID card that has expired within the previous 120 days (shown on the screen as “Elig with valid ID card”), care may be rendered when the patient has a new ID card issued within the previous 120 days.

(F) Sponsor’s duty station has an FPO or APO number or sponsor is stationed outside the 50 United States. Do not deny
care to bona fide dependents of sponsors assigned to a duty station outside the 50 United States or assigned to a duty station with an FPO or APO address as long as the sponsor appears on the DEERS data base. Before initiating nonemergency care, request collateral documentation showing relationship to sponsor when the relationship is or may be in doubt.

(G) Survivors. Dependents of deceased sponsors when the deceased sponsor failed to enroll in or have his or her dependents enrolled in DEERS. This situation will be evidenced when an eligibility check on the surviving widow or widower (or other dependent) finds that the sponsor does not appear (screen shows “Sponsor SSN Not Found”) or the survivor’s name appears as the sponsor but the survivor is not listed separately as a dependent. In any of these situations, if the survivor has a valid ID card, treat the individual on the first visit and refer him or her to the local personnel support detachment for correction of the DEERS data base. For second and subsequent visits prior to appearance on the DEERS data base, require survivors to present a DD 1172 issued per §728.4(cc)(4)(viii)(A).

(H) Patients not eligible for DEERS enrollment. (1) Secretarial designees are not eligible for enrollment in DEERS. Their eligibility determination is verified by the letter, on one of the service Secretaries’ letterhead, of authorization issued.

(2) When it becomes necessary to make a determination of eligibility on other individuals not eligible for entry on the DEERS data base, patient administration department personnel will obtain a determination from the purported sponsoring agency, if appropriate. When necessary to treat or admit a person who cannot otherwise present proof of eligibility for care at the expense of the Government, do not deny care based only on the fact that the individual is not on the DEERS data base. In such instances, follow the procedures in NAVMED P-5020 to minimize, to the fullest extent possible, the write-off of uncollectible accounts.

§728.12 Extent of care.

Members who are away from their duty stations or are on duty where there is no MTF of their own service may receive care at the nearest available Federal MTF (including designated USTFs) with the capability to provide required care. Care will be provided without regard to whether the condition for which treatment is required was incurred or contracted in line of duty.

(a) All uniformed services active duty members. (1) All eligible beneficiaries
covered in this subpart are entitled to and will be rendered the following treatment and services upon application to a naval MTF whose mission includes the rendering of the care required. This entitlement provides that when required care and services are beyond the capabilities of the facility to which the member applies, the commanding officer of that facility will arrange for care from another USMTF, designated USTF, or other Federal source or will authorize and arrange for direct use of supplemental services and supplies from civilian non-Federal sources out of operation and maintenance funds.

(i) Necessary hospitalization and other medical care.

(ii) Occupational health services as defined in §728.2(z).

(iii) Necessary prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and other orthopedic appliances (see subpart H). When these items need repair or replacement and the items were not damaged or lost through negligence, repair or replacement is authorized at Government expense.

(iv) Routine dental care.

(2) When a USMTF, with a mission of providing the care required, releases the medical management of an active duty member of the Navy, Marine Corps, Army, Air Force, or a commissioned corps member of USPHS or NOAA, the resulting civilian health care costs will be paid by the referring facility.

(3) The member’s uniformed service will be billed for care provided by the civilian facility only when the referring MTF is not organized nor authorized to provide needed health care (see part 732 of this chapter for naval members). Saturation of service or facilities does not fall within this exception. When a naval MTF retains medical management, the costs of supplemental care obtained from civilian sources is paid from funds available to operate the MTF which manages care of the patient. When it becomes necessary to refer a USPHS or NOAA commissioned corps member to a non-Federal source of care, place a call to the Department of Health and Human Services (DHHS), Chief, Patient Care Services on (301) 443–1943 or FTS 443–1943 if DHHS is to assume financial responsibility. Patient Care Services is the sole source for providing authorization for non-Federal care at DHHS expense.

(b) Maternity episode for active duty female members. A pregnant active duty member who lives outside the MHSS inpatient catchment area of all USMTFs is permitted to choose whether she wishes to deliver in a closer civilian hospital or travel to the USMTF for delivery. If such a member chooses to deliver in a naval MTF, makes application, and presents at that facility at the time for delivery, the provisions of paragraph (a) of this section apply with respect to the furnishing of needed care, including routine newborn care (i.e., nursery, newborn examination, PKU test, etc.); arrangements for care beyond the facility’s capabilities; or the expenditure of funds for supplemental care or services. Pay expenses incurred for the infant in USMTFs or civilian facilities (once the mother has been admitted to the USMTF) from funds available for care of active duty members, unless the infant becomes a patient in his or her own right either through an extension of the birthing hospital stay because of complications, subsequent transfer to another facility, or subsequent admission. If the Government is to assume financial responsibility for:

(1) Care of pregnant members residing within the MHSS inpatient catchment area of a uniformed services hospital or in the inpatient catchment area of a designated USTF, such members are required to:

(i) Make application to that facility for care, or

(ii) Obtain authorization, per part 732 of this chapter, for delivery in a civilian facility.

(2) Non-Federal care of pregnant members residing outside inpatient catchment areas of USMTFs and USTFs, the member must request and receive authorization per part 732 of this chapter. Part 732 of this chapter also provides for cases of precipitous labor necessitating emergency care.
Pregnant Servicewomen, contains medical-administrative guidelines on management prior to admission and after discharge from admission for delivery.

(c) **Reserve and National Guard personnel.** In addition to those services covered in paragraphs (a) and (b) of this section, Reserve and National Guard personnel are authorized the following under conditions set forth. (See §728.25 for additional benefits for National Guard personnel.)

1. Personnel whose units have an active Army mission of manning missile sites are authorized spectacle inserts for protective field masks.

2. Personnel assigned to units designated for control of civil disturbances are authorized spectacle inserts for protective field masks M17.

§728.13 Application for care.

Possession of an ID card (a green colored DD 2 (with letter suffix denoting branch of service), Armed Forces Identification Card; a green colored PHS 1866-1, Identification Card; or a red colored DD 2 Res (Reservists on active duty for training)) alone does not constitute sufficient proof of eligibility. Accordingly, make a DEERS check, per §728.4(cc), before other than emergency care is rendered to the extent that may be authorized.

§728.14 Pay patients.

Care is provided on a reimbursable basis to: Coast Guard active duty officers, enlisted personnel, and academy cadets; Public Health Service Commissioned Corps active duty officers; and Commissioned Corps active duty officers of the National Oceanic and Atmospheric Administration. Accordingly, patient administration personnel will initiate the collection action process in subpart J in each instance of inpatient or outpatient care provided to these categories of patients.

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

§728.21 Navy and Marine Corps reservists.

(a) **Scope.** This section applies to reservists, as those terms are defined in §728.2, ordered to active duty for training or inactive duty training for 30 days or less. Reservists serving under orders specifying duty in excess of 30 days, such as Sea and Air Mariners (SAMS) while on initial active duty for training, will be provided care as members of the Regular service per subpart B.

(b) **Entitlement.** Per 10 U.S.C. 1074a(a), reservists who incur or aggravate an injury, illness, or disease in line of duty while on active duty for training or inactive duty training for a period of 30 days or less, including travel to and from that duty, are entitled to medical and dental care appropriate for the treatment of that injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment. Care is authorized for such an injury, illness, or disease beyond the period of training to the same extent as care is authorized for members of the Regular service (see subpart B) subject to the provisions of §728.21(e).

(c) **Questionable circumstances.** If the circumstances are questionable, referral to the OMA or ODA is appropriate. If necessary, make referral to the Naval Medical Command (MEDCOM–33 for medical and MEDCOM–06 for dental) on determinations of entitlements.

(d) **Line of duty.** For the purpose of providing treatment under laws entitling reservists to care, an injury, illness, or disease which is incurred, aggravated, or becomes manifest while a
§ 728.22 Members of other reserve components of the uniformed services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40–3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168–6, Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, obtain such authorization from the reservist’s unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see subpart G) pending final determination of eligibility.

§ 728.22 Members of other reserve components of the uniformed services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40–3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168–6, Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, obtain such authorization from the reservist’s unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see subpart G) pending final determination of eligibility.
upon presentation of a written request from the Commissioned Personnel Operations Division, OPM/OAM, 5600 Fishers Lane, Rockville, MD 20852.

§ 728.23 Reserve Officers’ Training Corps (ROTC).

(a) Eligible beneficiaries. (1) Members of the Senior Reserve Officers’ Training Corps of the Armed Forces including students enrolled in the 4-year Senior ROTC Program or the 2-year Advanced Training Senior ROTC Program.

(2) Designated applicants for membership in the Navy, Army, and Air Force Senior ROTC Programs during their initial 6-weeks training period (practice cruises or field training).

(3) Medical, dental, pharmacy, veterinary or science allied to medicine students who are commissioned officers of a reserve component of an Armed Force who have been admitted to and training in a unit of a Senior Reserve Officers’ Training Corps.

(b) Extent of care. (1) While attending or en route to or from field training or practice cruises:

(i) Medical care for a condition incurred without reference to line of duty.

(ii) Routine dental care.

(iii) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that have become damaged or lost during training duty, not through negligence of the individual, may be repaired or replaced as necessary at government expense.

(iv) Care of remediable physical defects, elective surgery or other remediable treatment for conditions that existed prior to a period of training duty are not authorized without approval from the appropriate OMA or ODA, or from the Commander, Naval Medical Command (MEDCOM–33 for medical and MEDCOM–06 for dental).

(v) Medical examinations and immunizations.

(vi) ROTC members are authorized continued medical care, including hospitalization, upon expiration of their field training or practice cruise period, the same as reservists in §728.21(b) and §728.22.

(2) While attending a civilian educational institution:

(i) Medical care in naval MTFs, including hospitalization, for a condition incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for purposes of making visits of observation, including participation in service-sponsored sports, recreational, and training activities.

(ii) Medical examinations, including hospitalization necessary for the proper conduct thereof.

(iii) Required immunizations, including hospitalization for severe reactions therefrom.

(c) Authorization. The individual’s commanding officer will prepare a letter of authorization addressed to the commanding officer of the MTF concerned.

(d) ROTC members as beneficiaries of the Office of Workers’ Compensation Programs (OWCP). Under circumstances described therein, render care as outlined in §728.53 to members of the ROTC as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Officer Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of §728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs are authorized access to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual’s commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is necessary for the proper conduct of the special physical examinations. Hospitalization should be kept
§ 728.25 Army and Air Force National Guard personnel.

(a) Medical and dental care. Upon presentation of a letter of authorization, render care as set forth in AR 40–3 (Medical, Dental, and Veterinary Care) and AFR 168–6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who contract a disease or become ill in line of duty while on full-time National Guard duty, (including leave and liberty therefrom) or while traveling to or from that duty. The authorizing letter will include name, social security number, grade, and organization of the member; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will indicate that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical or dental care. Limit care to that appropriate for the injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment.

(b) Physical examinations. AR 40–3 and AFR 168–6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit’s commanding officer, naval MTFs may perform the requested physical examination per the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible beneficiaries and health benefits authorized.

(a) Retired members of the uniformed services. Retired members, as defined in §728.2(aa), are authorized the same medical and dental benefits as active duty members subject to the availability of space and facilities, capabilities of the professional staff, and the priorities in §728.3, except that:

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as care to active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles, are authorized when required to satisfy patient needs. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Military ophthalmic laboratories will not furnish occupational type spectacles, such as aviation, industrial safety, double segment, and mask insert, to retired military personnel (NAVMEDCOMINST 6810.1 refers).

(b) Dependents of members of former members. Include:

(1) The spouse.

(2) The unremarried widow.

(3) The unremarried widower.

(4) An unmarried legitimate child, including an adopted child or a stepchild who either—

(i) Has not passed his or her 21st birthday;

(ii) Is incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of the member’s or former member’s death, in fact dependent on the member for over one-half of his or her support; or

(iii) Has not passed the 23rd birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member’s or former member’s death, in fact dependent on the member for over one-half of his or her support. (If such a child suffers a disabling illness or injury and is unable to return to school, the child remains eligible for benefits until 6 months after the disability is removed, or until the 23rd birthday is reached, whichever comes first.)

(5) An unmarried illegitimate child or illegitimate step-child who is, or was at the time of sponsor’s death, dependent on the sponsor for more than one-half of his or her support; residing with or in a home provided by the
sponsor or the sponsor’s spouse, as applicable, and is—
(i) Under 21 years of age; or
(ii) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individual’s 21st birthday; or
(iii) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved per §728.31(b)(4)(iii).

(6) A parent or parent-in-law, who is, or was at the time of the member’s or former member’s death, in fact dependent on the member for over one-half of such parent’s support and residing in the sponsor’s household.

(7) An unremarried former spouse of a member or former member who does not have medical coverage under an employer-sponsored health plan, and who:
(i) On the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member at least 20 years during which period the member of former member performed at least 20 years of service creditable in determining that member’s or former member’s eligibility for retired or retainer pay, or equivalent pay.
(ii) Had been married to the member of former member at least 20 years, at least 15 of which were during the period the member of former member performed service creditable in determining the member’s eligibility for retired or retainer pay, or equivalent pay. The former spouse’s sponsor must have performed at least 20 years of service creditable in determining the sponsor’s eligibility for retired or retainer pay, or equivalent pay. The former spouse’s sponsor must have performed at least 20 years of service creditable in determining the sponsor’s eligibility for retired or retainer pay, or equivalent pay. The former spouse’s sponsor must have performed at least 20 years of service creditable in determining the sponsor’s eligibility for retired or retainer pay, or equivalent pay.
(A) Eligibility for such former spouses continue until remarriage if the final decree of divorce, dissolution, or annulment occurred before 1 April 1985.
(B) Eligibility terminates the later of: Either 2 years from the date of the final decree of divorce, dissolution, or annulment; or 1 April 1988 for such former spouses whose final decree occurred on or after 1 April 1985.

(ii) Had elected to participate in the Survivor Benefit Plan, may not be rendered medical or dental care under the sponsor’s entitlement until the date on which such member of former member would have attained age 60.

(4) A spouse, not qualifying as a former spouse, who is divorced from a member loses eligibility for benefits as of midnight of the date the divorce becomes final. This includes loss of maternity care benefits for wives who are pregnant at the time a divorce becomes
§ 728.31

32 CFR Ch. VI (7–1–02 Edition)

A spouse does not lose eligibility through issuance of an interlocutory decree of divorce even when a property settlement has been approved which releases the member from responsibility for the spouse’s support. A spouse’s eligibility depends upon the relationship of the spouse to the member; so long as the relationship of husband and wife is not terminated by a final divorce or annulment decree, eligibility continues.

(5) Eligibility of children is not affected by the divorce of parents except that a stepchild relationship ceases upon divorce or annulment of natural parent and step-parent. A child’s eligibility for health benefits is not affected by the remarriage of the divorced spouse maintaining custody unless the marriage is to an eligible service member.

(6) A stepchild relationship does not cease upon death of the member step-parent but does cease if the natural parent subsequently remarries.

(7) A child of an active duty or retired member, adopted after that member’s death, retains eligibility for health benefits. However, the adoption of a child of a living member (other than by a person whose dependents are eligible for health benefits at USMTFs) terminates the child’s eligibility.

(8) If a member’s child is married before reaching age 21 to a person whose dependents are not eligible for health benefits at USMTFs, eligibility ceases as of midnight on the date of marriage. Should the marriage be terminated, the child again becomes eligible for benefits as a dependent child if otherwise eligible.

(d) Health benefits authorized.

(1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen, and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or CO’s designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

(i) Medical and surgical conditions.

(ii) Contagious diseases.

(iii) Nervous, mental, and chronic conditions.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant, and well-baby care for mothers and infants meeting the eligibility requirements of §728.31(b). If a newborn infant of an unmarried dependent minor daughter becomes a patient in his or her own right after discharge of the mother, classify the infant as civilian humanitarian non-indigent inasmuch as §728.31(b) does not define the infant as a dependent of the active duty or retired service member. Therefore, the minor daughter’s sponsor (parent) should be counseled concerning the possibility of Secretarial designee status for the infant (see §728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations, physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requested by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. Rendering of such services is subordinate to and will not unduly
interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. Ensure that the release of any information to non-Navy employed physicians is in consonance with applicable provisions of SECNAVINST 5211.5C.

(9) Family planning services as delineated in SECNAVINST 6300.2A. Abortions, at the expense of the Government, may not be performed except where the life of the mother would be endangered if the fetus were carried to term.

(10) Dental care worldwide on a space available basis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government at facilities outside the United States and at specific installations within the United States where adequate civilian facilities are unavailable.

(17) Special lenses (including intraocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) One wig if the individual has alopecia resulting from treatment of a malignant disease: Provided the individual has not previously received a wig at the expense of the United States.

(e) Dependents of reserves. (1) A dependent, as defined in §728.31(b), of a deceased member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve, who—

(i) Was ordered to active duty or to perform inactive-duty training for any period of time.

(ii) Was disabled in the line of duty from an injury while so employed, and

(iii) Dies from such a specific injury, illness, or disease is entitled to the same care as provided for dependents in §728.31(c).

(2) The provisions of this subpart D are not intended to authorize medical and dental care precluded for dependents of members of Reserve components who receive involuntary orders to active duty under 10 U.S.C. 270b.

(f) Unauthorized care. In addition to the devices listed in §728.31(d)(16) as unauthorized, dependents are not authorized care for elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

§728.32 Application for care.

Possession of an ID card alone (DD 2 (Retired), PHS–1896–3 (Retired), or DD 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check will be instituted per §728.4 (cc) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of §728.34 apply. When required inpatient care cannot be rendered and a decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of §728.33 apply.

§728.33 Nonavailability statement (DD 1251).

(a) General. Per DODINST 6015.19 of 26 Nov. 1984, the following guidelines are effective as of 1 Jan. 1985. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) Applicability. The following provisions are applicable to nonemergency inpatient care only. A DD 1251 is not required:
(1) For emergency care (see paragraph (d)(1)) of this section.
(2) When the beneficiary has other insurance (including Medicare) that provides primary coverage for a covered service.
(3) For medical services that CHAMPUS clearly does not cover.

(c) Reasons for issuance.

DD 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.
(2) Professional capability is not available.
(3) It would be medically inappropriate (as defined in §728.2(u)) to require the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(C) A beneficiary is in a travel status. The commanding officer of the first facility contacted, in either the beneficiary's home catchment area or the catchment area where hospital care was obtained, has this discretionary authority. Travel in this instance means the beneficiary is temporarily on a trip away from his or her permanent residence. The reason the patient is traveling, the distance involved in the travel, and the time away from the permanent residence is not critical to the principle inherent in the policy. The issuing officer to whom the request for a Nonavailability Statement is made should reasonably determine that the trip was not made, and the civilian care is not (was not) obtained, with the primary intent of avoiding use of a USMTF or USTF serving the beneficiary's home area.

(d) Guidelines for issuing—

(1) Emergency care. Emergency care claims do not require an NAS; however, the nature of the service or care must be certified as an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, a DD 1251 is required by CHAMPUS-eligible beneficiaries who are subject to the provisions of this section.

(2) Emergency maternity care. Unless substantiated by medical documentation and review, a maternity admission would not be deemed as an emergency since the fact of the pregnancy would have been established well in advance of the admission. In such an instance, the beneficiary would have had sufficient opportunity to obtain a DD 1251 if required in her residence catchment area.

(3) Newborn infant(s) remaining in hospital after discharge of mother. A newborn infant remaining in the hospital continuously after discharge of the mother does not require a separate DD 1251 for the first 15 days after the mother is discharged. Claims for care beyond this 15-day limitation must be accompanied by a valid DD 1251 issued in the infant's name. This is due to the fact that the infant becomes a patient in his or her own right (the episode of care for the infant after discharge of the mother is not considered part of the initial reason for admission of the mother (delivery), and is therefore considered a separate admission under a different diagnosis).

(4) Cooperative care program. When a DD 2161, Referral for Civilian Medical Care, is issued for inpatient care in connection with the Cooperative Care Program (§728.4(2)(5)(iv)) for care under CHAMPUS, a DD 1251 must also be issued.

(5) Beneficiary responsibilities. Beneficiaries are responsible for determining whether an NAS is necessary in
Department of the Navy, DoD

§ 728.33

the area of their residence and for obtaining one, if required, by first seeking nonemergency inpatient care in the USMTF or USTF serving the catchment area. Beneficiaries cannot avoid this requirement by arranging to be away from their residence when nonemergency inpatient care is obtained, e.g., staying with a relative or traveling. Individuals requiring an NAS because they reside in the inpatient catchment area of a USMTF or USTF also require an NAS for nonemergency care received while away from their inpatient catchment area.

(e) Issuing authority. Under the direction of the Commander, Naval Medical Command, exercised through commanders of naval geographic medical commands, naval MTFs will issue Nonavailability Statements only when care required is not available from the naval MTF and the beneficiary’s place of residence is within the catchment area (as defined in §728.2(d)) of the issuing facility or as otherwise directed by the Secretary of Defense. When the facility’s inpatient catchment area overlaps the inpatient catchment area of one or more other USMTFs or USTFs with inpatient capability and the residence of the beneficiary is within the same catchment area of one or more other USMTFs or USTFs with inpatient capability, the issuing authority will:

(1) Determine whether required care is available at any other USMTFs or USTFs whose inpatient catchment area overlaps the beneficiary’s residence. If care is available, refer the beneficiary to that facility and do not issue a DD 1251.

(2) Implement measures ensuring that an audit trail related to each check and referral is maintained, including the check required before retroactive issuance of a DD 1251 as delineated in paragraph (g) of this section. When other than written communication is made to ascertain capability, make a record in the log required in paragraph (h) of this section that “Telephonic (or other) determination was made on (date) that required care was not available at (name of other USMTF(s) or USTF(s) contacted).” The individual ascertaining this information will sign this notation.

(3) Once established that a DD 1251 is authorized and will be issued, the following will apply:

(i) Do not refer patients to a specific source of care.

(ii) Nonavailability Statements issued at commands outside the United States are not valid for care received in facilities located within the United States. Statements issued within the United States are not valid for care received outside the United States.

(iii) The issuing authority will:

(A) If capability permits, prepare a DD 1251 via the automated application of DEERS. Where this system is operational, it provides for transmitting quarterly reports to the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)) by electronic means. System users should refer to their DEERS/NAS Users Manual for specific guidance on the use of the automated system. At activities where the DEER/NAS automated system is not operational, prepare each DD 1251 per instructions on the reverse of the form. After completion, if authorized by the facility CO, the issuing authority will sign the DD 1251. Give a copy to the patient for presentation to a participating civilian provider, or for submission with the claim of a nonparticipating provider. Retain a copy for the issuing activity’s records. Retain the original for subsequent transmittal to the Naval Medical Data Services Center per paragraph (j) of this section.

(B) Explain to the patient or other responsible family member the validity period of the DD 1251 (see paragraph (f) of this section).

(C) Ensure that beneficiaries are clearly advised of the cost-sharing provisions of CHAMPUS and of the fact that the issuance of a Nonavailability Statement does not imply that CHAMPUS will allow any and all costs incurred through the use of the DD 1251. The issuance of a DD 1251 indicates only that care requested is not available at a USMTF or USTF serving the beneficiary’s residence inpatient catchment area.

(D) Review, with the patient or responsible family member, instructions 1 through 6 on the face of the DD 1251 and have the patient or responsible
§ 728.33

family member sign acknowledgement that such review has been made and is understood.

(E) Advise recipients that CHAMPUS fiscal intermediaries may deny claims of individuals who are not enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

(f) Validity period. DD 1251’s issued for:

(1) Other than maternity care are valid for a hospital admission occurring within 30 days of issuance and remain valid from the date of admission until 15 days after discharge from the facility rendering inpatient care. This allows for any follow-on treatment related directly to the original admission.

(2) Maternity episodes are valid if outpatient of inpatient treatment related to the pregnancy is initiated within 30 days of its issuance. They remain valid for care of the mother through termination of the pregnancy and for 42 days thereafter to allow for postnatal care to be included in the maternity episode. (See paragraph (d)(3) of this section for the validity period of DD 1251’s for infants remaining after discharge of the mother.)

(g) Retroactive issuance. Issue Nonavailability Statements retroactively only if required care could not have been rendered in a USMTF or USTF as specified in paragraph (e) of this section at the time services were rendered in the civilian sector. At the time a retroactive issuance is requested, the facility receiving the request will determine whether capability existed at the USMTF or USTF serving the inpatient catchment area wherein the beneficiary resides or at any of the facilities in the overlapping area described in paragraph (e) of this section. While the date of service will be recorded on the DD 1251, send the retained original to the Naval Medical Data Services Center along with others issued during the week of issuance (paragraph (j) of this section refers).

(h) Annotating DD 1251’s. Before issuance, annotate each DD 1251 per the instructions for completion on the reverse of the form. DD 1251’s issued under the CO’s discretionary authority for the “medically inappropriate reason” (paragraph (c)(3)(ii) of this section) will be annotated in the remarks section documenting the special circumstances necessitating issuance, the name and location of the source of care selected by the beneficiary, and approximate distance from the source selected to the nearest USMTF or USTF with capability (see instruction number 2 on the reverse of the DD 1251). Establish and maintain a consecutively numbered log to include for each individual to whom a DD 1251 is issued:

(1) Patient’s name and identifying data.

(2) The facility unique NAS number (block number 1 on the DD 1251).

(i) Appeal procedures. Beneficiaries may appeal the denial of their request for a DD 1251. This procedure consists of four levels within Navy, any one of which may terminate action and order issuance of a Nonavailability Statement if deemed warranted:

(1) The first level is the chief of service, or director of clinical services if the chief of service is the cognizant authority denying the beneficiary’s original request.

(2) The second level is the commanding officer of the naval MTF denying the issuance. Where the appeal is denied and denial is upheld at the commanding officer’s level, inform beneficiaries that their appeal may be forwarded to the geographic commander having jurisdictional authority.

(3) The third level is the appropriate geographic commander, if the appeal is denied at this level, inform beneficiaries that their appeal may be forwarded to the Commander, Naval Medical Command, Washington, DC 20372-5120.

(4) The Commander, Naval Medical Command, the fourth level of appeal, will evaluate all documentation submitted and arrive at a decision. The beneficiary will be notified in writing of this decision and the reasons therefor.

(j) Data collection and reporting. Do not issue the original of each DD 1251 prepared at activities where the DEER/NAS automated system is not operational. Send the retained originals to the Commanding Officer, Naval Medical Data Services Center (Code 03), Bethesda, MD 20814-5066 for reporting.
§ 728.41 General provisions.

(a) Dependent. As used in this subpart, the term “dependent” denotes a person who bears one of the following relationships to his or her sponsor:

(1) A wife.

(2) A husband if dependent on his sponsor for more than one-half of his support.

(3) An unmarried legitimate child, including an adopted or stepchild who is dependent on the sponsor for over one-half of his or her support and who either:

(i) Has not passed the 21st birthday; or

(ii) Is incapable of self-support due to a physical or mental incapacity that existed prior to reaching the age of 21; or

(iii) Has not passed the 23rd birthday and is enrolled in a full-time course of study in an accredited institution of higher learning.

(b) Transfer to naval MTFs in the United States. Do not transfer personnel covered in this subpart to the United States solely for the purpose of obtaining medical care at naval MTFs. Consideration may be given however, in special circumstances following laws of humanity or principles of international courtesy. Transfer to naval MTFs in the United States of such persons located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, should not commit the Navy by a promise of treatment in the United States. Approval generally will not be granted for treatment of those who suffer from incurable afflictions, who require excessive nursing or custodial care, or those who have adequate facilities in their own country. When a request is received concerning transfer for treatment at a naval MTF in the United States, the following procedures apply:

(1) Forward the request to the Chief of Naval Operations (OP-61), with a copy to the Commander, Naval Medical Command, Washington, DC 20372-5120 for administrative processing. Include:

(i) Patient’s full name and grade or rate (if dependent, the sponsor’s name and grade or rate also).

(ii) Country of which a citizen.

(iii) Results of coordination with the chief of the diplomatic mission of the country involved.
§ 728.42 NATO.

(a) NATO SOFA nations. Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(b) Beneficiaries. The following personnel are beneficiaries under the conditions set forth.

(1) Members of NATO military services and their dependents. Military personnel of NATO nations, who, in connection with their official duties, are stationed in or passing through the United States, and their dependents residing in the United States with the sponsor may be provided care in naval MTFs to the same extent and under the same conditions as comparable U.S. uniformed services personnel and their dependents. Accordingly, the provisions of §728.12 are applicable to military personnel and §728.31(d) through §728.34 to accompanying dependents.

(2) Military ships and aircraft personnel. Crew and passengers of visiting military aircraft and crews of ships of NATO nations which land or come into port at NATO or U.S. military airfields or ports within NATO countries.

(c) Application for care. Military personnel of NATO nations stationed in the United States and their dependents will present valid Uniformed Services Identification and Privilege Cards (DD 1173) when applying for care. For other eligible persons passing through the United States on official business and those enumerated in paragraph (b) (2) and (3) of this section, orders or other official identification may be accepted in lieu of the DD 1173.

(d) Disposition. When it becomes necessary to return individuals to their home country for medical reasons, make immediate notification to the NATO unit sponsoring the member or dependent’s sponsor. Include all pertinent information regarding the physical and mental condition of the individual concerned. Following are details of agreements among the Armed Forces of NATO, CENTO, and SEATO Nations on procedures for disposition of allied country patients by DOD medical installations.

(i) Transfer of patients. (i) The patient’s medical welfare must be the paramount consideration. When deciding upon transfer of a patient, give due consideration to any increased medical hazard which the transfer might involve.

(ii) Arrangements for disposition of patients should be capable of being implemented by existing organizations. Consequently, no new establishment should be required specially for dealing with the transferring of allied casualties.

(iii) Transfer patients to their own national organization at the earliest practicable opportunity consistent with the observance of principles established in paragraph (d)(1) (i) and (ii) of this section and under any of the following conditions:

(A) When a medical facility of their own nation is within reasonable proximity of the facility of the holding nation.
(B) When the patient is determined to require hospitalization in excess of 30 days.

(C) Where there is any question as to the ability of the patient to perform duty upon release from the MTF.

(iv) The decision as to whether a patient, other than one requiring transfer under paragraph (d)(1)(iii) of this section, is fit for release from the MTF is the responsibility of the facility’s commanding officer.

(v) All clinical documents, to include x-rays, relating to the patient will accompany such patients on transfer to their own national organization.

(vi) The decision of suitability for transfer and the arrangements for transfer will be the responsibility of the holding nation.

(vii) Final transfer channels should be arranged by local liaison before actual movement.

(viii) Patients not suitable for transfer to their own national organization must be dealt with for treatment and disposition purposes as patients of the holding nation until they are transferred, i.e., they will be dealt with in military hospitals, military medical installations, or in civilian hospitals that are part of the military medical evacuation system of the holding nation.

(2) Classification of patients. Different channels for disposition will be required for the following two types of patients:

(i) Patients not requiring admission. Patients not requiring admission to an MTF will be returned to their nearest national unit under arrangements to be made locally.

(ii) Patients admitted to medical installations. All such patients will be dealt with per paragraph (d)(1) of this section.

(e) Care authorized outside the 48 contiguous United States. Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only. Provided, the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient’s own country, or if such facilities are inadequate. Provide hospitalization only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Administer dental treatment only as an adjunct to authorized inpatient care. Do not include dental prostheses or orthodontia.

§ 728.43 Members of other foreign military services and their dependents.

(a) Foreign military service members. For the purpose of §728.43, members of foreign military services include only:

(1) Military personnel carried on the current Diplomatic List (Blue) or on the List of Employees of Diplomatic Missions (White) published by the Department of State.

(2) Military personnel assigned or attached to United States military units for duty; military personnel on foreign military supply missions accredited to and recognized by one of the military departments; and military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. For the purpose of §728.43, members of foreign Security Assistance Training Programs (SATP) and Foreign Military Sales (FMS) are not included (see §728.44).

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the Secretary of State, Secretary of Defense, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments exclusive of NATO nations.

(b) Care authorized in the United States. Military personnel of foreign nations not covered in §728.42 and their dependents residing in the United States with the sponsor may be routinely provided only outpatient medical care in naval MTFs on a reimbursable basis. Provided, the sponsor is in the United States in a status officially recognized by an agency of the Department of Defense. Dental care and hospitalization for such members and their dependents are limited to emergencies. All outpatient care and hospitalization in emergencies are subject
§ 728.44 Members of security assistance training programs, foreign military sales, and their ITO authorized dependents.

(a) Policies—(1) Invitational travel orders screening. Prior to determining the levels of care authorized or the government or person responsible for payment for care rendered, carefully screen ITOs to detect variations applicable to certain foreign countries. For example, unless orders state differently, Kuwait has a civilian health plan to cover medical expenses of their trainees; trainees from the Federal Republic of Germany are personally responsible for reimbursing for inpatient care provided to their dependents; and all inpatient medical services for trainees from France and their dependents are to be borne by the individual trainee.

(2) Elective and definitive surgery. The overall policy with respect to elective and definitive surgery for Security Assistance Training Program (SATP), Foreign Military Sales (FMS) personnel and their dependents is that conservatism will at all times prevail, except bona fide emergency situations which might threaten the life or health of an individual. Generally, elective care is not authorized nor should be started. However, when a commanding officer of a naval MTF considers such care necessary to the early resumption and completion of training, submit the complete facts to the Chief of Naval Operations (OP-63) for approval. Include the patient’s name (sponsor’s also if patient is an ITO authorized dependent), grade or rate, country of origin, diagnosis, type of elective care being sought, and prognosis.

(3) Prior to entering training. Upon arrival of an SATP or FMS trainee in the United States or at an overseas training site, it is discovered that the trainee cannot qualify for training by reason of a physical or mental condition which will require a significant amount of treatment before entering or completing training, return such trainees to their home country immediately or as soon thereafter as travel permits.

(4) After entering training. When trainees require hospitalization or are disabled after entering a course of training, return them to their home country as soon as practicable when, in the opinion of the commanding officer of the medical facility, hospitalization or disability will prevent training for a period in excess of 30 days. Forward a copy of the patient’s clinical records with the patient. When a trainee is accepted for treatment that is not expected to exceed 30 days, notify the commanding officer of the training activity. Further, when a trainee is scheduled for consecutive training sessions convening prior to the expected data of release from a naval MTF, make the next scheduled training activity an information addressee. Upon
release from the MTF, direct such trainees to resume training.

(b) Care authorized. Generally, all SATP and FMS personnel and their ITO authorized dependents are entitled to care to the same extent. However, certain agreements require that they be charged differently and that certain exclusions apply.

(1) NATO members and their ITO authorized dependents—(i) Foreign military sales (FMS). Subject to reimbursement per §728.46, FMS personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and their accompanying ITO authorized dependent will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(ii) International military education and training (IMET). Subject to reimbursement for inpatient care at the appropriate IMET rate for members or at the full reimbursement rate for dependents, IMET personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and accompanying dependents will be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, provided the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for the military member and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(ii) International military education and training. Subject to reimbursement for both inpatient and outpatient care at the appropriate rates for members and dependents, IMET personnel of non-NATO nations may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Dependent dental care is not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, provided the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for military members and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(c) Application for care. Trainees and accompanying dependents will present official U.S. identification or orders verifying their status when applying for care. If any doubt exists as to the extent of care authorized, ITOs should be screened (see paragraph (a)(1) of this section).

(d) Notification. When trainees require hospitalization as a result of illness or injury prior to or after entering training, the training activity (the hospital if patient has been admitted) will make a message report through the normal chain of command to the Chief of Naval Operations (OP-63) with information copies to MAAG, COMNAV MEDCOM, Navy International Logistics Control Office (NAVIL CO), Unified Commander, the affected office, and the foreign naval attache concerned. Include details of the incident, estimated period of hospitalization, physical or
§ 728.45 Civilian components (employees of foreign military services) and their dependents.

(a) Care authorized. Beneficiaries covered in this section are only authorized care in naval MTFs in the United States and then only civilian humanitarian emergency care on a reimbursable basis (subpart J) rendered at installations which have been designated as remote by the Secretary of the Navy. Make arrangements to transfer such beneficiaries to a civilian facility as soon as their condition permits.

(b) Potential beneficiaries—(1) NATO. Civilian employee personnel (and their dependents residing with them) accompanying military personnel in §728.42(b)(1), Provided, the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(2) Others. Civilian personnel not covered in §728.45(b)(1) (and their dependents residing with them) accompanying military personnel in §728.42(b)(1), Provided, the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(c) Application for care. Personnel covered by the provisions of §728.45 will present orders or other official U.S. identification verifying their status when applying for care.

§ 728.46 Charges and collection.

(a) Policy. Pub. L. 99–591, section 9029, contains provisions prohibiting the expenditure of appropriated funds “. . . to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: Provided, That reimbursements . . . shall be credited to the appropriations against which charges have been made for providing such care, except that inpatient medical care may be provided in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel in that foreign country.”

(b) Canadian agreement. On 3 November 1986, the Department of National Defence of Canada and DOD concluded a comparable care agreement that covers certain military personnel. The agreement stipulates that:

(1) DOD will, upon request, provide Canadian Forces members the same range of medical and dental services under the same conditions and to the same extent as such services are provided comparable United States military personnel. Inasmuch as the agreement covers only certain military personnel, the reimbursement provisions of Pub. L. 99–591 remain in effect for inpatient care provided to Canadian diplomatic personnel, Canadian dependents, and Canadian foreign military sales trainees who receive care in the United States. Further:

(2) Permanently stationed Canadian units with established strengths of more than 150 personnel are expected to have integral health care capability. Any health care services which members of such units receive from the host nation will be provided on a full reimbursement basis. Groups of larger than 150 personnel, which conduct collective training in the United States, are expected to deploy with an organic unit medical capability. Naval MTFs may be requested to provide services, beyond the capability of the organic unit, at full reimbursement rates.

(c) Procedures. (1) Until otherwise directed, naval MTFs in the 50 United States will collect the full reimbursement rate (FRR) for inpatient care provided to all foreign military personnel (except Canadians covered by the comparable care agreement in §728.46(b), and military personnel connected with a Foreign Military Sales (FMS) case number), foreign diplomatic personnel, and to the dependents of both whether they are in the United States on official duty or for other reasons.

(2) Subpart J contains procedures for the initiation of collection action when inpatient care is rendered to beneficiaries from NATO nations and when either inpatient or outpatient care is
rendered to all others enumerated in this part. Chapter II, part 4 of NAVMED P–5020 is applicable to the collection of and accounting for such charges.

Subpart F—Beneficiaries of Other Federal Agencies

§ 728.51 General provisions—The “Economy Act.”

The Economy Act, 31 U.S.C. 1535, generally permits agency heads, or heads of major organizational units of agencies, to procure goods and services from other agencies or within their own agency so long as funds for procurement are available, the order is in the best interest of the Government, the source from which the goods or services are ordered can produce them or obtain them by contract, and the internal or inter-agency procurement is more convenient, or less expensive, than commercial procurement. Provisions of the Economy Act apply to requests from other Federal agencies for medical and dental care for beneficiaries for whom they are responsible. Consult specific provisions of the Act respecting financial and accounting limitations and requirements.

§ 728.52 Veterans Administration beneficiaries (VAB).

(a) Eligible beneficiaries—Those who have served in the Armed Forces, have been separated under conditions other than dishonorable, and have been determined by the Veterans Administration (VA) to be eligible for care at VA expense. Prior to 7 September 1980, veterans status could be obtained by virtue of 1 day’s honorable service. The following restrictions do not apply to individuals who are discharged from active duty because of a disability or who were discharged for reasons of “early out” or hardship program under 10 U.S.C. 1171 and 1173.

(1) For individuals with an original enlistment in the military service after 7 September 1980, the law generally denies benefits, including medical care.

(2) For individuals entering service after 16 October 1981, the law generally denies medical benefits when such individuals do not complete the shorter of:

(i) Twenty-four months of continuous active duty, or

(ii) The full period for which that person was called or ordered to active duty.

(b) Inpatient control—Each VAB admitted will be required to conform to regulations governing the internal administration of the naval facility. Restrictive or punitive measures, including disciplinary action or denial of privileges, will conform as nearly as possible to VA instructions.

(c) Resolution of problems—All problems pertaining to VABs, including admission, medical or other records, and all correspondence will be matters of resolution between the commanding officer of the naval facility and the VA office of jurisdiction authorizing admission. Questions of policy and administration which cannot be so resolved will be forwarded, through the normal chain of command, to the Administrator of Veterans Affairs via COMNAVMEDCOM for resolution.

(d) Care in the United States—(1) Inpatient care. An eligible VAB may be admitted to a naval MTF on presentation of a written authorization for admission signed by an official of the VA office of jurisdiction. Neurological and certain neuropsychiatric patients without obvious evidence of psychosis and not requiring restraints, and instances of suspected tuberculosis, may be admitted for diagnosis. When diagnosed, promptly report instances of psychosis, psychoneurosis, and tuberculosis of present clinical significance to the VA office of jurisdiction with a request for transfer to a VA facility.

(i) Extent of care. Provide eligible VABs medical and surgical care, including prostheses such as eyes and limbs and appliances such as hearing aids, spectacles, or orthopedic appliances when required for the proper treatment of the condition upon which eligibility is based.

(ii) Disposition of emergency admission. Notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the date and hour of an emergency admission of a potential VAB. Include a request for an authorization for admission and emergency treatment. If VA
§ 728.53 Department of Labor, Office of Workers’ Compensation Programs (OWCP) beneficiaries.

(a) Potential beneficiaries. The following may be beneficiaries of one of the programs sponsored by the Office of Workers’ Compensation Programs (OWCP) under the conditions set forth. They are not beneficiaries of OWCP until authorized as such by the appropriate district officer of OWCP. However, they may be carried as potential

(b) Care outside the United States—(1) Eligible beneficiaries. Beneficiaries described in paragraph (a) of this section who are citizens of the United States and residing or sojourning abroad may, within the capabilities of the facility as determined by the commanding officer, be provided inpatient and outpatient care upon presentation of an authorization from the appropriate VA office of jurisdiction listed in paragraph (b)(3) of this section.

(2) Overseas naval MTFs furnishing emergency care to potential VABs will promptly notify the appropriate VA office of jurisdiction and request authorization for treatment and instructions for disposition of the patient.

(3) Offices of Jurisdiction. The following activities are vested with responsibility for issuing authorizations for care and furnishing disposition instructions for VABs in overseas naval MTFs:

(i) In the Trust Territory of the Pacific (Micronesia), VA Office, Honolulu, Hawaii.

(ii) In the Philippines, VA Regional Office, Manila, Philippines.

(iii) In Canada, Canadian Department of Veterans Affairs, Ottawa, Canada.

(iv) In all other foreign countries, consular offices of U.S. embassies.

(3) Forms required. (1) Complete a VA 10-10 (Application for Medical Benefits) when potential VABs are admitted for emergency care without prior authorization.

(2) Prepare a VA 10-10m (Medical Certificate and History) when care is rendered. All information required in the medical certificate thereon will be furnished whether the admission is subsequently approved or disapproved by the VA office of jurisdiction.

(3) Since the completion of VA 10-10m requires an examination of patients, admissions which are disapproved will be reported as medical examinations on DD 7A, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (part B) (See subpart J).

(4) Prepare and submit a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished (part A)) on all VABs and potential VABs admitted (see subpart J).

(5) Complete an SF 502 (Narrative Summary) or SF 539 (Abbreviated Clinical Record), as appropriate, when a VAB or potential VAB is discharged or otherwise released. When an interim report of hospitalization is requested by the VA office of jurisdiction, it may be prepared on an SF 502.

§ 728.53 Department of Labor, Office of Workers’ Compensation Programs (OWCP) beneficiaries.

(a) Potential beneficiaries. The following may be beneficiaries of one of the programs sponsored by the Office of Workers’ Compensation Programs (OWCP) under the conditions set forth. They are not beneficiaries of OWCP until authorized as such by the appropriate district officer of OWCP. However, they may be carried as potential
Department of the Navy, DoD

§ 728.53

beneficiaries pending OWCP determination of eligibility. DOD civilian employees provided medical services under a Defense or service health program are not included under this authority (see subpart G).

(1) Members and applicants for membership in the Reserve Officers’ Training Corps of the Navy, Army, and Air Force, provided the condition necessitating treatment was incurred in line of duty during an off-campus training regimen. Such care is authorized for injury (a disease or illness which is the proximate result of performance of training is considered an injury) incurred while engaged in:

(i) Training.

(ii) Flight instructions.

(iii) Travel to or from training or flight instructions.

(2) The following employees of the Government of the United States, regardless of nationality or place of work, are entitled to receive care as outlined in paragraph (e) of this section for work incurred traumatic injuries at the expense of OWCP. (In addition to injury by accident, a disease or illness which is the proximate result of performance of employment duties is considered an injury.) This category includes but is not limited to:

(i) Civilian student employees in training at Navy and Marine Corps facilities.

(ii) Civilian seamen in the service of vessels operated by the Department of the Army (see paragraph (a)(7) of this section and § 728.80(c)(2) for civilian Military Sealift Command (MSC) personnel).

(iii) All civilian employees of the Government except nonappropriated-fund-activity employees. Nonappropriated fund employees may be covered under the Longshore and Harbor Workers’ Compensation Act (contact cognizant district office of OWCP).

(3) Civilian members of the Civil Air Patrol (except Civil Air Patrol Cadets) for injury or disease which is the proximate result of active service or travel to and from such service, rendered in performance or support of operational missions of the Civil Air Patrol under the direction and written authority of the Air Force.

(4) Former Peace Corps enrollees for injury or disease which is the proximate result of their former employment with the Peace Corps or which was sustained or contracted while located with the Peace Corps outside the United States and its territories.

(5) Former Job Corps enrollees for injury or disease which is the proximate result of employment with the Job Corps.

(6) Former VISTA (Volunteers in Service to America) enrollees for injury or disease which is the proximate result of employment with VISTA.

(7) Military Sealift Command (MSC) civilian marine personnel (CIVMARPERS or CIVMARS) (including temporary employees, intermittent employees, and employees with less than 1 year’s service) are entitled to occupationally related care at the expense of OWCP. CIVMARS are in a crew status only after reporting to their assigned ship. They are in a travel status from crewing point to ship and return. While in a travel status, they are entitled to the same health care benefits as other Federal civil service employees in a travel status (5 U.S.C. 8101). CIVMARS presenting for treatment with a properly completed CA–16, Request for Examination and/or Treatment, will:

(i) Enter the naval MTF’s system through the occupational medicine service.

(ii) Be treated for any injury or disease proximately caused by their employment. Although the actual determination of whether an illness or injury is occupationally related is a function of OWCP, determinations are based on the required injury report along with the treatment record from the attending physician. Therefore, when doubt exists as to the relationship of the condition to the potential patient’s employment, the physician should report an unbiased medical conclusion and the medical rationale therefor, indicating the conditions which are responsible for the claimant’s disability. As a general rule, the following may be initially considered as occupationally related, however, it should be emphasized that OWCP is the final approval authority:
§ 728.53

(A) Any injury or illness occurring as a direct result of employment. May occur on a ship, at a Government installation ashore, or in an aircraft while performing a requirement of employment.

(B) Any injury or illness which becomes manifest while away from work (on leave or liberty) while in a crew status or travel status as long as the condition may be directly related to job activities or to exposures incident to travel to ship assignment.

(C) Required immunizations.

(D) Required physical examinations.

(E) Periodic medical surveillance screening examinations for DOD occupational and industrial health programs, i.e., asbestos medical surveillance, hearing conservation, etc.

(iii) Be referred to a non-Federal source of care where back-to-work care may be provided at the CIVMAR’s expense after, if necessary, the immediate emergency is alleviated when a reasonable determination can be made that the injury or illness is not occupationally related.

(A) Per 5 U.S.C. 7901(c)(3), the health service program for Federal civilian employees is limited to referral of employees, upon their request, to private sources of care.

(B) Long term extended care of chronic illnesses such as hypertension, diabetes, etc., is not authorized in naval MTFs at the expense of OWCP nor at the CIVMAR’s personal expense.

(C) Patients who cannot be referred, because of medical reasons or because non-Federal sources are not available or available but inadequate, may be retained in naval MTFs at the expense of the CIVMAR or of his or her private insurance until transfer becomes possible. Although the means of access to the naval MTF may have been through the occupational medicine service, retention in the naval MTF is on a civilian humanitarian basis. This is also applicable when OWCP disallows a CIVMAR’s claim (see paragraph (c) of this section).

(b) Authorization required. Personnel in paragraph (a) (1) through (6) may be rendered inpatient and outpatient care as outlined in paragraph (e) of this section, unless otherwise stipulated in this section, upon presentation of a properly prepared and signed authorization from CA–16 (Request for Examination and/or Treatment). District offices of OWCP will honor these authorizations for 60 days unless written notice of termination of authorization is given earlier. Whereas the CA–16 is used primarily for traumatic injuries, it may also be used to authorize examination and treatment for disease or illness provided the affected agency has obtained prior permission from the cognizant district office of OWCP. If the condition for which treatment is requested appears related to employment, treatment of beneficiaries in paragraph (a) (1) through (7) of this section may be initiated without presentation of a CA–16. Patients provided treatment without a CA–16 may be carried as OWCP beneficiaries from the time of initial treatment, provided the appropriate district office of OWCP is notified and requested to submit a CA–16 within 48 hours giving authorization as of the date of actual treatment. OWCP will not be liable for payment of bills for unauthorized treatment. Post hospitalization care following authorized inpatient care does not require an additional authorization. First aid treatment rendered civilian employees does not require an authorization form.

(c) Disallowance by OWCP. When OWCP determines that any claim should be disallowed, OWCP will advise the naval facility rendering care that no further treatment should be rendered at OWCP expense. The patient ceases to be an OWCP beneficiary as of the date of receipt of the notice of disallowance by the naval MTF and the patient will be so notified. Any treatment subsequent to the date of receipt of the notice of disallowance will be at the personal expense of the patient (see §728.81(a)).

(d) Authorization for transfer. Prior approval of OWCP is required before a transfer can be effected, except in an emergency or when immediate treatment is deemed more appropriate in another Federal facility. When transfer is effected without approval, the transferring facility will immediately request such authorization from the appropriate district office of OWCP. When authorized by OWCP, evacuation to the United States can be effected per
§ 728.54 U.S. Public Health Service (USPHS), other than members of the uniformed services.

(a) Potential beneficiaries. The following may be beneficiaries of the USPHS for care in naval MTFs upon submission of the necessary form from appropriate officials as outlined in paragraph (b) of this section.

(1) Within and outside the United States. Any individuals the USPHS may determine to be eligible for care on an interagency reimbursable basis.

(2) Within the 48 Contiguous United States and the District of Columbia, American Indians, Alaska Natives, Eskimos, and Aleuts.

(3) In Alaska, American Indians, Eskimos, and Aleuts.

(b) Authorization required—(1) Normal circumstances. An American Indian or Alaska Native may be rendered inpatient care upon presentation of form HRSA 43 (Contract Health Service Purchase Order for Hospital Services Rendered) or HRSA form 64 (Purchase/Delivery Order for Contract Health Services Other Than Hospital Inpatient or Dental). Either form must be signed by an appropriate Indian Health Service or Alaska Native Health Service area/program official.
§ 728.55 Department of Justice beneficiaries.

Upon presentation of a letter of authorization that includes disposition of SF 88 (Report of Medical Examination), SF 93 (Report of Medical History), and address for submission of claim, the following personnel may be furnished requested care as beneficiaries of the Department of Justice. See subpart J on completing and submitting forms for central collection of the cost of care provided.

(a) Federal Bureau of Investigation. Investigative employees of the Federal Bureau of Investigation (FBI) and applicants for employment as special agents with the FBI may be provided:

(1) Immunizations.

(2) Physical examinations and hospitalization when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(b) U.S. Marshals. U.S. Marshals may receive physical examinations and hospitalizations when required to determine physical fitness. Use this period of hospitalization for diagnostic purposes only. Do not correct disqualifying defects.

(c) Claimants against the United States. Claimants whose suits or claims against the United States are being defended by the Department of Justice may be furnished physical examinations to determine the extent and nature of the injuries or disabilities being claimed. Hospitalization is authorized for proper conduct of the examination. Upon completion, forward the report of the examination promptly to the U.S. Attorney involved.

§ 728.56 Treasury Department beneficiaries.

(a) Potential beneficiaries. The following may be beneficiaries of the Treasury Department and may be rendered care as set forth below.

(1) Secret Service Special Agents and support personnel.

(2) Secret Service Agents providing protection to certain individuals.

(3) Persons being provided protection by the Secret Service.

(4) Agents of the U.S. Customs Service.

(5) Prisoners (detainees) of the U.S. Customs Service.

(b) Care authorized. (1) Secret Service Special Agents may be provided routine annual physical examinations upon request and presentation of a letter of authorization. Conduct and record examinations in the same manner as routine examinations rendered naval officers except that they may be conducted only on an outpatient basis.
§ 728.57 Department of State and associated agencies.

Eligibility for care under the provisions of this section will be determined by the Department of State, Office of Medical Services.

(a) Beneficiaries. Officers and employees of the following agencies, their dependents, and applicants for appointment to such agencies are authorized inpatient and outpatient medical care as set forth below in addition to that care that may be authorized elsewhere within this part (i.e., § 728.53, § 728.55, § 728.56, and § 728.58). Limit dental care to that delineated in paragraph (b)(6) of this section.

(1) Department of State—U.S. Arms Control and Disarmament Agency and the Office of International Conferences.

(2) U.S. Agency for International Development.

(3) International Communications Agency.

(4) ACTION—Peace Corps Staff.

(5) Department of Agriculture—Foreign Agriculture Service.

(6) Department of Commerce—Bureau of Public Roads.

(7) Department of Interior—Bureau of Reclamation and the U.S. Geological Survey.

(8) Department of Transportation—Federal Aviation Administration and the Federal Highway Administration.

(9) Department of Justice—Drug Enforcement Agency.

(10) Department of Treasury—U.S. Customs, U.S. Secret Service, Office of International Affairs (OIA), U.S.—Saudi Arabian Joint Commission for Economic Cooperation (JECOR), and the Internal Revenue Service.

(11) National Aeronautics and Space Administration.

(12) Library of Congress.

(13) Beneficiaries of such other agencies as may be included in the Department of State Medical Program.

(b) Care authorized—(1) General. The Foreign Service Act of 1946, as amended, authorizes care delineated in this section. Subject to the restrictions and priorities of § 728.3 and the restrictions of this section, care may be rendered at the expense of the Department of State.
or one of the agencies listed in paragraph (a) of this section. The law allows for payment when care is furnished for an illness or injury which results in hospitalization or equal treatment. Outpatient care is only authorized as an adjunct to hospitalization.

2. Overseas. (i) When, in the opinion of the principal or administrative officer of an overseas post of the Department of State, an individual meets the conditions of eligibility, the post will furnish authorization to the naval MTF for care at the expense of the Department of State or one of the agencies listed in paragraph (a) of this section.

(ii) Should the Department of State official determine that the illness or injury does not meet the conditions of eligibility for care at the expense of one of the agencies, all care provided will be at the expense of the patient or patient’s sponsor and charged at the full reimbursement rate.

3. In the United States. (i) Care is not authorized for an injury or illness incurred in the United States. Authorizations and other arrangements for care in the United States for individuals incurring injury or illness outside the United States will be provided by the Deputy Assistant Secretary for Medical Services, Department of State, using appropriate authorization form(s). When personnel are admitted in an emergency without prior authorization, the commanding officer of the admitting naval MTF will immediately request authorization from the Deputy Assistant Secretary for Medical Services.

(ii) The extent of care furnished in the United States, to individuals in paragraph (a) of this section who are evacuated to the United States for medical reasons, will be comparable in all respects to that which is authorized or prescribed for these individuals outside the United States. When determined appropriate by the Deputy Assistant Secretary for Medical Services, officers and employees and their accompanying dependents who have returned to the United States for non-medical reasons may be furnished medical care at the expense of one of the above agencies for treatment of an illness or injury incurred while outside the United States.

4. Physical examinations. The Secretary of State is authorized to provide for comprehensive physical examinations, including dental examinations and other specific testing, of applicants for employment and for officers and employees of the Foreign Service who are U.S. citizens and for their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. An authorization will be executed by an appropriate Department of State official and furnished in duplicate to the naval MTF, listing the type of examination required and stating that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

5. Immunizations. Inoculations and vaccinations are authorized for officers, employees, and their dependents upon written authorization from an appropriate Department of State official. This authorization, in duplicate, will include the type of inoculation or vaccination required and will state that the individual is entitled to services at the expense of the Department of State. Furnish reports per the letter of authorization.

6. Dental care. Limit dental care to emergencies for the relief of pain or acute conditions, or dental conditions as an adjunct to inpatient care. Do not provide prosthetic dental appliances.

(c) Evacuation to the United States. Should a beneficiary in an overseas naval MTF require prolonged hospitalization, the commanding officer of the overseas facility will report the requirement to the nearest Department of State principal or administrative officer and request authority to return the patient to the United States. Release dependents who decline evacuation to the custody of their sponsor. Aeromedical evacuation may be used per OPNAVINST 4630.25B. Travel of an attendant or attendants is authorized at Department of State expense when the patient is too ill or too young to travel unattended.

(d) Report. Complete and submit, per subpart J, a DD 7 (Report of Treatment
Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.58 Federal Aviation Agency (FAA) beneficiaries.

(a) **Beneficiaries.** Air Traffic Control Specialists (ATCS) of the FAA when appropriate authorization has been furnished by the FAA regional representative.

(b) **Authorization.** Written authorization from an FAA Regional Flight Surgeon is required and will include instructions for forwarding the results of services rendered.

(c) **Care authorized.** Subject to the provisions of §728.3, authorized personnel may be rendered chest x-rays, electrocardiograms, basic blood chemistries, and audiograms, without interpretation in support of the medical surveillance program for ATCS personnel established by the FAA.

(d) **Report.** Complete and submit, per subpart J, a DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) outpatient care is rendered.

§ 728.59 Peace Corps beneficiaries.

(a) **Potential beneficiaries.** (1) Applicants for the Peace Corps.

(2) Peace Corps Volunteers.

(3) Minor children of a Peace Corps volunteer living with the volunteer.

(b) **Care authorized in the United States.** Upon written request of a Peace Corps official, stating care to be provided and disposition of reports, the following may be provided subject to the provisions of §728.3.

(1) **Physical examinations.** Physical examinations are authorized on an outpatient basis only. Except for interpretation of x-rays, make no assessment of the physical qualifications of examinees.

(i) Preselection physical examination may be provided applicants (volunteers) for the Peace Corps.

(ii) Separation or other special physical examinations may be provided volunteers and their dependents as listed in paragraph (a)(3) of this section. Unless otherwise prescribed in written requests, report such examinations of Peace Corps volunteers on SF–88 and SF–93. Include:

(A) Medical history and systemic review.

(B) Chest x-ray with interpretation.

(C) Complete urinalysis, serology, and blood type.

(D) Pelvic examination and Pap smear for all female volunteers.

(E) Hematocrit or hemoglobin for all females and for all males over 40 years of age.

(F) Electrocardiogram for all volunteers over 40 years of age.

(2) **Immunizations.** When requested, may be provided all beneficiaries listed in paragraph (a) of this section.

(3) **Medical care.** Both inpatient and outpatient care may be provided volunteers for illnesses or injuries occurring during their period of service which includes all periods of training. Dependents of volunteers specified in paragraph (a)(3) of this section are authorized care to the same extent as their sponsor.

(4) **Dental care.** Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. All beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(c) **Care authorized outside the United States.**—(1) **Physical examinations.** Termination physical examinations may be provided volunteers and eligible dependents of volunteers. In most instances, Peace Corps staff physicians will provide these examinations; however, help may be required of naval MTFs for ancillary services.

(2) **Immunizations.** When requested, immunizations may be provided all beneficiaries listed in paragraph (a) of this section.

(3) **Medical care.** When requested in writing by a representative or physician of a Peace Corps foreign service post, volunteers, eligible dependents of volunteers, and trainees of the Peace Corps may be provided necessary medical care at Peace Corps expense. When emergency treatment is rendered without prior approval, forward a request to the Peace Corps foreign service post as soon as possible.
§ 728.60  Job Corps and Volunteers in Service to America (VISTA) beneficiaries.

(a) Beneficiaries. Job Corps and VISTA enrollees and Job Corps applicants may be provided services as set forth. For former members, see §728.53.

(b) Authorization required—(1) Job Corps enrollees. Presentation of a Job Corps Identification Card after appointment has been made by the corpsmember’s Job Corps center.

(2) Job Corps applicants. Presentation of a letter from a screening agency (e.g., State Employment Service) after appointment has been made by that agency.

(3) VISTA Volunteers and VISTA Trainees. A “Blue-Cross and Blue Shield Identification Card” is issued to such personnel as identification. Each card has a VISTA Identification number which will be used on all records and correspondence.

(c) Care authorized. Normally, medical services are provided only when civilian of VA facilities are not available, or if available, are incapable of providing needed services. However, upon presentation of an appropriate authorization, the following services may be provided subject to the provisions of §728.3.

(i) Emergency medical care upon presentation of their Job Corps Identification Card; however, the corpsmember’s Job Corps center should be notified immediately.

(ii) Pre-enrollment physical examinations and immunizations on an outpatient basis only.

(iii) Limit dental care to emergencies. Render only that care essential to relieve pain or prevent imminent loss of teeth. Beneficiaries seeking dental care will be requested, whenever possible, to furnish advanced authorization.

(d) Report. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.61  Medicare beneficiaries.

(a) Care authorized. Emergency hospitalization and other emergency services are authorized for beneficiaries of the Social Security Health Insurance Program for the Aged and Disabled (Medicare) who reside in the 50 United States and the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Such care in naval
MTFs may be rendered when emergency services, as defined in §728.61(b), are necessary.

(b) Emergency services. Services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing the patient’s health in serious jeopardy.

(2) Serious impairment to bodily functions of serious dysfunction of any bodily organ or part.

(c) General provisions—(1) Limitations. Benefit payments for emergency services under Medicare can be made for only that period of time during which the emergency exists. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, discharge or transfer the patient to a facility that participates in Medicare.

(2) Notification. Notify the nearest office of the Social Security Administration as soon as possible when a Medicare beneficiary is rendered treatment.

(d) Report. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

Subpart G—Other Persons

§728.71 Ex-service maternity care.

(a) Eligible beneficiaries. After separation from the service under honorable conditions because of pregnancy, or separated from the service under honorable conditions and found to have been pregnant at the time of separation, the following former members and their newborn infant(s) may be provided care as set forth below. The rendering of this care is subject to the provisions of §728.3. When certified by medical authorities that the pregnancy existed prior to entry into service (EPITE), maternity benefits are not authorized.

(1) Former women members of the Army, Air Force, Navy, and Marine Corps.

(2) On or after 12 August 1985, former women members of the Commissioned Corps of the United States Public Health Service (USPHS) and the National Oceanic and Atmospheric Administration (NOAA).

(b) Care authorized. (1) Former women members may be rendered medical and surgical care in naval MTFs incident to that pregnancy, prenatal care, hospitalization, postnatal care, and, when requirements of SECNAVINST 6300.2A are met, abortions. Limit postnatal care to 6 weeks following delivery. Do not promise civilian sources under any circumstances for either the mother or the infant as such care is not authorized.

(2) Treatment of the newborn infant in USMTFs includes care, both inpatient and outpatient, only during the first 6 weeks (42 days) following delivery. If the newborn infant requires care beyond the 6-weeks postnatal period, the mother or other responsible family member must make arrangements for disposition to private, State, welfare, or another Federal facility.

(c) Application for care. In making application for care authorized by this section, former women members should apply either in person or in writing to the Armed Forces inpatient MTF nearest their home and present either their DD 214 (Armed Forces of the United States Report of Transfer or Discharge) or DD 256A (Honorable Discharge Certificate) as proof of eligibility for requested care. In areas with more than one Armed Forces MTF available and capable of providing required care, application should be made to the MTF of the service from which separated, as applicable. Disengagement in such areas to MTFs of other services may be made only when space is not available or capability does not exist in the MTF of the services from which the individual was separated.

(d) Charges and collection. Charges and reimbursement procedures for care rendered to beneficiaries in paragraph (a)(2) of this section are the same as prescribed by current regulations for active Coast Guard, USPHS, and NOAA members.
§ 728.72 Applicants for enrollment in the Senior Reserve Officers’ Training Program.

When properly authorized, designated applicants (including applicants for enrollment in the 2-year program and Military Science II enrollees applying for Military Science III) may be furnished medical examinations at naval MTFs including hospitalization necessary for the proper conduct thereof. Medical care, including hospitalization, is authorized for diseases contracted or injuries incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for visits of observation.

§ 728.73 Applicants for enlistment or reenlistment in the Armed Forces, and applicants for enlistment in the reserve components.

(a) Upon referral by a commander of a Military Enlistment Processing Station (MEPS), applicants will be furnished necessary medical examinations, including hospitalization when qualifications for service cannot otherwise be determined. Use the hospitalization period only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.74 Applicants for appointment in the regular Navy or Marine Corps and reserve components, including members of the reserve components who apply for active duty.

(a) Necessary medical examinations may be furnished, including hospitalization when qualifications for service cannot otherwise be determined. Use such a period of hospitalization only for diagnostic purposes. Do not correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.75 Applicants for cadetship at service academies and applicants for the Uniformed Services University of Health Sciences (USUHS).

(a) Upon presentation of a letter of authorization from the Department of Defense Medical Examination Review Board (DODMERB), applicants for cadetship at Service Academies (Navy, Army, Air Force, Coast Guard, and Merchant Marine) and applicants for the Uniformed Services University of Health Sciences (USUHS) will be furnished medical examinations at facilities designated by the DODMERB. Hospitalization is authorized when qualifications for service cannot otherwise be determined. Use the hospitalization period for diagnostic purposes only, and not to correct disqualifying or other defects. Perform examinations and make disposition of completed forms per BUMEDINST 6120.3M.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or at MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.76 Naval Home residents.

Provide necessary medical and dental care, both inpatient and outpatient, to residents of the Naval Home when requested by the Governor of the Home. In an emergency, care may be rendered without prior approval of the Governor; however, the Governor of the Home should be contacted immediately and requested to furnish authorization.

§ 728.77 Secretarial designees.

Subject to the capabilities of the professional staff and the availability of space and facilities, naval MTFs and DTFs will provide treatment to individuals that have been granted Secretarial designee status by any of the three service Secretaries (Navy, Army, or Air Force), the Secretary of Commerce for NOAA personnel, the Secretary of Health and Human Services for USPHS personnel, or the Secretary of Transportation for Coast Guard personnel.

(a) Potential designees. Upon a showing of sufficient cause, the Secretary of the Navy may authorize individuals,
not otherwise authorized by law, to receive such care as is available in naval MTFs in the United States. Designation may be extended on a worldwide basis for preadoptive children and wards of active duty members, and for abused dependents delineated in paragraph (a)(6) of this section. Temporary in loco parents or foster parent status of the member with regard to a minor is insufficient for approval. Also, civilian health care under the CHAMPUS program cannot be authorized for other than abused dependents. The Secretary's discretionary authority is exercised most conservatively, however, favorable action is usually taken on requests involving the following situations:

(1) Preadoption proceedings wherein an active duty member or a retired member has taken affirmative legal action to adopt a child.

(2) Custodianships and guardianships authorized by a court order wherein the member is designated by the court as the custodian or guardian and the child is fully dependent upon the active duty or retired member sponsor.

(3) Evaluation and selection of non-beneficiaries who are donor candidates for an organ or tissue transplant procedure in behalf of a military service beneficiary.

(4) Nonbeneficiary participants in officially approved clinical research studies.

(5) Unremarried former spouses who: Require care for a condition incurred during or caused/aggravated by conditions associated with the member's or former member's creditable service; do not qualify under the former spouses act; and do not have medical coverage under an employer-sponsored health plan which will provide for the care required.

(6) Abused dependents of discharged or dismissed former uniformed services members in need of medical or dental care resulting from knowledge of the abuse or for an injury or illness resulting from abuse by the former member. Eligibility will terminate the earliest of 1 year after the date on which the member is discharged or dismissed from a uniformed service, or when care is no longer needed.

(7) In other instances wherein the circumstances clearly merit the providing of treatment in naval MTFs, and in which the best interest of the patient, the Navy, and the Government will be served, favorable Secretarial action may result. The mere need of medical care by a former beneficiary or other person, alone, will not support approval of such a request.

(b) Requests for consideration. Requests for consideration will be submitted to the Commander, Naval Medical Command (MEDCOM–33) by applicants via their command, when applicable, or by the Medical Department command concerned. Requests should include any pertinent information which will support resolution and a return address. Requests involving:

(1) Preadoption must include a legible reproducible copy of an interim court order or adoption agency placement agreement which names the sponsor and identifies the other participating parties. A petition for a court order is insufficient to support a recommendation for approval.

(2) Custodianships and guardianships must include a legible reproducible copy of the court order, identification of the parties, and also identify any amounts of income to which the ward is entitled.

(3) Participants in clinical research studies must include:

(i) Sufficient clinical information concerning the nature of the study.

(ii) Benefits which may accrue to the individual.

(iii) The extent, if any, to which access by other authorized beneficiaries will be impaired.

(iv) Benefits which will accrue to the command, e.g., enhancement of training, maximum use of specialized facilities, etc.

(v) Recommended duration of designation.

(vi) Whether the consenting individual has been informed concerning the nature of the study, its personal implications, and freely consents.

(4) Unremarried former spouses must include:

(i) A notarized copy of the marriage license.

(ii) A statement attesting to the fact that the sponsoring former spouse
§ 728.77

achieved 20 or more years of creditable military service.

(iii) Copy of divorce decree with official date.

(5) Abused dependents must include:

(i) Full name, social security number, grade or rate, branch or service, and date and type of discharge or dismissal of the former member. Such a member must have received a dishonorable or bad-conduct discharge or dismissal from a uniformed service as a result of court-martial conviction for an offense involving abuse of a dependent of the member.

(ii) Full names, social security numbers (if assigned), and relationship to the former member of any dependent in need of medical or dental care to treat adverse health conditions resulting from such dependent’s knowledge of the abuse or any injury or illness suffered by the abused person as a result of such abuse.

(c) Blanket designation. (1) The Secretary of Defense has granted Secretarial designee status to full-time Schedule ‘‘A’’ faculty members of the Uniformed Services University of Health Sciences (USUHS). They have been provided documentation substantiating their eligibility and, where necessary, an eligibility termination date. These personnel are authorized routine care at the Naval Hospital, Bethesda, MD. At other naval MTFs, only emergency treatment is authorized while they are traveling on official university business. The letter of authorization excludes routine dental care, prosthetic appliances, and spectacles.

(2) The following officials within the Government, the Department of Defense, and military departments have been granted blanket Secretarial designation for medical and emergency dental care in naval MTFs in the United States:

(i) The President.

(ii) The Vice President.

(iii) Members of the Cabinet.

(iv) Article III Federal Judges.

(v) U.S. Court of Military Appeals Judges.

(vi) Members of Congress.

(vii) The Secretary, Deputy Secretary, and the Assistant Secretaries of Defense.

(viii) The Under Secretary of Defense for Policy.

(ix) The Under Secretary of Defense for Research and Engineering.


(d) Authorization. Designees will present a signed letter bearing the letterhead of the designating service. Secretarial designees are not included in the DEERS data base and may not possess Government identification cards. Therefore, the only proof of their eligibility for treatment may be the letter of authorization. When a Secretarial designee presents for treatment:

(1) Ask for identification of the individual presenting the letter of authorization to assure that the person seeking care is the individual to whom the letter was issued.

(2) Check the expiration date on the letter of authorization. Many authorizations are issued for only a specified period of time, e.g., abused dependents—no longer than 1 year.

(3) Check to assure that the individual is applying for care authorized by the letter of authorization. Designation is often granted for a specific diagnosis or specific mode of treatment.

(4) Check to assure that the individual has not been designated for care only as specific facility. Many authorizations are granted for conditions or for care that can be rendered only by a specified physician or under a specific program.

(5) Place a copy of the letter of authorization in the individual’s Health Record or outpatient treatment record on the left side at the first visit or admission.

(e) Charges and collection. (1) Interagency rates are applicable for inpatient and outpatient care provided outside the National Capital Region to all individuals listed in paragraph (c)(2) of this section with the exception of Members of Congress. Charges are at full reimbursement rates for Members of Congress provided inpatient or outpatient care outside the National Capital Region.

(2) In the National Capital Region:

(i) Charges are waived for outpatient care provided to all categories listed in paragraph (c)(2) of this section.
(ii) Charge interagency rates for inpatient care of all individual in paragraph (c)(2) of this section except Members of Congress. Charge Members of Congress at full reimbursement rates.

(3) Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered to Secretarial designees whose charges for care have not been waived.

§ 728.78 American Red Cross representatives and their dependents.

(a) Potential beneficiaries.

(1) Volunteer workers.

(2) Full-time, paid employees.

(3) Dependents of personnel enumerated in paragraph (a) (1) and (2) of this section when accompanying their sponsor outside the continental United States, including Alaska, Hawaii, and Puerto Rico.

(b) Care authorized.

(1) When services of the American Red Cross (ARC) have been accepted in behalf of the Federal Government under applicable DOD regulations, beneficiaries in paragraph (a)(1) of this section are considered “employees” of the Government for the purpose of this part and are authorized health care in USMTFs, both in and outside the United States for work-related conditions. See §728.53(a)(2) regarding the specific application of this authorization.

(2) Beneficiaries enumerated in paragraph (a) (1) and (2) of this section are authorized health care in USMTFs located outside the United States for both work and nonwork-related conditions. See §728.53(a)(2) for treatment of work-related conditions of those in paragraph (a)(1) of this section.

(3) Beneficiaries identified in paragraph (a) (1), (2), and (3) of this section are authorized emergency care in USMTFs outside the continental United States, including Alaska, Hawaii, and Puerto Rico where facilities are not otherwise available in reasonably accessible non-Federal hospitals. Provide hospitalization only for acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible non-Federal facilities.

(c) Records disposal. Upon completion of treatment of accredited representatives of the American Red Cross or their dependents, forward medical records, including all clinical records and x-ray films, to the Medical Director, National Headquarters, American Red Cross, 20th and D Street NW., Washington, DC 20006.

(d) Charges and collection. Charge beneficiaries in paragraph (a) (1) and (2) of this section the rate applicable to officer personnel and dependents in paragraph (a)(3) of this section the dependent rate. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered to ARC personnel or to their dependents.

§ 728.79 Employees of Federal contractors and subcontractors.

(a) Beneficiaries.

(1) U.S. citizen contractor, engineering, and technical service personnel designated as U.S. Navy Technicians.

(2) Civilian employees of contractors and subcontractors operating under U.S. Government contracts.

(3) Dependents of personnel enumerated in paragraph (a) (1) and (2) of this section when accompanying their sponsor outside the continental United States or in Alaska.

(b) Care authorized.

(1) Beneficiaries identified in paragraph (a) (1) and (2) of this section may be provided emergency care in naval MTFs for illnesses and injuries occurring at work in or outside the United States.

(2) While serving outside the continental United States or in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities, beneficiaries identified in paragraph (a) (1), (2), and (3) of this section may receive hospitalization and necessary
outpatient services in naval MTFs on a reimbursable basis. Except for beneficiaries in paragraph (a)(1) of this section who are serving aboard naval vessels, all others enumerated may only be hospitalized for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(c) Charges and collection. Care is authorized on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.

§ 728.80 U.S. Government employees.

(a) Civil service employees of all Federal agencies, including teachers employed by Department of Defense Dependent’s Schools (DODDS) and their dependents, may be provided hospitalization and necessary outpatient services, (other than occupational health services), on a reimbursable basis, outside the continental limits of the United States and in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Except for employees who are serving aboard naval vessels, hospitalization may be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Routine dental care, other than dental prosthesis and orthodontia, is authorized on a space available basis provided facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(b) Such civilian employees and their dependents may be provided medical, surgical, dental treatment, hospitalization, and optometric care at installations in the United States which have been designated remote by the Secretary of the Navy for the purpose of providing medical care.

(c) The major objective of the following programs for civil service employees, regardless of location, is emergency treatment for relief of minor ailments or injuries to keep the employee on the job:

1. The Department of Labor, Office of Workers’ Compensation Programs (OWCP), governs the overall medical care program for employees of the Government who sustain injuries while in the performance of duty, including diseases proximately caused by conditions of employment (see §728.53).

2. Federal civil service employees and applicants for such employment are authorized services as outlined in chapter 22, section XIII, of the Manual of the Medical Department (MANMED). When appropriated fund and nonappropriated fund employees, including unpaid volunteer employees, require emergency and nonemergency occupational health services due to an illness or an injury on the job, provide this limited care through your occupational health service, emergency room, or evening primary care clinic, as appropriate. This care is rendered free of charge to the employee, the employee’s command, or insurance carrier. Included with this group are Military Sealift Command (MSC) civilian marine personnel (authorized additional care and services as outlined in BUMINST 6320.52 and care under §728.53(a)(7)) and members of the National Oceanic and Atmospheric Administration (NOAA) serving with the Navy.

3. Under the technical control of the Surgeon General of the Army, the DOD Civilian Employees’ Health Service is responsible for administering the health program for all Federal civil service employees in the District of Columbia area.

(d) Care, other than occupational health services, is provided on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.
§ 728.81 Other civilians.

(a) General. In an emergency, any person may be rendered care in naval MTFs to prevent undue suffering or loss of life or limb. Limit care to that necessary only during the period of the emergency, and if further treatment is indicated, initiate action to transfer the patient to a private physician or civilian facility as soon as possible. Further, subject to the provisions of §728.3, the following personnel are authorized care as set forth.

(b) Beneficiaries and extent of care. (1) Provide all occupational health services to civilian employees paid from nonappropriated funds, including Navy exchange employees and service club employees, free of charge (see §728.80(c)(2)). Provide treatment of occupational illnesses and injuries other than in emergencies per rules and regulations of the Office of Workers’ Compensation Programs (see §728.83).

(2) Civilians attending the Federal Bureau of Investigation (FBI) Academy, Marine Corps Development and Education Command, Quantico, VA, may be rendered care at the Naval Medical Clinic, Quantico, VA, for emergencies. Such persons who are in need of hospitalization for injuries or disease may be hospitalized and classed as civilian humanitarian nonindigents with the approval of the cognizant hospital’s commanding officer. EXCEPTION: Certain individuals, such as employees of the Federal Bureau of Investigation who are injured in the line of duty, may be entitled to care at the expense of the Office of Workers’ Compensation Programs (OWCP) (see §728.53).

(3) The following civilians who are injured or become ill while participating in Navy or Marine Corps sponsored sports, recreational or training activities may be rendered care on a temporary (emergency) basis until such time as disposition can be effected to another source of care.

(i) Members of the Naval Sea Cadet Corps.

(ii) Junior ROTC/NDCC (National Defense Cadet Corps) cadets.

(iii) Civilian athletes training or competing as part of the U.S. Olympic effort.

(iv) Civilians competing in Navy or Marine Corps sponsored competitive meets.

(v) Members of Little League teams and Youth Conservation groups.

(vi) Boy Scouts and Girl Scouts of America.

(4) Other civilian personnel included below are not normally eligible for care in naval MTFs; however, under the conditions set forth, care may be rendered.

(i) Potential beneficiaries.

(A) Civilian representatives of religious groups.

(B) Educational institutions representatives.

(C) Athletic clinic instructors.

(D) USO representatives.

(E) Celebrities and entertainers.

(F) Social agencies representatives.

(G) Others in a similar status to those in §728.81(b)(4)(i) (A) through (F).

(H) News correspondents.

(i) Commercial airline pilots and employees.

(J) Volunteer workers. This category includes officially recognized welfare workers, other than Red Cross.

(ii) Care authorized. (A) Persons enumerated in paragraph (b)(4)(i) (A) through (G) of this section, who are contracted to provide direct services to the Armed Forces and who are acting under orders issued by the Department of Defense or one of the military departments to visit military commands overseas, and their accompanying dependents, may be provided medical care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate. Limit inpatient care to acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Routine dental care, other than dental prostheses and orthodontia, is authorized on a space available basis outside the United States, provided such care is not otherwise available in reasonably accessible and appropriate non-Federal facilities.

(B) Persons enumerated in paragraph (b)(4)(i) (H) and (J) of this section are authorized emergency medical and dental care in naval MTFs outside the 48
§ 728.82 Individuals whose military records are being considered for correction.

Individuals who require medical evaluation in connection with consideration of their individual circumstances by the Navy, Army, and Air Force Board for Correction of Military Records are authorized evaluation, including hospitalization when necessary for the proper conduct thereof.

§ 728.83 Persons in military custody and nonmilitary Federal prisoners.

(a) Potential beneficiaries.
(1) Military prisoners.
(2) Nonmilitary Federal prisoners.
(3) Enemy prisoners of war and other detained personnel.

(b) Care authorized—(1) Military prisoners.
(i) Whose punitive discharges have been executed but whose sentences have not expired are authorized all necessary medical and dental care.
(ii) Whose punitive discharges have been executed and who require hospitalization beyond expiration of sentences are not eligible for care but may be hospitalized as civilian humanitarian nonindigents until final disposition can be made to some other appropriate facility.
(iii) On parole pending completion of appellate review or whose parole changes to an excess leave status following completion of sentence to confinement while on parole are members of the military service and as such are authorized care as outlined in subpart B.
(iv) On parole whose punitive discharge has been executed are not members of the military service and are therefore not entitled to care at Government expense. If the circumstances are exceptional, individuals herein who are not authorized care may request Secretarial designee status under the provisions of §728.77.
(2) Nonmilitary Federal prisoners. Under the provisions of this section, nonmilitary Federal prisoners are authorized only emergency medical care. When such care is being rendered, the institution to which prisoners are sentenced must furnish necessary guards to effectively maintain custody of prisoners and assure the safety of other patients, staff members, and residents of the local area. Under no circumstances will military personnel be voluntarily used to guard or control such prisoners. Upon completion of emergency care, make arrangements for immediate transfer of the prisoners to a nonmilitary MTF or for return to the facility to which sentenced.
(3) Enemy prisoners of war and other detained personnel. Subject to the provisions of §728.3, enemy prisoners of war and other detained personnel are entitled to and may be rendered all necessary medical and dental care.

(c) Charges and collection. Care provided individuals enumerated in §728.83(b)(1) (i), (iv), and (2) is on a reimbursable basis. Complete and submit, per subpart J, a DD 7 (Report of Treatment Furnished Pay Patients, Hospitalization Furnished, part A) or DD 7A (Report of Treatment Furnished Pay Patients, Outpatient Treatment, part B) when outpatient or inpatient care is rendered.
Subpart H—Adjuncts to Medical Care

§ 728.91 General.
Adjuncts to medical care include but are not limited to prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, wheel chairs, hospital beds, and similar medical support items or aids which are required for the proper care and management of the condition being treated. Generally, expenses incurred for procurement of such items, either from civilian sources as supplemental care or from stocks maintained by the facility, are payable from operation and maintenance funds available for support of naval MTFs. However, certain adjuncts may be cost-shared under CHAMPUS for CHAMPUS-eligible individuals under circumstances enumerated in the cooperative care or services criteria of §728.42.

§ 728.92 Policy.
(a) Provide adjuncts to medical care to eligible beneficiaries receiving inpatient or outpatient care when, in the opinion of the attending physician, such adjuncts will offer substantial assistance in overcoming the handicap or condition and thereby contribute to the well-being of the beneficiary.
(b) Unless necessary for humanitarian reasons, do not furnish orthopedic and prosthetic appliances on an elective basis to members of the naval service with short periods of service remaining when the defect requiring the appliance existed prior to entry into service and when such members will be separated from the service because of these defects.
(c) For active duty members, make the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear the same quantity as provided in the initial clothing allowance.
(d) Base the number of orthopedic and prosthetic appliances issued or replaced for other authorized recipients upon the individual’s requirements as determined by the attending physician to be consistent with the highest standards of modern medicine.
(e) Former members of the uniformed service should be advised that they may obtain durable medical equipment, medical care, and adjuncts from Veterans Administration facilities.
(f) Dependents are authorized certain adjuncts per §§728.31 (c) and (d) and in instances where items are not normally authorized at the expense of the Government, they may be provided at cost to the United States if available from Government stocks under the following conditions:
   (1) Outside the United States.
   (2) At specific stations within the United States which have been authorized by the Secretary of the Navy to sell these items.

§ 728.93 Chart of adjuncts.
The following chart and footnotes provide information relative to adjuncts which may be furnished the several categories of beneficiaries eligible for medical care at naval MTFs.

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<thead>
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<th>Adjuncts</th>
<th>Active duty and retired members</th>
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<th>Dependents authorized the same benefits(2)</th>
<th>Other beneficiaries(3)</th>
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Subpart I—Reservists—Continued
Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

§ 728.101 General.

(a) Notice of eligibility (NOE). While the NOE is basically a document that substantiates entitlement to a disability benefit equal to pay and allowances, it may be accepted when required to substantiate eligibility for benefits other than pay and allowances, i.e., treatment in USMTFs under the provisions of title 10, United States Code.

(b) Physical disability benefits. The following, excerpted and paraphrased from SECNAVINST 1770.3, paragraph 10, is applicable when a reservist may be entitled to physical disability benefits.

(1) When a notice of eligibility (NOE) has been issued to a member hospitalized in a naval MTF and the attending physician is of the opinion that recovery is not anticipated or that the reservist is not expected to be fit for return to full duty within a reasonable period, a medical board will be convened and the case managed the same as that of a Regular member. Assure that a copy of the NOE accompanies the medical board report forwarded to the Central Physical Evaluation Board. Disability benefits, equal to pay and allowances, will continue in such instances until final disposition.

(2) There is no limited duty status, per se, for inactive reservists. However, if the attending physician determines that a reservist is temporarily unfit for full duty, but will be fit for full duty following a period of convalescence or following duty with physical limitations, not to exceed 6 months, the physician may return the reservist to duty with a summary of the hospitalization or treatment. The summary will set forth the limitations posed by the member’s disability and the period of such limitations. Follow up hospitalization, treatment, and evaluation for the same condition may be provided at USMTFs during the period of restricted duty, if required. If, during the period of the restricted duty, it appears that the reservist will be permanently unfit for full duty, promptly authorize the reservist to report for evaluation, treatment if required, and appearance before a medical board at the nearest naval MTF capable of accomplishing same. Admission to the sicklist is authorized, when required. Should the medical board recommend appearance before a physical evaluation board, disability benefits equal to pay and allowances should continue until final disposition is effected.

§ 728.102 Care from other than Federal sources.

The provisions of this subpart do not authorize care for reservists at other than Federal facilities nor out of funds available for operation of USMTFs.
(supplemental care) after a period of active duty or a period of training duty ends, including travel to and from such training. Such care may be rendered under the provisions of part 732 of this chapter.

Subpart J—Initiating Collection Action on Pay Patients

§ 728.111 General.

The Comptroller of the Navy has approved a system of transactions that generates reports to COMNAV MEDCOM on unfunded reimbursable transactions. The purpose of the final report is to provide data on services furnished by naval health care facilities for which central collection from other Government agencies and private parties is required.

§ 728.112 Responsibilities.

(a) Patient administration departments. The initiation of the collection process begins with patient administration departments. Collection action cannot be accomplished unless patient administration departments take the initial step to complete:

(1) DD 7, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (part A). Prepare a separate substantiating DD 7, in triplicate, for each category of pay patient receiving inpatient care. At the end of each day that any pay patient is admitted, submit DD 7’s to the collection agent.

(2) DD 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (part B). Prepare a separate substantiating DD 7A, in triplicate, for each category of pay patient receiving outpatient care. At the end of each day that any pay patient is treated on an outpatient basis, submit DD 7A’s to the collection agent.

(b) Collection agents. Upon receipt of a completed DD 7 or DD 7A, collection agents will take the action indicated in paragraph 24304 of the Resource Management Handbook, NAVMED P–5020, to effect central collection action.

§ 728.113 Categories of pay patients.

The categories of patients for whom collection action must be initiated are:

(a) Coast Guard. (1) Active Officers; (2) Retired Officers; (3) Active Enlisted; (4) Retired Enlisted; (5) Dependents; (6) Cadets.

(b) Public Health Service. (1) Active Officers; (2) Retired Officers; (3) Dependents of Officers.

(c) National Oceanic and Atmospheric Administration (NOAA). (1) Active Officers; (2) Retired Officers; (3) Dependents of Officers.

(d) Foreign. (1) NATO Officers (Except Canadians provided care under the comparable care agreement.); (2) NATO Enlisted (Except Canadians provided care under the comparable care agreement.); (3) NATO Dependents; (4) Civilians Accompanying NATO Members; (5) Foreign Military Sales (FMS) Officers; (6) FMS Enlisted; (7) FMS Dependents; (8) FMS Civilians; (9) Military Grant Aid Officers; (10) Military Grant Aid Enlisted; (11) Military Grant Aid Dependents; (12) Military Grant Aid Civilians; (13) Military Officers From Other Than NATO Nations; (14) Military Enlisted From Other Than NATO Nations; (15) Dependents of Officers and Enlisted From Other Than NATO Nations; (16) Civilians Accompanying Military Members of Other Than NATO Nations; (17) Nationals and Their Dependents.

(e) Secretarial designees not exempted from paying.

(1) Others. (1) Merchant Marines; (2) Military Sealift Command (MSC) Personnel; (3) Public Health Service beneficiaries (Other than Commissioned Corps); (4) Veterans Administration beneficiaries; (5) Peace Corps beneficiaries; (6) Job Corps beneficiaries; (7) Volunteers In Service to America (VISTA) beneficiaries; (8) Office of Workers Compensation Program (OWCP) beneficiaries; (9) Bureau of Employees Compensation (BEC) beneficiaries; (10) Department of State and Other Federal Agencies beneficiaries (prepare a separate form for each Federal agency); (11) Civilian Humanitarian Nonindigents (CHNI); (12) Trust Territory beneficiaries; (13) Others not specified above who are not entitled to health benefits at the expense of the Government.
PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

§ 732.1 Background.

When a U.S. Navy or Marine Corps member or a Canadian Navy or Marine Corps member receives authorized care from other than a Navy treatment facility, care is under the cognizance of the uniformed service medical treatment facility (USMTF) providing care, the USMTF referring the member to another treatment source, or under the provisions of this part. If such a member is not receiving care at or under the auspices of a Federal source, responsibility for health and welfare, and the adjudication of claims in connection with their care, remains within the Navy Medical Department. Part 728 of this chapter and NAVMEDCOMINST 6320.18 contain guidelines concerning care for other eligible beneficiaries, not authorized care by this part.

§ 732.2 Action.

Ensure that personnel under your cognizance are made aware of the contents of this part. Failure to comply with contents may result in delayed adjudication and payment or may result in denial of Navy financial responsibility for expenses of maternity, medical, or dental care obtained.

Subpart B—Medical and Dental Care from Nonnaval Sources

§ 732.11 Definitions.

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

(a) Active duty. Full-time duty in the active military service of the United States. Includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) Active duty for training. A specified tour of active duty for Reserves for training under orders that provides for automatic reversion to non-active duty status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service. The period of duty includes travel to and from training duty, not in excess of the allowable constructive travel time prescribed by SECNAVINST 1770.3 and paragraphs 10242 and 10243 of DOD Military Pay and Allowances Entitlements Manual.

(c) Constructive return. For purposes of medical and dental care, an unauthorized absentee's return to military control may be accomplished through notification of appropriate military authorities as outlined below.

(1) For members in an unauthorized absentee (UA) status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care that
the Navy accepts responsibility for a naval member's care. The naval activity providing this information must also provide documentation of such notification to the appropriate adjudication authority in §732.20.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested, while in a UA status, by civil authorities for a civil offense and a naval authority has been notified that the member can be released to military control.

(2) When a naval member has been arrested by civil authorities for a civil offense while in a UA status and the offense does not allow release to military control, constructive return is not accomplished. The individual is responsible for medical and dental care received prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(d) Designated Uniformed Services Treatment Facilities (Designated USTFs). Under Pub. L. 97–99, the following facilities are “designated USTFs” for the purpose of rendering medical and dental care to all categories of individuals entitled to care under this part.

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

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

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

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

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

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


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

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

(3) Outpatient services only. (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103 (207) 774–5855.

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

(e) Duty status. The situation of the claimant when maternity, medical, or dental care is received. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, performing active duty for training or inactive duty training, are also considered in a duty status during their allowable constructive travel time to and from training.

(f) Emergency care. Medical treatment of severe life threatening or potentially disabling conditions which result from accident or illness of sudden onset and necessitates immediate intervention to prevent undue pain and suffering or loss of life, limb, or eyesight and dental treatment of painful or acute conditions.

(g) Federal facilities. Navy, Army, Air Force, Coast Guard, Veterans Administration, and USTFs (former U.S. Public Health Service facilities listed in §732.11(d).

(h) Inactive duty training. Duty prescribed for Reserves by the Secretary of the Navy under Section 206 of Title 37, United States Code, or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary of the Navy and performed by Reserves on a voluntary basis in connection with the prescribed training or maintenance activities of units to which they are assigned.

(1) Maternity emergency. A condition commencing or exacerbating during pregnancy when delay caused by referral to a uniformed services medical
§ 732.12 Eligibility.

(a) Regular members. To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense, Regular active duty United States naval members and Canadian Navy and Marine Corps members must be in a duty status when care is provided.

(b) Reservists. (1) Reservists on active duty for training and inactive duty training, including leave and liberty therefrom, are considered to be in a duty status while participating in training. Accordingly, they are entitled to care for illnesses and injuries occurring while in that status.

(2) Reservists are entitled to care for injuries and illnesses occurring during
§ 732.14 Authorized care.

(a) Medical. (1) Consultation and treatment provided by physicians or at medical facilities, and procedures not involving treatment when directed by COMNAVMEDCOM, are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc. See §732.17 for prior approval of these services in non-emergency situations.

(2) When transplant (including bone marrow) is the treatment of choice, COMNAVMEDCOM approval is required. If time permits, telephone (A) 294–1102, (C) (202) 653–1102 during regular hours or (A) 294–1327, (C) 653–1327 after regular duty hours, and followup with a message. Request approval via message in nonemergency situations.

(b) Maternity episode. If a member authorized care under this part qualifies for care under the provisions of §732.17(c) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test, necessarily the day and hour care was initiated.

§ 732.13 Sources of care.

(a) Initial application. If a member requires maternity, medical, or dental care and naval facilities are unavailable, make initial application to other available Federal medical or dental facilities or USTFs. When members are stationed in or passing through a NATO SOFA nation and U.S. facilities are unavailable, ensure that members make initial application for emergency and nonemergency care to military facilities of the host country, or if applicable, to civilian sources under the NATO SOFA nation’s health care program. When hospitalized in Hawaii, Alaska, or in a foreign medical facility, members and responsible commands will comply with OPNAVINST 6320.6.

(b) Secondary sources. When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from non-Federal sources under this part.

§ 732.14 Authorized care.

(a) Medical. (1) Consultation and treatment provided by physicians or at medical facilities, and procedures not involving treatment when directed by COMNAVMEDCOM, are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc. See §732.17 for prior approval of these services in non-emergency situations.

(2) When transplant (including bone marrow) is the treatment of choice, COMNAVMEDCOM approval is required. If time permits, telephone (A) 294–1102, (C) (202) 653–1102 during regular hours or (A) 294–1327, (C) 653–1327 after regular duty hours, and followup with a message. Request approval via message in nonemergency situations.

(b) Maternity episode. If a member authorized care under this part qualifies for care under the provisions of §732.17(c) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test,
§ 732.15 Unauthorized care.

The following are not authorized by this part:
(a) Chiropractic services.
(b) Vasectomies.
(c) Tubal ligations.
(d) Breast augmentations or reductions.
(e) Psychiatric care, beyond the initial evaluation.
(f) Court ordered care.
(g) Contact lenses.
(h) Other elective procedures.

§ 732.16 Emergency care requirements.

Only in a bona fide emergency will medical, maternity, or dental services be obtained under this part by or on behalf of eligible personnel without prior authority as outlined below.

(a) Medical or dental care. A situation where the need or apparent need for medical or dental attention does not permit obtaining approval in advance.

(b) Maternity care. When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a USMTF or USTF, would jeopardize the welfare of the mother or unborn child, the following constitutes indications for admission to or treatment at a non-Federal facility:
(1) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.
(2) Spontaneous abortion, with first trimester hemorrhage.
(3) Premature or term labor with delivery.
(4) Severe pre-eclampsia.
(5) Hemorrhage, second and third trimester.
(6) Ectopic pregnancy with cardiovascular instability.
(7) Premature rupture of membranes with prolapse of the umbilical cord.
(8) Obstetric sepsis.
(9) Any other obstetrical condition that, by definition, constitutes an emergency circumstance.
§ 732.17 Nonemergency care requirements.

Members are cautioned not to obtain nonemergency care from civilian sources without prior approval from the cognizant adjudication authority in §732.20. Obtaining nonemergency care, other than as specified herein, without documented prior approval may result in denial by the Government of responsibility for claims arising from such care.

(a) Individual prior approval. (1) Submit requests for prior approval of nonemergency care (medical, dental, or maternity) from non-Federal sources to the adjudication authority (§732.20) serving the geographic area where care is to be obtained. When the requirements of §732.14(d)(2) are met and spectacles have been obtained, request after-the-fact approval per this paragraph.

(2) Submit requests on a NAVMED 6320/10. Statement of Civilian Medical/Dental Care, with blocks 1 through 7 and 19 through 25 completed. Assistance in completing the NAVMED 6320/10 can be obtained from the health benefits advisor (HBA) at the nearest USMTF.

(3) Upon receipt, the adjudication authority will review the request and, if necessary, forward it to the appropriate chief of service with an explanation of non-Federal care regulations pertaining to the request. The chief of service will respond to the request within 24 hours. The adjudication authority will then complete blocks 26 and 27, and return the original of the approved/disapproved NAVMED 6320/10 to the member.

(b) Blanket prior approval. (1) Recruiting offices and other activities far removed from USMTFs, uniformed services dental treatment facilities (USDTFs), designated USTFs, and VA facilities may request blanket approval for civilian medical and dental care of assigned active duty personnel. Letter requests should be submitted to the adjudication authority (§732.20) assigned responsibility for the geographic area of the requestor.

(2) With full realization that such blanket approval is an authorization to obligate the Government without individual prior approval, adjudication authorities will ensure that:

(i) Each blanket approval letter specifies a maximum dollar amount allowable in each instance of care.

(ii) The location of the activity receiving blanket approval authority is clearly delineated.

(iii) Travel distance and time required to reach the nearest USMTF, USDTF, designated USTF, or VA facility have been considered.

(iv) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(v) COMNAVMEDCOM (MEDCOM-333) is made an information addressee on each letter of authorization.

(c) Maternity care. (1) Pregnant active duty members residing outside Military Health Services System (MHSS) inpatient catchment areas of uniformed services facilities (including USTFs), designated in Volumes I, II, and III of MHSS Catchment Area Directories, are permitted to choose whether to deliver in a closer civilian hospital or travel to a USMTF or USTF for delivery. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member must obtain individual prior approval as outlined in paragraph (a) of this section. Adjudication authorities should not approve requests from members residing within an inpatient MHSS catchment area unless:

(i) Capability does not (did not) exist at the USMTF or other Federal MTF serving her catchment area.

(ii) An emergency situation necessitated delivery or other treatment in a non-Federal facility (§732.16(b)).

(2) Normal delivery at or near the expected delivery date should not be considered an emergency for members residing within an MHSS inpatient catchment area where delivery was expected to occur and, unless provided for in this part, will not be reason for delivery in a civilian facility at Government expense.

(3) When granted leave that spans the period of an imminent delivery, the pregnant member should request a copy of her complete prenatal care
§ 732.18 Notification of illness or injury.

(a) Member’s responsibility. (1) If able, members must notify or cause their

use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. Request that the member sign a statement on an SF 600, Chronological Record of Medical Care, or an SF 603 or 603A, Health Record, Dental as appropriate, for inclusion in the member’s Health Record. The statement must specify that counseling has been accomplished, and that the member understands the significance of receiving unauthorized civilian care. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling will include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that hospitalization become necessary, or other time is lost from the member’s place of duty, such lost time may be chargeable as “ordinary leave.”

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier or when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member’s fitness for continued service.

(b) For emergency care, see § 732.30.

(d) Nonemergency care without prior approval. (1) If it becomes known that a member intends to seek medical or dental care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the

records from the prenatal care physician. The physician should note in the record whether the member is clear to travel. If receiving prenatal care from a USMTF, the HBA will assist the member in obtaining a statement bearing the name of the MTF (may be an OMA) with administrative responsibility for the geographic area of her leave address, including the telephone number of the head of the patient administration department or HBA, if available. If a member is receiving prenatal care from other than a USMTF, she should avail herself of the services of the nearest HBA to effect the aforesaid services. This statement should be attached to the approved leave request. In normal deliveries, requests for after-the-fact approval should be denied when members have not attempted to adhere to the provisions of this part.

(4) Upon arrival at the designated leave address, members should contact the MTF indicated on the statement attached to their leave request. The MTF will make a determination whether the member’s leave address falls within the inpatient catchment area of a USMTF or USTF with the capability of providing needed care. If no such USMTF or USTF exists, the member will be given the opportunity to choose to deliver in a civilian hospital closer to her leave address or travel to the most accessible USMTF or USTF with capability for maternity care.

(5) Upon determination that civilian sources will be used for maternity care, the MTF listed on the attachment to the leave papers will inform the member that she (or someone acting in her behalf) must notify that MTF of the member’s admission for delivery or other inpatient care so that medical cognizance can be initiated.

(6) Automatically grant prior or retroactive approval, as the situation warrants, to members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders.

(d) Nonemergency care without prior approval. (1) If it becomes known that a member intends to seek medical or dental care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the
§ 732.19

(1) Article 4210100.11 of the MILPERSMAN requires submission of a personnel casualty report, by priority message, to the primary and secondary next of kin (PNOK/SNOK) of Navy members seriously or very seriously ill or injured, and on those terminally ill (diagnosed and confirmed). While submission of the personnel casualty report to the PNOK and SNOK is a responsibility of the member’s command, adjudication authorities must advise the member’s command when such a member is being treated or diagnosed by non-Federal sources. The message will also request forwarding of the member’s service and medical records to the personnel support detachment (PSD) supporting the activity in which the OMA is located. Additionally, the notification should contain a request for appropriate orders, either temporary additional duty (TEMADD) or temporary duty (TEMPDU).

(1) Request TEMADD orders if care is expected to terminate within the time constraints imposed for these orders.

(ii) Request TEMDU Under Treatment orders for members hospitalized in a NMTF within the adjudication authority’s area of responsibility.

(2) Make prompt message notification to the member’s commanding officer when apprised of any medical condition, including pregnancy, which will now or in the foreseeable future result in loss of a member’s full duty services in excess of 72 hours. Mark the message “Commanding Officer’s Eyes Only.”

§ 732.19 Claims.

(a) Member’s responsibility. Members receiving care are responsible for preparation and submission of claims to the cognizant adjudication authority identified in §732.20. A complete claim includes:

(i) Article 4210100.11, Statement of Civilian Medical/Dental Care. In addition to its use as an authorization document, the original and three copies of a...
§ 732.19

NAVMED 6320/10 are required to adjudicate claims in each instance of sickness, injury, or maternity care when treatment is received from a non-Federal source under the provisions of this part. The form should be prepared by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the member receiving care when on detached duty where a senior officer is not present.

(i) For nonemergency care with prior approval, submit the NAVMED 6320/10 containing the prior approval, after completing blocks 8 through 18.

(ii) For emergency care (or nonemergency care without prior approval), submit a NAVMED 6320/10 after completing blocks 1 through 18. Ensure that the diagnosis is listed in block 10. If prior approval was not obtained, state in block 11 circumstances necessitating use of non-Federal facilities.

(iii) Signature by the member in block 17 implies agreement for release of information to the responsible adjudicating authority receiving the claim for processing. Signature by the certifying officer in block 18 will be considered certification that documentation has been entered in the member’s Health Record as directed in article 16–24 of MANMED.

(2) Itemized bills. The original and three copies of itemized bills to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(iv) Acknowledgment of receipt of the services or supplies on the face of the bill or by separate certificate. The acknowledgment must include the statement, “Services were received and were satisfactory.”

(3) Claims for reimbursement. To effect reimbursement, also submit the original and three copies of paid receipts and an SF 1164. Claim for Reimbursement for Expenditures on Official Business, completed per paragraphs 046377–2 a and b of the Naval Comptroller Manual (NAVCOMPT MAN).

(4) Notice of eligibility (NOE) and line of duty (LOD) determination. When a reservist claims benefits for care received totally after the completion of either an active duty or active duty for training period, the claim should also include:

(i) An NOE issued per SECNAVINST 1770.3.

(ii) An LOD determination from the member’s commanding officer.

(b) Adjudicating authority’s responsibility. Reviewing and processing properly completed claims and forwarding approved claims to the appropriate disbursing office should be completed within 30 days of receipt. Advice may be requested from COMNAVMEDCOM (MEDCOM–333 (A/V 294–1127)) for medical or MEDCOM–06 (A/V 294–1250)) for dental on unusual or questionable instances of care. Advise claimants of any delay experienced in processing claims.

(1) Review. The receiving adjudication authority will carefully review each claim submitted for payment or reimbursement to verify whether:

(i) Claimant was entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training, was not an unauthorized absentee, etc.). As required by part 728 of this chapter, a Defense Enrollment Eligibility Reporting System (DEERS) eligibility check must be performed on claims to all claimants required to be enrolled in DEERS.

(ii) Care rendered was due to a bona fide emergency. (NOTE: When questions arise as to the emergency nature of care, forward the claim and all supporting documentation to the appropriate clinical specialist at the nearest naval hospital for review.)

(iii) Prior approval was granted if a bona fide emergency did not exist. (NOTE: If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim may be denied.) Consideration should always be given to cases that would have received prior approval but, due to lack of knowledge of the program, the member did not submit a request.

(iv) Care rendered was authorized under the provisions of this part.
Department of the Navy, DoD § 732.20

(v) Care rendered was appropriate for the specific condition treated. (NOTE: When questions arise regarding appropriateness of care, forward all documentation to a clinical specialist at the nearest naval hospital for review. If care is determined to have been inappropriate, the claim may be denied to the extent the member was negligent.)

(vi) Claimed benefits did not result from a referral by a USMTF. If the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the civilian care is supplemental and may be the responsibility of the referring USMTF. See §732.11(p) for the definition of supplemental care.

(2) Disapproval. If a determination is made to disapprove a claim, provide the member (and provider of care, when applicable) a prompt and courteous letter stating the reason for the disapproval and the appropriate avenues of appeal as outlined in §732.24.

(3) Processing. Subpart C contains the chargeable accounting classifications and Standard Document Numbers (SDN) to be cited on the NAVCOMPT 2277, Voucher for Disbursement and/or Collection, on an SF 1164 submitted per paragraph (a)(3) of this section, and on supporting documents of approved claims before submission to disbursing offices.

(i) For payment to providers of care, a NAV COMPT 2277 will be prepared and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation per paragraph 046393–1 of the NAVCOMPTMAN.

(ii) Where reimbursement is requested, the SF 1164 submitted per §732.19(a)(3) will be completed, per paragraph 046377 of the NAVCOMPTMAN, and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation.

(c) Amount payable. Amounts payable are those considered reasonable after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where services or supplies were furnished. Although rates specially established by the Veterans Administration, CHAMPUS, or those used in Medicare are not controlling, they should be considered along with other facts.

(1) Excessive charges. If any charge is excessive, the adjudication authority will advise the provider of care of the conclusion reached and afford the provider an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction and the claim is that of a physician or dentist, refer the difference in opinions to the grievance committee of the provider’s professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, forward all documentation to COMNAVMEDCOM (MEDCOM–333) for decision. Charges determined to be above the allowed amount or charges for unauthorized services are the responsibility of the service member.

(2) Third party payment. Do not withhold payment while seeking funds from health benefit plans or from insurance policies for which premiums are paid privately by service members (see §732.22 for possible recovery of payments action).

(3) No-fault insurance. In States with no-fault automobile insurance requirements, adjudication authorities will notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(d) Duplicate payments.Adjudication authorities and disbursing activities should take precautions against duplicate payments per paragraph 046073 of the NAVCOMPTMAN.

§ 732.20 Adjudication authorities.

(a) General. Controlling activities for medical care in the United States are designated as “offices of medical affairs” (OMA) and for dental care, “offices of dental affairs” (ODA). NAVMEDCOMINST 6010.3 delineates responsibilities and functional tasks of OMAs and ODAs, including monthly reporting of receipt of claims and claims payment. Commanders of geographic
§ 732.20

32 CFR Ch. VI (7–1–02 Edition)

Naval medical commands must communicate with all activities in their regions to ensure that messages and medical cognizance reports are properly furnished per higher authority directives.

(b) Within the United States (less Hawaii). In the contiguous United States, the District of Columbia, and Alaska, the following six regions are responsible for care rendered or to be rendered within their areas of responsibility.

(1) Northeast Region. The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA and 1 OMA:

(i) Responsibility for dental matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3910 or (C) (312) 688–3940.

(ii) Responsibility for medical matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3950 or (C) (312) 688–3950.

(2) National Capital Region. For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A/V) 295–5322 or (C) (301) 295–5322.

(3) Mid-Atlantic Region. For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A/V) 565–1074/1075 or (C) (804) 445–1074 or 1075.

(4) Southeast Region. For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer, Naval Medical Clinic, Code O1A, New Orleans, LA 70146, Tele: (A/V) 485–2406/7/8 or (C) (504) 482–2406 or 2407 or 2408.

(5) Southwest Region. For the States of Arizona and New Mexico; the counties of Kern, San Bernardino, San Luis Obispo, Santa Barbara, and all other California counties south thereof; the community of Bridgeport, California (Marine Corps cold-weather training site); and Nevada, except for NAS Fallon and its immediate area; medical and dental responsibilities are vested in: Commander, Naval Medical Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134–7000, Tele: (A/V) 987–2611 or (C) 233–2611.

(6) Northwest Region. The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; the counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area are served by 2 OMAs and 1 ODA:

(i) Responsibility for dental matters for the area of responsibility of the Northwest Region is vested in: Commander, Naval Medical Command, Northwest Region, Office of Dental Affairs, Oakland, CA 94627–5025, Tele: (A/V) 855–6200 or (C) (415) 633–6200.

(ii) Responsibility for medical matters for the States of Colorado, Kansas, and Utah; the California counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area is vested in: Commander, Naval Medical Command, Northwest Region, Oakland, CA 94627–5025, Attn: Office of Medical Affairs, Tele: (A/V) 855–5705 or (C) (415) 633–5705.

(iii) Responsibility for medical matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA 98115, Attn: Office of Medical Affairs, Tele: (A/V) 941–3823 or (C) (206) 526–3823.

358
(c) Outside the United States (plus Hawaii). For all areas outside the United States plus Hawaii, the following activities are vested with responsibility for approval or disapproval of requests and claims for maternity, medical, and dental care:

1. Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

2. Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652–1600 (U.S. Naval Hospital, Subic Bay, Luzon, Republic of the Philippines), for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

3. Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765–1600 (U.S. Naval Hospital, Yokosuka, Japan), for care rendered in Japan, Korea, and Okinawa.

4. Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96630–1600 (U.S. Naval Hospital, Guam, Marianas Islands), for care rendered in New Zealand and Guam.

5. Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96680–1800 (U.S. Naval Communications Station, Harold E. Holt, Exmouth, Western Australia), for care rendered in Australia.

6. Commanding Officer, U.S. Naval Air Station, FPO New York 09560 (U.S. Naval Air Station, Bermuda), for care rendered in Bermuda.

7. Commanding Officer, U.S. Naval Hospital, FPO Miami 34051 (U.S. Naval Hospital, Roosevelt Roads, Puerto Rico), for maternity and medical care, and Commanding Officer, U.S. Naval Dental Clinic, FPO Miami 34051 (U.S. Naval Dental Clinic, Roosevelt Roads, PR), for dental care rendered in Puerto Rico, the Virgin Islands, and other Caribbean Islands.

8. Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for maternity and medical care, and Commanding Officer, Naval Dental Clinic, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

9. The OMA for either the Southeast Region or the Southwest Region for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333).

10. Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333) for inpatient and outpatient emergency and nonemergency care of active duty Navy and Marine Corps members in Canada and under the circumstances outlined in paragraph (d) of this section.

11. Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command in paragraphs (b)(1) through (c)(9) of this section. This is a local policy decision to enhance the maintenance of good public relations.

12. The appropriate command in paragraphs (b)(1) through (c)(9) of this section for care rendered aboard commercial vessels en route to a location within the geographic areas listed.

13. The commanding officer authorizing care in geographical areas not specifically delineated elsewhere in this section.

(d) The Commander, Naval Medical Command (MEDCOM–333), Navy Department, Washington, DC 20372–5120. Under the following circumstances, responsibility is vested in COMNAVMEDCOM for adjudication of claims:

1. For reservists who receive treatment after completion of their active duty or inactive duty training as prescribed in §732.12(b).

2. For care rendered in Mexico to personnel stationed outside the areas of responsibility of the Southeast and Southwest Regions.

3. For care rendered to members stationed in or passing through countries in Central and South America.

4. For outpatient care rendered NATO active duty members.

5. When Departmental level review is required prior to approval, adjudication, or payment. These claims:

   (1) Will be considered on appeal.
§ 732.21 Medical board.

When adjudication authorities uncover conditions which may be chronic or otherwise potentially disabling, they should make a determination (with help from appropriate clinical specialists) as to the need for a medical board. Chapter 18 of MANMED and Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM–25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to):

1. Arthritis,
2. Asthma,
3. Diabetes,
4. Gout,
5. Heart disease,
6. Hypertension,
7. Peptic ulcer disease,
8. Psychiatric conditions, and
9. Allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the adjudication authority with the concurrence of an appropriate naval clinical specialist and the commander of the regional medical command.

§ 732.22 Recovery of medical care payments.

Adjudication authorities must submit evidence of payment to the action JAG designee per chapter 21 of the Manual of the Judge Advocate General (JAGMAN), in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workers compensation, no-fault insurance, or under medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 must be completed whenever benefits are received in connection with a vehicle accident. Adjudication authorities should return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) must be completed and submitted by adjudication authorities with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care must show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member should be asked to sign his or her name beneath the statement.

(c) For care rendered in States with no-fault insurance laws, comply with procedures outlined in §732.19(c)(3).

§ 732.23 Collection for subsistence.

The Navy Pay and Personnel Procedures Manual provides guidance regarding pay account checkage procedures to liquidate subsistence charges incurred by members entitled to care under the provisions of this part. Such members must also be entitled to basic allowance for subsistence (BAS) while hospitalized at Government expense. The responsible activity (the adjudication authority or the naval MTF to which such a member is transferred) should follow procedures outlined in the Navy Pay and Personnel Procedures Manual when an eligible officer or enlisted member of the naval service is subsisted at Department of the Navy expense while hospitalized in a nonnaval treatment facility. Subpart C contains the creditable accounting classification for inpatient subsistence collections.

§ 732.24 Appeal procedures.

When a claim for care or a request for prior approval for nonemergency
care is initially denied by an adjudication authority, the member may appeal
the denial as outlined below. Any level in the appeal process may over-rule the
previous decision and order payment of the claim in whole or in part or grant
the request for prior approval of care.
(a) Level I—Reconsideration by the
adjudication authority making the ini-
tial denial. The member should submit
any additional information that may
mitigate the initial denial.
(b) Level II—Consideration by the
commander of the regional medical
command having cognizance over the
adjudication authority which upheld
the initial denial on reconsideration.
(c) Level III—Consideration by
COMNAVMEDCOM (MEDCOM–333).

Subpart C—Accounting Classifi-
cations for Nonnaval Medical
and Dental Care Ex-
penses and Standard Docu-
ment Numbers

§ 732.25 Accounting classifications for
nonnaval medical and dental care
expenses.

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<th>OBJ** Class</th>
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<th>AAA</th>
<th>TT</th>
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Notes:
\(^*\)For the third digit of the appropriation, enter the last digit of the fiscal year current at the time claim is ap-
proved for payment.
\(^**\)Refer to NAVCOMPT Manual par. 027003 for appropriate Expenditure Category Codes when disburse-
ment or collection involves a foreign or U.S. Contractor abroad.
\(^1\)Not applicable when care is procured from non-DOD sources for a patient receiving either inpatient or out-
patient care at a naval medical facility. In such instances, the expenses incurred are payable from operations
and maintenance funds available for support of the naval medical facility.
\(^2\)Service expenses include: hospital, emergency room clinic, office fees; physician and dentist professional
fees; laboratory, radiology, operating room, anesthesia, physical therapy, and other services provided.
\(^3\)Supply expenses include: medications and pharmacy charges; IV solutions; whole blood and blood prod-
ucts; bandages; crutches; prosthetic devices; needles and syringes; and other supplies provided.

§ 732.26 Standard document numbers.
Adjudication authorities will assign
to each claim approved for payment, a
unique 15 position alpha/numeric
standard document number (SDN). Prominently display this number on
the NAVMED 6320/10, the NAVCOMPT
2277 (Voucher for Disbursement and/or
Collection), NAVCOMPT 1164 (Claim
for Reimbursement for Expenditures on
Official Business) and on all other doc-
umentation accompanying claims. Compose SNDs per the following example:
N0016887MD00001 or
N0016887RV00001.
PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS

Sec. 733.1 Rates of basic allowance for housing (BAH).

733.2 Delegations.

733.3 Information and policy on support of dependents.

733.4 Complaints of nonsupport and insufficient support of dependents.

733.5 Determination of paternity and support of illegitimate children.


SOURCE: 44 FR 42190, July 19, 1979, unless otherwise noted.

§733.1 Rates of basic allowance for housing (BAH).

(a) Except as otherwise provided by law, a member of the naval service entitled to basic pay is entitled to a BAH at the monthly rates according to the pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term “dependent” with respect to a member of the naval service, as used in this part, means:

(1) His or her spouse;

(2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member) who either:

(i) Is under 21 years of age; or

(ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

(i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or

(ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of is or her support.

The relationship between a stepparent and his or her stepchild is terminated

362
§ 733.2 Delegations.

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44190, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, DC 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for BAH, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.


§ 733.3 Information and policy on support of dependents.

(a) Policy—(1) General. The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) Adequacy of support. Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth in paragraphs (b) and (c) of this section are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(b) Navy members. (1) The amount of support to be provided in the absence of a mutual agreement or court order is as follows:

For spouse only—1/3 gross pay
For spouse and one minor child—1/2 gross pay
For spouse and two or more children—2/3 gross pay
For one minor child—1/4 gross pay
For two minor children—1/3 gross pay
For three or more children—1/2 gross pay

(2) For purposes of this support guide, gross pay will include basic pay and BAH, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(3) Support of a lawful wife. The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the
§ 733.3

parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps, as appropriate.

(4) Payments of alimony. Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) Support of children. The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through divorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) Adopted children. The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) Entitlement to basic allowance for quarters. Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member’s application. This delays the application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Allowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) Application of the rule based on Robey v. United States 71 Ct. Cl. 561. Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

(i) The full amount of his/her basic allowance for quarters, or

(ii) An amount specified in a court order or legal separation agreement, or

(iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

(c) Marine Corps members. (See MCO 5800.16A, Marine Corps Manual for Legal Administration (LÉGADMINMAN))

(1) In the absence of a court order or a written agreement between the parties as to an amount of support to be furnished by the Marine, the following shall apply to establish interim support requirements. Note that gross pay
is defined as basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence.

(2) Single family. (i) For a single family living in Government housing (civilian spouse): interim support shall be $200.00 per supported person, up to a maximum of ½ gross pay, per month.

(ii) For a single family not living in Government housing (civilian spouse): interim support shall be either $200.00 per supported family member, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of ½ gross pay, per month.

(3) Multiple families (not including a spouse in the armed forces). Interim support for each family member shall be either $200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of ½ gross pay, per month.

(4) Both spouses in the armed forces. (i) No children of the marriage: no support obligation, regardless of any disparities in pay grade.

(ii) All the children of the marriage in the custody of one spouse: interim support shall be either $200.00 per supported child, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of ½ gross pay, per month.

(iii) If custody of children of the marriage is divided between the two parents: interim support shall be either $200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of ½ gross pay, per month.

(5) Support amounts required pursuant to this section will be paid until a court order or written agreement is obtained.

(6) Form and timing of financial support payments

(i) Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made in one of the following ways:

(A) Check.

(B) Money order.

(C) Electronic transfer.

(D) Voluntary allotment.

(E) Cash.

(F) Involuntary allotment.

(G) Garnishment.

(ii) As an exception to paragraph 15002.6a of the LEGADMINMAN, a commanding officer may direct compliance with the financial support requirements of this section by making in-kind financial support. For example, paying non-Government housing expenses on behalf of family members, automobile loans, or charge accounts.

(7) Alimony and child support. (i) Dependents for whom BAH or other allowances are payable are defined by law. For purposes of qualifying for BAH, medical care, or other benefits, a former spouse is not a dependent even though alimony has been decreed. Marines are expected to comply with the terms of court orders which adjudge alimony payments (even though BAH is not payable) until the responsibility for compliance is terminated by a court of competent jurisdiction; a written agreement between the persons concerned; relinquishment by the former spouse in writing; or the waiver of the support requirement is granted by the general court-martial (GCM) authority in writing.

(ii) If the decree is silent as to alimony payments, it is presumed that the court did not intend such payments.

(iii) When a valid court order exists and the Marine concerned is financially unable to comply, the Marine will be advised that noncompliance with the terms of that order renders the Marine liable to further civil court action.

(iv) The duty of Marines to support their minor children is not terminated by desertion or other misconduct on the part of the Marine’s spouse. Similarly, the obligation to support a child or children is not eliminated or reduced by the dissolution of the marriage through divorce, unless a judicial decree or order specifically negates the obligation of child support. The fact that a divorce decree is silent relative to support of minor children, or does not mention a child or children, will not be interpreted by command authorities as relieving the Marine of the inherent obligation to provide support for the child or children of the marriage.
§ 733.4 Complaints of nonsupport and insufficient support of dependents.

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in §733.3 will apply. The member will be informed that his/her Navy or Marine Corps career may be in jeopardy if he/she does not take satisfactory action. The member may become ineligible to reenlist or extend enlistment (in the case of enlisted members), and may be subject to administrative or disciplinary action that may result in separation from the Navy or Marine Corps.

1) Waiver of support of spouse. If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity or in the case of a member of the U.S. Marine Corps, the general court-martial convening authority, may grant such a waiver for support of a spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) U.S. Navy members. An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer, and written admissions by the spouse contained in letters written by that spouse to the service member or other persons. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(ii) U.S. Marine Corps members. The Marine’s commander may consider all pertinent facts and circumstances. The general court-martial convening authority may consider any reliable evidence including, but not necessarily limited to, the following: affidavits of the Marine, relatives, or other witnesses; admissions of the spouse, including verbal and written statements or letters written by the spouse to the Marine or other persons; pertinent photographs or court orders; and admissions by the person with whom the spouse allegedly had sexual liaisons. Witness statements should ordinarily state facts that were personally observed. Statements that merely state a
(ii) The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or in the case of a member of the U.S. Marine Corps, the general court-martial convening authority, with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) Action. After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

(b) [Reserved]

§ 733.5 Determination of paternity and support of illegitimate children.

(a) Illegitimate children. If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) Judicial order or decree of paternity or support. Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree fails within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. If the member refuses to comply with the terms of the court order, administrative action will be taken as indicated in §733.4.

(1) Court of competent jurisdiction. A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or personal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.
(c) Nonjudicial determination. In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) Members not on active duty. Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) Former members. (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician’s affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.


PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

Sec.
734.1 Purpose.
734.2 Scope.
734.3 Service of process.
734.4 Responsibilities.
734.5 Administrative procedures.


SOURCE: 44 FR 42193, July 19, 1979, unless otherwise noted.

§ 734.1 Purpose.


§ 734.2 Scope.

The provisions of this part shall apply to legal process affecting any Federal pay administered by the Department of the Navy and due and payable to all categories of naval military
or civilian personnel including personnel of Navy or Marine Corps non-appropriated-fund activities. This part is not applicable to legal process affecting entitlements administered by other agencies, such as civilian employees’ retirement benefits administered by the Office of Personnel Management or compensation administered by the Veterans Administration.

[44 FR 42193, July 19, 1979, as amended at 47 FR 28371, June 30, 1982]

§ 734.3 Service of process.

(a) It is the policy of the Department of the Navy to respond promptly to legal process addressed to naval officials. Service of legal process affecting the pay of Department of the Navy personnel shall be made on the following designated officials in the manner and in the circumstances specified below:

(1) Navy members. Process affecting the military pay of active duty, Reserve, Fleet Reserve, or retired Navy members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

(2) Marine Corps members. 42 U.S.C. 659 provides that pay of a servicemember, active duty or retired, shall be subject to legal process brought for the enforcement against such member of legal obligations to provide child support or alimony payments. “Legal process” means any writ, order, summons, or other similar process in the nature of garnishment. Upon receipt of such legal process, it will be forwarded directly to: Defense Finance and Accounting Service, Cleveland Center, Garnishment Operations Directorate (DFAS–CL/L), P.O. Box 998002, Cleveland, Ohio 44199–8002. The letter of transmittal will state the date of service and method by which service was made. Detailed instructions for disbursing officers and commanding officers are contained in DFAS–KC 7220.31–R, chapter 7.

(3) Civilian Employees. Process affecting the pay of active civilian employees of the Department of the Navy:

(i) If currently employed at Navy or Marine Corps activities (including non-appropriated-fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served personally, or by registered or certified mail, return receipt requested, on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be served personally or by registered or certified mail, return receipt requested, in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on the Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, DC 20390.

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated-fund instrumentalities administered by the Navy Resale System Office, such process may be served on the Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn, New York 11232.

(C) If pertaining to non-civil service civilian personnel of other nonappropriated-fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(D) If pertaining to non-civil service civilian personnel of any Marine Corps nonappropriated-fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

(b) The Department of the Navy officials designated above are authorized to accept service of process within the
§ 734.4 Responsibilities.

(a) Designated officials. Within their respective areas of cognizance as set forth in §734.3, the designated officials are responsible for the following functions with regard to legal process:

(1) Sending such notifications and directions to the member concerned and his or her commanding officer as may be required.

(2) Obtaining or providing an appropriate review by qualified legal counsel.

(3) Taking or directing actions, temporary and final, as are necessary to comply with 42 U.S.C. 659, as amended (see §734.3(b)), the MCO 5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN), Navy Comptroller Manual, and the court’s order in the case, and

(4) Apprising the cognizant United States Attorney of the Department of the Navy’s disposition, as required, and, in coordination with the Judge Advocate General, effecting liaison with the Department of Justice or United States Attorneys in instances of noncompliance with process or other circumstances requiring such action.

(b) Command responsibility. (1) The Commanding officer of the member or employee concerned shall, upon receipt of notification from the appropriate designated official, ensure that the member or employee has received written notification of the pending process and that the member or employee is afforded counseling concerning his or her obligations in the matter, and legal assistance if applicable, in dealing with the legal action to affect his or her Federal pay. The commanding officer shall comply with the directions of the designated official in responding to the legal process.

(2) For the purposes of this part, the Director, Navy Family Allowance Activity, Cleveland, Ohio, will function as the commanding officer with regard to retired Navy military personnel and members of the Fleet Reserve.

(c) Legal services. The Judge Advocate General is responsible for the following functions pertaining to legal process within the purview of this part:

(1) Providing overall technical direction and guidance, as required, for all Department of the Navy military and civilian attorneys engaged in reviewing such process or advising on its disposition.

(2) Ensuring, as Director, Naval Legal Service, the availability of attorneys in Naval Legal Service Offices who are qualified to advise and assist the designated officials concerning the disposition of legal process, and

(3) Where required, ensuring effective liaison with the Department of Justice or United States Attorneys.


§ 734.5 Administrative procedures.

The designated officials specified in §734.3, shall, in consultation with the Judge Advocate General and Command, Navy Accounting and Finance Center or the Commandant of the Marine Corps (FD), as appropriate, establish procedures for effectively executing their assigned responsibilities. Implementing procedures shall conform with 42 U.S.C., 659, as amended, the MCO 5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN), the Navy Comptroller Manual, and the Federal Personnel Manual.

§ 735.1 Purpose.
To promulgate latest guidance on reporting births and deaths, including births to which part 138 of this title is applicable.

§ 735.2 Background.
For Armed Forces members and their dependents on duty overseas, registration of vital statistics with an appropriate foreign government may be a distinct advantage should documentary evidence, acceptable in all courts, be required at any future time. Department of Defense (DOD) policy is that military services will require their members to make official record of births, deaths, marriages, etc., with local civil authorities in whose jurisdiction such events occur.

§ 735.3 Action.
When a medical officer has knowledge of a birth or death occurring under the following conditions, he or she shall refer the matter to the commanding officer for assurance of compliance with DOD policy.

(a) Births. (1) In accordance with local health laws and regulations, the commanding officer of a naval hospital in the United States (U.S.) shall report to proper civil authorities all births, including stillbirths, occurring at the hospital. Medical officers on ships and aircraft operating within U.S. political boundaries, or at stations other than naval hospitals in the U.S., shall report all births occurring within their professional cognizance. It shall be the duty of the medical officer to determine the requirements of local civil authorities for these reports.

(2) When births occur on aircraft or ships operating beyond U.S. political boundaries, the medical officer responsible for delivery shall make a report to the commanding officer, master of the ship, or to the officer in command of any aircraft, in every case to be recorded in the ship or aircraft log. A report shall also be made to local civil authorities in the first port of entry if required by law and regulation of such authorities when births occur on a course inbound to the U.S. Additionally, the medical officer shall:

(i) Furnish the parents with appropriate certificates and shall, if the report is not accepted by the local registrar of vital statistics or other civil authority, or in any case in which local authority has indicated in writing that such a report will not be accepted,

(ii) Advise the parents to seek the advice of the nearest office of the U.S. Immigration and Naturalization Service (USINS), at the earliest practicable time. USINS offices are located in ports of entry and in major cities of the United States.

(iii) For births occurring on courses out-bound and beyond the continental limits of the U.S., report to the U.S. consular representative at the next appropriate foreign port. When the aircraft or ship does not enter a foreign port, procedures described in §735.3(a)(2)(ii) shall be followed.

(3) Attention is invited to the fact that reports of birth may be forwarded to the Bureau of Health Statistics, Department of Health, Honolulu, Hawaii for any births occurring on courses destined for islands in the Pacific Ocean over which the United States has jurisdiction as well as for those births which are otherwise accepted by civil authorities for Hawaii.

(4) Part 138 of this title prescribes policy, responsibilities, and procedures on birth registration of infants born to U.S. citizens, in military medical facilities outside the United States and its possessions.

(b) Deaths. When a death occurs at a naval activity in any State, Territory, or insular possession of the United States, the commanding officer or designated representative shall report the death promptly to proper civil authorities in accordance with Naval Medical Command directives. If requested by these civil authorities, the civil death certificate may be prepared and signed by the cognizant naval medical officer. Local agreements concerning reporting and preparation of death certificates should be made between the naval facility and local civil authorities.
SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

Cross Reference: For joint procurement regulations of the Armed Forces, see chapter I of this title.

PART 736—DISPOSITION OF PROPERTY

§ 736.1 General.

Real and personal property under the jurisdiction of the Department of the Navy, exclusive of battleships, aircraft carriers, cruisers, destroyers, and submarines (referred to as warships in this part) and certain public domain lands and mineral interests, may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (40 U.S.C. 471), in this part referred to as the Federal Property Act.

The Federal Property Act places the responsibility for the disposition of excess and surplus property located in the United States, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands with the Administrator of General Services, and for disposition of such property located in foreign areas, with the head of each executive agency. The Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 of January 21, 1974, (39 FR 2577) provide authority for the disposal of warships as well as other vessels stricken from the Naval Vessel Register. The United States Maritime Commission, however, is authorized to dispose of surplus vessels, other than warships, or 1,500 gross tons or more which the Commission determines to be merchant vessels or capable of conversion to merchant use (40 U.S.C. 484(i)). Accordingly, in disposing of its property, the Department of the Navy is subject to applicable regulations of the Administrator of General Services and the Secretary of Defense, and, in regard to potential merchant vessels other than warships, to determinations of the United States Maritime Commission. In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to educational institutions, and law enforcement and marine research activities.

(a) Within the limitations indicated in the introductory paragraph of this section, the Department of the Navy is authorized to sell its surplus personal property under the authority of the Federal Property Act and the Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7305), and to report its real property.
when excess to the needs of the Department of Defense, to the General Services Administration for ultimate disposition by that agency or the Department of the Navy. The Department of the Navy is also authorized to transfer real and personal property to other departments or agencies of the Government, and to sell, transfer and otherwise dispose of certain vessels and other personal property under special statutory authority. Ships other than warships are sold pursuant to the Federal Property Act (40 U.S.C. 484(i)) by the U.S. Maritime Commission if over 1500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. In certain cases, Navy vessels and other property may be transferred or otherwise made available to other agencies without reimbursement (sec. 616, 73 Stat. 381; 40 U.S.C. 483a).

(b) This part sets forth the general procedures and authority with respect to the disposition of property under the control of the Department of the Navy except disposition of property to foreign governments under the authority of such statutes as the Aid to American Republics Act (54 Stat. 396; 22 U.S.C. 821) and the Mutual Defense Assistance Control Act of 1951 (65 Stat. 644; 22 U.S.C. 1611–1613c).

(c) The Department of Defense Material Disposition Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Defense Material Disposition Manual is available on the internet at www.drga.dla.mil. Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

§ 736.3 Sale of personal property.

(a) The sale of personal property determined to be surplus or foreign excess or for exchange purposes is authorized by the Federal Property Act and regulations of the Administrator of General Services (see §736.1(a)). Certain vessels stricken from the Naval Vessel Register may be sold under the act of August 19, 1956, (70A Stat. 451, 10 U.S.C. 7305).

(b) Sales are by sealed bid, auction, spot bid or, under limited conditions prescribed by law, negotiated method. A deposit, generally 20 percent of the amount bid, is normally required of each bidder. Awards are usually made to the highest acceptable bidder. Normally property may not be removed from Government control until full payment is made. Arrangements must be made by the successful bidder to remove the property within the time limit prescribed in the invitation to bid or sales contract. The Government reserves the right to withdraw any property from sale when in the best interest of the Government.

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the

§ 736.2 Dispositions under contracts.

(a) Contractor inventory (that is, personal property acquired by a contractor under terms vesting title in the Government but in excess of the amount required for performance of a contract) may be sold to the contractor or otherwise disposed of in accordance with the terms and conditions set forth in the contract and applicable Navy Instructions. See also parts 8 and 13 and §§30.2 and 30.3 of this title.

(b) Industrial and plant equipment provided by the Government to a contractor for the performance of a contract may, subject to applicable statutory authority and Navy instructions be disposed of in accordance with the applicable contract terms and conditions.

(c) Transfer to nonprofit education or research institutions of title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research is authorized by the act of September 6, 1958 (sec. 2, 72 Stat. 1793; 42 U.S.C. 1892) and implementing regulations (§§13.800 to 13.803 of this title).
United States. The contact point is the Defense Surplus Bidders Control Office, Defense Reutilization and Marketing Office, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person’s buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamphlet “How to Buy Surplus Personal Property From The Department of Defense,” prepared by the Defense Reutilization and Marketing Office, Defense Logistics Agency, Battle Creek, Michigan.

(2) Retail sales at fixed prices based on the current market value are conducted by certain Defense property disposal offices.


§ 736.4 Disposition of real property.

(a) Real property, including related personal property, determined to be excess to the needs of the Department of Defense is subject to disposition under the Federal Property Act. In the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense and not required for the needs and the discharge of the responsibilities of all Federal agencies, is generally disposed of by the General Services Administration as surplus property. Exceptions, however, are property worth less than $1,000; certain leases, permits, licenses, easements or similar interests; certain fixtures, structures, and improvements; and other special classes of property which, when determined to be surplus, are disposed of by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers under authority delegated in Title II, Regulations of the General Services Administration, or under special delegations from the Administrator of General Services.

(b) Outside the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense is disposed of directly by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers.


[35 FR 10008, June 18, 1970, as amended at 41 FR 26008, June 24, 1976]

§ 736.5 Disposition of real and personal property under special statutory authority.

In addition to the authority to sell personal property to the general public and to transfer real property to the General Services Administration under the provisions of §§736.3 and 736.4, the Department of the Navy has further authority to dispose of personal and real property as described in paragraphs (a) through (h) of this section.

(a) Disposition to other Government agencies. The Department of the Navy is authorized to transfer real and personal property to other governmental departments or agencies under statutes applicable to particular agencies, the act of March 4, 1915 (38 Stat. 1084) as amended (31 U.S.C. 686) and, as to certain personal property, under directives of the General Services Administration.

(b) Leases. Real and personal property under the control of the Department of the Navy not excess to its needs and not for the time being required for public use may be leased, when the Secretary of the Navy shall deem it to be advantageous to the Government, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Such leases shall be for a period of not exceeding five years unless the Secretary determines that a longer period will promote the national defense or will be in the public interest. Such leases are authorized by the act of August 10, 1956 (70A Stat. 150; 10 U.S.C. 2667). Leases of Government-owned real property where the estimated annual rental is more than 50,000 must be deferred for 30 days.
after reporting the proposed trans-
action to the Armed Services Commit-
tees of Congress in accordance with the
act of August 10, 1956 70A Stat. 147), as

(c) Disposition of strategic materials.
Strategic materials may be disposed of
by the Department of the Navy under
the authority described in § 736.3 only
when such property is excess to the
needs of the Department of Defense and
when the Director of the Office of Civil
and Defense Mobilization (acting
through the Defense Materials Service
of the General Services Administra-
tion) determines that the amounts of
such materials to be disposed of are so
small as to make transfer thereof
under the act of June 7, 1939 (33 Stat.
811) as amended (50 U.S.C. 98–98h)
economically impractical, or such mate-
rials are not necessary for stockpile re-
quirements determined in accordance
with section 2 of said act.

(d) Disposition of vessels. Vessels
stricken from the Naval Vessel Reg-
ister may be sold by the Department of
the Navy under the authority
subject to the limitations of the Federal
Property Act (sections 203(1), 63 Stat.
386, 40 U.S.C. 484(i)) and the act of Au-
7304, 7305, 7307) and Executive Order
11765 (39 FR 2577). However, pursuant
to section 203(i) of the Federal Property
Act (40 U.S.C. 484(i)), the United States
Maritime Commission disposes of ves-
sels, other than warships, if over 1,500
gross tons and determined by the Mar-
time Commission to be merchant ves-
sels or capable of conversion to mer-
chant use. Vessels may be sold for
scraping or for use under such author-
ity or, if such sale is not feasible, the
Naval Sea Systems Command may ar-
range for the demolition of a vessel and
sale of the resulting materials by an
authorized selling activity as set forth
in § 736.3.

(e) Exchange or sale of property for
replacement purposes. Under the au-
thority of section 201(c) of the Federal
Property Act (40 U.S.C. 481(c)) and con-
sistent with Department of Defense im-
plementing regulations, DOD 4140.1–R
and the Defense Federal Acquisition
Regulation Supplement, the Depart-
ment of the Navy is authorized in the
acquisition of new equipment to ex-
change or sell similar items which are
not excess to its needs, and apply the
exchange allowance or proceeds of sale
in whole or part payment for the items
acquired.

(f) Donations and loans of personal
property. (1) Certain personal property
of the Department of the Navy, includ-
ing vessels, which become surplus, may
be donated or loaned under the author-
ity contained in the Federal Property
Act and the act of August 10, 1956 (70A
Stat. 453; 10 U.S.C. 2572, 7308, 7545) to:

(i) Schools such as maritime acad-
emies or military, naval, Air Force or
Coast Guard preparatory schools, des-
ignated by the Secretary of Defense as
educational activities of special inter-
est to the armed services.

(ii) Accredited schools, colleges and
universities and educational institu-
tions which have been exempted from
taxation under section 501(c)(3) of the
Internal Revenue Code of 1954 and
State Departments of Education for
use by tax exempt educational institu-
tions. Applications for donation shall
be approved by the Department of
Health and Human Services and the
Administrator of General Services and
may be filed with the field representa-
tive of the Department of Health and
Human Services located nearest the ap-
plicant.

(iii) States, Territories, Common-
wealths, or possessions of the United
States and political subdivisions, mu-
nicipal corporations, veterans associa-
tions, soldiers’ monument associations,
State museums, and non-profit edu-
cational museums, subject in certain
cases to the approval of the Curator for
the Navy and to objection by a concur-
rent resolution of the Congress.

(2) Applications other than those to
be filed with the field representative of
the Department of Health and Human
Services shall be filed with the Depart-
ment of the Navy and referred to the
cognizant Command or Headquarters
for action except that applications for
vessels and district craft shall be re-
ferred to the Chief of Naval Operations,
apPLICATIONs FOR boats to the Naval Sea
Systems Command, and applica-
tions for barges, floating drydocks, and
other floating construction equipment to the
§ 736.6 Certification prior to disposition.

The transfer, sale, or other disposition of a battleship, aircraft carrier, cruiser, destroyer, or submarine shall not be made unless and until the Chief of Naval Operations, in accordance with the act of August 10, 1956 (70A Stat. 452; 10 U.S.C. 7307), has certified that such material is not essential to the defense of the United States.

§ 736.7 Approval by the Attorney General.

Prior to the disposition, either competitively or by negotiation, to private interests of a plant or plants, or other property, which cost the Government $1,000,000 or more if real property, or $5,000,000 or more if personal property (other than a patent, process, technique or invention), or of patents, processes, techniques or inventions, irrespective of cost, the Department of the Navy must notify the Attorney General of the proposed disposal and the probable terms and conditions thereof. Within a reasonable time, in no event to exceed sixty days after receiving such notification, the Attorney General will advise the Department of the Navy, whether, insofar as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. In such cases, the Department of the Navy must obtain from the proposed purchaser information regarding its financial status, the anticipated use to be made of the property and any other information as may be required by the Attorney General; the award or final sale must be delayed until the Attorney General advises of his determination.

PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

Sec.

744.1 Purpose.
744.6 Authorization for release without consent of the owner.


§ 744.1 Purpose.

This part implements part 264 of this title and the Technical Property Intercourse Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

[26 FR 12217, Dec. 21, 1961]

§ 744.6 Authorization for release without consent of the owner.

(a) Military equipment including the information essential for its operation,
maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with §264.4(d)(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

(b) Where any technical information is released in accordance with this section, such release shall be subject to the conditions of release set forth in §264.4(f).

(c) Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with §264.4(d)(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

§ 746.2 Policy.

(a) A major premise of the Presidential Statement on Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that government inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given
§ 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

§ 746.4 Definitions.

(a) Government invention means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) To the point of practical application means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

§ 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§746.5 and 746.7, subject to the applicable procedures of §746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

§ 746.6 Nonexclusive license.

(a) Availability of licenses. Each government invention normally shall be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under §746.8.

(b) Terms of grant. (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensees to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.
(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee’s business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.7 Limited exclusive license.

(a) Availability of licenses. Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to paragraph (a) of §746.11 for a period of at least six months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any nonexclusive license granted on the invention;

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of §746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a)(3) of §746.7 the Chief of Naval Research has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) Selection of exclusive licensee. An exclusive licensee will be selected on bases consistent with the policy set forth in §746.2 and in accordance with the procedures set forth in §746.11.

(c) Terms of grant. (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c)(6) and (c)(7) of §746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a nonexclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United States.
§ 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inventions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;
(b) In consideration of a release of a claim of infringement; or
(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

§ 746.9 Royalties.

(a) Nonexclusive license. Normally, royalties shall not be changed under nonexclusive licenses granted to United States citizens and United States corporations on government inventions; however, the Chief of Naval Research may require other consideration.

(b) Limited exclusive license. A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

§ 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

§ 746.11 Procedures.

(a) Publication requirements. The Chief of Naval Research shall cause to be published in the Federal Register, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available
for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) Contents of a nonexclusive license application. An application for a nonexclusive license under a government invention should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant’s business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant’s plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) Contents of an exclusive license application. An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of §746.11, an application for an exclusive license shall include:

(1) Applicant’s status, if any, in any one or more of the following categories:

(i) Small business firm;

(ii) Minority business enterprise;

(iii) Location in a surplus labor area;

(iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant’s capability to undertake the development and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant’s offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant’s best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under inventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) Published notices. (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

(i) Identification of the invention;

(ii) Identification of the selected licensee;

(iii) Duration and scope of the contemplated license; and

(iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of §746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or
§ 746.12

(B) The Chief of Naval Research determines that third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the Federal Register. Such notice shall include:

(i) Identification of the invention;
(ii) Identification of the licensee; and
(iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) § 746.11, notice thereof shall be published in the Federal Register. Such notice shall include:

(i) Identification of the invention;
(ii) Identification of the licensee; and
(iii) Effective date of the modification or revocation.

(e) Modification or revocation. (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Research if the licensee willfully makes a false statement of material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Research shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e)(1) of § 746.11, or to show cause why the license should not be modified or revoked.

(f) Appeals. An applicant for a license, a licensee, or such other third party who has participated under paragraph (d)(1)(iv)(B) of § 746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 746.12 Litigation.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

§ 746.13 Transfer of custody of Government inventions.

The Chief of Naval Research may enter into an agreement to transfer custody of a Government invention to another government agency for purposes of administration, including the granting of licenses pursuant to this part.

SUBCHAPTER E—CLAIMS

PART 750—GENERAL CLAIMS REGULATIONS

Subpart A—General Provisions for Claims

Sec.
750.1 Scope of subpart A.
750.2 Investigations: In general.
750.3 Investigations: The report.
750.4 Claims: In general.
750.5 Claims: Proper claimants.
750.6 Claims: Presentment.
750.7 Claims: Action by receiving command.
750.8 Claims: Responsibility of the adjudicating authority.
750.9 Claims: Payments.
750.10 Claims: Settlement and release.
750.11 Claims: Denial.
750.12 Claims: Action when suit filed.
750.13 Claims: Single service responsibility.
750.14–750.20 [Reserved]

Subpart B—Federal Tort Claims Act

750.21 Scope of subpart B.
750.22 Exclusiveness of remedy.
750.23 Definitions.
§ 750.2 Investigations: In general.
(a) Conducting the investigation. The command where the incident giving rise to the claim is alleged to have happened is responsible for conducting an investigation in accordance with this part.
§ 750.3 Investigations: The report.

(b) Thorough investigation. Every incident that may result in a claim against or in favor of the United States shall be promptly and thoroughly investigated under this part. Investigations convened for claims purposes are sufficiently complex that they should be performed with the assistance and under the supervision of a judge advocate or other attorney. Where the command has an attorney assigned, he shall be involved in every aspect of the proceedings. When an attorney is not assigned to the investigating command, consultation shall be sought from the appropriate Naval Legal Service Command activity.

(c) Recovery barred. Even when recovery may be barred by statute or case law, all deaths, serious injuries, and substantial losses to property that are likely to give rise to claims must be investigated while the evidence is available. Claims against persons in the naval service arising from the performance of their official duties shall be investigated as though they were claims against the United States. When an incident involves an actual or potential claim against the United States for property damage only and the total amount likely to be paid does not exceed $5,000.00, an abbreviated investigative report may be submitted. Where this monetary figure may be exceeded, but the circumstances indicate an abbreviated report may be adequate to preserve the facts and protect the Government’s claims interests, approval to submit a limited investigative report may be sought from the nearest Naval Legal Service Command activity.

(d) Developing the facts. Any investigation convened for claims purposes must focus on developing the facts of the incident, i.e., the who, what, where, when, why, and how of the matter. Opinions on the possible liability of the United States under any of the claims statutes listed above shall not be expressed. Early and continuous consultation with claims attorneys at Naval Legal Service Command activities is essential to ensure the timely development of all necessary facts, the identification and preservation of relevant evidence, and to void the need for supplemental inquiries.

(e) Attorney work product. (1) The convening order and the preliminary statement of an investigative report prepared to inquire into the facts of an incident giving or likely to give rise to a claim against the United States shall include the following:

This investigation has been convened and conducted, and this report prepared, in contemplation of claims adjudication and litigation and for the express purpose of assisting attorneys representing the interests of the United States.

(2) When an investigation is prepared by or at the direction of an attorney representing the Department of the Navy and is prepared in reasonable anticipation of litigation, it is exempt from mandatory disclosure under the Freedom of Information Act exemption (b)(5) and is normally privileged from discovery in litigation under the attorney work product privilege. 5 U.S.C. 552(b)(5). Unless an attorney prepares the report or personally directs its preparation, the investigation may not be privileged, even if it was prepared in reasonable anticipation of litigation.

(f) Advance copy. An advance copy of any investigation conducted because a claim has been, or is likely to be, submitted shall be forwarded to the Naval Legal Service Command activity claims office responsible for the area where the incident giving rise to the claim occurred.
not necessary. Summaries of the witnesses’ remarks prepared by the investigating officer are quite sufficient and generally expedite the gathering of information. On the other hand, written signed statements should be obtained from the claimant, wherever possible;

(2) To inspect the property alleged to have been damaged by the action of Government personnel;

(3) To determine the nature, extent, and amount of any damage, and to obtain pertinent repair bills or estimates and, medical, hospital, and associated bills necessary to permit an evaluation of the claimant’s loss;

(4) To obtain maintenance records of the Navy motor vehicle, plane, or other piece of equipment involved in the claim;

(5) To reduce to writing and incorporate into an appropriate investigative report all pertinent statements, summaries, exhibits, and other evidence considered by the investigator in arriving at his conclusions; and,

(6) To furnish claim forms to any person expressing an interest in filing a claim and to advise such personnel where they should file their claim.

(c) Content of the report. The written report of investigation shall contain information answering the questions mentioned in § 750.3(a) and, depending on the nature of the incident, will include the following:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, or road;

(2) A concise but complete statement of the incident with reference to physical facts observed and any statements by the personnel involved;

(3) Names, grades, organizations, and addresses of military personnel and civilian witnesses;

(4) Opinions as to whether military or civilian employees involved in the incident were acting within the scope of their duties at the time;

(5) Description of the Government property involved in the incident and the nature of any damage it sustained; and,

(6) Descriptions of all private property involved.

(d) Immediate report of certain events. The Navy or Marine Corps activity most directly involved in the incident shall notify the Judge Advocate General and the appropriate adjudicating authority immediately by message, electronic mail, or telephone in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims.

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

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

(e) Request for assistance. When an incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge with responsibility for performing the investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Likewise, if a commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from a naval commanding officer or officer in charge, the latter should normally comply. If a complete investigation is requested it will be performed in compliance with the regulations of the requested service. These investigations are normally conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating unit or installation.

(f) Report of Motor Vehicle Accident, Standard Form 91. RCS OPNAV 5100-6. The operator of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator’s Report of Motor Vehicle Accident, Standard Form 91. This operator’s report shall be made even though the operator of the other vehicle, or any other person involved, states that no claim will be filed, or the only vehicles involved are Government owned. An accident shall be reported by the operator regardless of who was injured, what property was damaged, or who was responsible. The operator’s report shall be referred to the investigating officer, who shall be responsible for examining it.
§ 750.3

for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

(g) Priority of the investigation. To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an investigating officer shall ordinarily have priority over any other assignments he may have.

(h) Contents of the report of investigation. The report should include the following items in addition to the requirements in §750.3(c):

(1) If pertinent to the investigation, the investigating officer should obtain a statement from claimant’s employer showing claimant’s occupation, wage or salary, and time lost from work as a result of the incident. In case of personal injury, the investigating officer should ask claimant to submit a written statement from the attending physician setting forth the nature and extent of injury and treatment, the duration and extent of any disability, the prognosis, and the period of hospitalization or incapacity.

(2) A Privacy Act statement for each person who was asked to furnish personal information shall be provided. Social Security numbers of military personnel and civilian employees of the U.S. Government should be included in the report but should be obtained from available records, not from the individual.

(3) Names, addresses, and ages of all civilians or military personnel injured or killed; names of insurance companies; information on the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured should be included.

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

(5) A statement as to whether any person involved violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

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

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

(i) Expert opinions. In appropriate cases the opinion of an expert may be required to evaluate the extent of damage to a potential claimant’s property. In such cases the investigating officer should consult Navy-employed experts, experts employed by other departments of the U.S. Government, or civilian experts to obtain a competent assessment of claimant’s damages or otherwise to protect the Government’s interest. Any cost involved with obtaining the opinion of an expert not employed by the Navy shall be borne by the command conducting the investigation. Any cost involved in obtaining the opinion of a Navy-employed expert shall be borne by the command to which the expert is attached. Medical experts shall be employed only after consultation with the Chief, Bureau of Medicine and Surgery.

(j) Action by command initiating the investigation and subsequent reviewing authorities. (1) The command initiating the investigation in accordance with §750.3 or §750.5 shall review the report of investigation. If additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly returned with an endorsement indicating that a supplemental investigative report will be submitted. If the original or supplemental report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. An advance copy of the investigation shall be forwarded to the Naval Legal Service Command activity having territorial responsibility for the area where the incident giving rise to the claim occurred as indicated in §750.34(c)(2)(i).

(2) A reviewing authority may direct that additional investigation be conducted, if considered necessary. The
initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that the supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendations including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim that may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(3) It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) as implemented by 32 CFR part 701, subpart F. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, corrected. The adjudicating Naval Legal Service Command activity listed in §750.34(c)(2)(ii) has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

§ 750.5 Claims: Proper claimants.

(a) Damage to property cases. A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(b) Personal injury and death cases. A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased’s estate or survivor where authorized by State law.

(c) Subrogation. A subrogor and a subrogee may file claims jointly or separately. When separate claims are filed and each claim individually is within local adjudicating authority limits, they may be processed locally, even if the aggregate of such claims exceeds local monetary jurisdiction, if they do not exceed the sum for which approval of the Department of Justice is required (currently, $100,000.00) under the Federal Tort Claims Act. Where they exceed this amount, they shall be referred to the Claims and Tort Litigation Division.

(d) Limitation on transfers and assignment. All transfers and assignments made of any claim upon the United States, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, are absolutely null and void unless they are
made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.6 Claims: Presentment.

(a) Written demand and Standard Form 95. A claim shall be submitted by presenting a written statement with the amount of the claim expressed in a sum certain, and, as far as possible, describing the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, shall be used whenever practical for claims under the Federal Tort and Military Claims Acts. Claims under the Personnel Claims Act shall be submitted on DD Form 1842. The claim and all other papers requiring the signature of the claimant shall be signed by the claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment. When more than one person has a claim arising from the same incident, each person shall file a claim separately. A subrogor and a subrogee may file a claim jointly or separately.

(b) To whom submitted. Claims under the Federal Tort and Military Claims Acts shall be submitted to the commanding officer of the Navy or Marine Corps activity involved, if known. Otherwise, they shall be submitted to the commanding officer of any Navy or Marine Corps activity, preferably the one nearest to where the accident occurred, the local Naval Legal Service Command activity, or to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

§ 750.7 Claims: Action by receiving command.

(a) Record date of receipt. The first command receiving a claim shall stamp or mark the date of receipt on the letter or claim form. The envelope in which the claim was received shall be preserved.

(b) Determine the military activity involved. The receiving command shall determine the Navy or Marine Corps activity most directly involved with the claim—usually the command where the incident is alleged to have occurred—and forward a copy of the claim to that activity. The original claim (and the transmittal letter, if a copy is forwarded to a more appropriate activity) should immediately be sent to the servicing Naval Legal Service Command activity claims office.

(c) Initiate an investigation. An investigation under this part shall be commenced immediately by the command most directly involved with the claim. Once the investigation has been completed, an advance copy shall be forwarded by the convening authority to the Naval Legal Service Command activity providing claims support. Waiting until endorsements have been obtained before providing a copy of the investigation to the cognizant claims adjudicating authority is neither required nor desirable. The facts of the incident must be made known to cognizant claims personnel as soon as possible.

§ 750.8 Claims: Responsibility of the adjudicating authority.

(a) Reviewing prior actions. The adjudicating authority determines whether an adequate investigation has been conducted, whether the initial receipt date is recorded on the face of the claim, and whether all holders of the investigation, if completed, are advised of the receipt of the claim.

(b) Determining sufficiency of the claim. The claim should be reviewed and a determination of its sufficiency made. If the claim is not sufficient as received, it shall be returned to the party who submitted it along with an explanation of the insufficiency. This does not constitute denial of the claim. The claim
shall not be considered “presented” until it is received in proper form.

(c) Adjudicating the claim. (1) The adjudicating authority shall evaluate and either approve or disapprove all claims within its authority, except where the payment of multiple Federal Torts Claims Act claims arising from the same incident will exceed $100,000.00 in the aggregate and thereby require approval of the Department of Justice. In this latter instance, the claims and the investigative report shall be forwarded to the Judge Advocate General for action.

(2) The adjudicating authority shall evaluate and, where liability is established, attempt to settle claims for amounts within its adjudicating authority. Permission of higher authority to conduct settlement negotiations to effect such settlements is not necessary. Negotiation at settlement figures above the adjudicating authority’s payment limits may be attempted if the claimant is informed that the final decision on the claim will be made at a higher level.

(3) If a claim cannot be approved, settled, compromised, or denied within the adjudicating authority limits established in this instruction, the claim shall be referred promptly to the Judge Advocate General. The following materials shall be forwarded with the claim:

(i) An official endorsement or letter of transmittal containing a recommendation on resolution of the claim.

(ii) A memorandum of law containing a review of applicable law, an evaluation of liability, and recommendation on the settlement value of the case. This memorandum should concentrate on the unusual aspects of applicable law, chronicle the attempts to resolve the claim at the local level, provide information about the availability of witnesses, and outline any other information material to a resolution of the claim, i.e. prior dealings with the claimant’s attorney, local procedural rules, or peculiarities that may make trial difficult. The memorandum should not repeat information readily obtained from the investigative report and should be tailored to the complexity of the issues presented. An abbreviated memorandum should be submitted if the claim is statutorily barred because of the statute of limitations or Federal Employees’ Compensation Act or otherwise barred because of the Feres doctrine.

(iii) The original investigative report and all allied papers.

(iv) The original claim filed by the claimant (and the envelope in which it arrived, if preserved). The adjudicating authority shall retain at least one copy of all papers forwarded to the Judge Advocate General under this section.

(d) Preparing litigation reports. A litigation report is prepared when a lawsuit is filed and a complaint received. The report is addressed to the Department of Justice official or the U.S. Attorney having cognizance of the matter. The report is a narrative summary of the facts upon which the suit is based and has as enclosures the claims file and a memorandum of law on the issues presented.

(1) When the claim has been forwarded to the Judge Advocate General prior to the initiation of a suit, litigation reports originate in the Claims and Tort Litigation Division of the Office of the Judge Advocate General.

(2) When, however, the claim has not been forwarded and is still under the cognizance of the Naval Legal Service Command claims office, that command will ordinarily be required to prepare and forward the litigation report to the requesting organization. In this instance, the litigation report should be sent directly to the cognizant Department of Justice official or U.S. Attorney with a copy of the report and all enclosures to the Judge Advocate General.

§ 750.9 Claims: Payments.

Claims approved for payment shall be expeditiously forwarded to the disbursing office or the General Accounting Office depending on the claims act involved and the amount of the requested payment. Generally, payment of a Federal tort claim above $2,500.00 requires submission of the payment voucher to the General Accounting Office. All other field authorized payment vouchers are submitted directly to the servicing disbursing office for payment.
§ 750.10 Claims: Settlement and release.

(a) Fully and partially approved claims. When a claim is approved for payment in the amount claimed, no settlement agreement is necessary. When a federal tort, military, or non-scope claim is approved for payment in a lesser amount than that claimed, the claimant must indicate in writing a willingness to accept the offered amount in full settlement and final satisfaction of the claim. In the latter instance, no payment will be made until a signed settlement agreement has been received.

(b) Release. (1) Acceptance by the claimant of an award or settlement made by the Secretary of the Navy or designees, or the Attorney General or designees, is final upon acceptance by the claimant. Acceptance is a complete release by claimant of any claim against the United States by reason of the same subject manner. Claimant’s acceptance of an advance payment does not have the same effect.

(2) The claimant’s acceptance of an award or settlement made under the provisions governing the administrative settlement of Federal tort claims or the civil action provisions of 28 U.S.C. 1346(b) also constitutes a complete release of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.11 Claims: Denial.

A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail with return receipt requested. The denial notification shall include a statement of the reason or reasons for the denial. The notification shall include a statement that the claimant may:

(a) If the claim is cognizable under the Federal Tort Claims Act, file suit in the appropriate United States District Court within 6 months of the date of the denial notification.

(b) If the claim is cognizable under the Military Claims Act, appeal in writing to the Secretary of the Navy within 30 days of the receipt of the denial notification. The notice of denial shall inform the claimant or his representative that suit is not possible under the Act.

§ 750.12 Claims: Action when suit filed.

(a) Action required of any Navy official receiving notice of suit. The commencement, under the civil action provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b)), of any action against the United States and involving the Navy, that comes to the attention of any official in connection with his official duties, shall be reported immediately to the commanding officer of the servicing Naval Legal Service Command activity who shall take any necessary action and provide prompt notification to the Judge Advocate General. The commencement of a civil action against an employee of the Navy for actions arising from the performance of official duties shall be reported in the same manner.

(b) Steps upon commencement of civil action. Upon receipt by the Judge Advocate General of notice from the Department of Justice or other source that a civil action involving the Navy has been initiated under the civil action provisions of the Federal Tort Claims Act, and there being no investigative report available at headquarters, a request shall be made to the commanding officer of the appropriate Naval Legal Service Command activity for an investigative report into the incident. If there is not a completed investigation, the request shall be forwarded to the appropriate naval activity to convene and complete such a report. The commanding officer of the Naval Legal Service Command activity shall determine whether an administrative claim had been filed and, if available information indicates none had, advise the Office of the Judge Advocate General (Claims and Tort Litigation Division) immediately.

§ 750.13 Claims: Single service responsibility.

(a) The Department of Defense has assigned single-service responsibility for processing claims in foreign countries under the following acts. The
service and country assignments are in DODDIR 5515.8 of 9 June 1990.\footnote{Copies may be obtained if needed, from Commanding Officer, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.}

1. Foreign Claims Act (10 U.S.C. 2734);
2. Military Claims Act (10 U.S.C. 2733);
3. International Agreements Claims Act (10 U.S.C. 2734a and b), on the pro-rata cost sharing of claims pursuant to international agreement;
4. NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;
5. Medical Care Recovery Act (42 U.S.C. 2651–2653) claims for reimbursement for medical care furnished by the United States;
6. Nonscope Claims Act (10 U.S.C. 2737), claims not cognizable under any other provision of law;

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

1. Department of the Army: Austria, Belgium, El Salvador, France, the Federal Republic of Germany, Grenada, Honduras, Korea, the Marshall Islands, and Switzerland and as the Receiving State Office in the United States under 10 U.S.C. 2734a and 2734b and the NATO Status of Forces Agreement, and other Status of Forces Agreements with countries not covered by the NATO agreement.

2. Department of the Navy: Bahrain, Iceland, Israel, Italy, Portugal, and Tunisia.

3. Department of the Air Force: Australia, Azores, Canada, Cyprus, Denmark, Greece, India, Japan, Luxembourg, Morocco, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, the United Kingdom, Egypt, Oman, and claims involving, or generated by, the U.S. Central Command (CENTCOM) and the U.S. Special Operations Command (USSOC), that arise in countries not specifically assigned to the Departments of the Army and the Navy.

(c) U.S. forces afloat cases under $2,500.00. Notwithstanding the single service assignments above, the Navy may settle claims under $2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

§§ 750.14–750.20 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.21 Scope of subpart B.

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

§ 750.22 Exclusiveness of remedy.

(a) The Federal Employees Liability Reform and Tort Compensation Act of 1988, Public Law 100–694 (amending 28 U.S.C. 2679(b) and 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all Federal employees, acting within the scope of their employment, will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts, nor to allegations of violations of statutes specifically authorizing suits against individuals.

(b) Other statutory provisions create immunity from personal liability for
§ 750.23 Definitions.

specific categories of Federal employees whose conduct, within the scope of their employment, gives rise to claims against the Government. Department of Defense health care providers are specifically protected by 10 U.S.C. 1089, the Gonzalez Act. DOD attorneys are specifically protected by 10 U.S.C. 1054.

§ 750.23 Definitions.

(a) Negligent conduct. Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under similar circumstances. Negligent conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government. 28 U.S.C. 1346(b) and 2674.

(b) Intentional torts. Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An “investigative or law enforcement officer” is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. 28 U.S.C. 2680(h).

(c) Government employees—(1) General. “Employee of the Government,” defined at 28 U.S.C. 2671, includes officers or employees of any Federal agency, members of the U.S. military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) Government contractors. Government (also referred to as independent) contractors, are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of “Federal agency,” found at 28 U.S.C. 2671, specifically excludes “any contractor with the United States,” the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions. They are:

(i) Where the thing or service contracted for is deemed to be an “inherently dangerous activity’’;

(ii) where a nondelegable duty in the entity has been created by law; or

(iii) where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner.

(3) Employees of nonappropriated-fund activities. Nonappropriated-fund activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be “arms’’ of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund activity not located in a foreign country, acting within the scope of employment, is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

(d) Scope of employment. “Scope of employment” is defined by the law of 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.

§ 750.24 Statutory/regulatory authority.

The statutory provisions of the Federal Tort Claims Act (FTCA) are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney
General’s regulations conflict, the Attorney General’s regulations prevail.

§ 750.25 Scope of liability.

(a) Territorial limitations. The FTCA does not apply to any claim arising in a foreign country. 28 U.S.C. 2680(k) and Beattie v. United States, 756 F.2d 91 (D.C. Cir. 1984).

(b) Exclusions from liability. Statutes and case law have established categories of exclusions from FTCA liability.

(1) Statutory exclusions. Section 2680 of Title 28 lists claims not cognizable under the FTCA. They include:

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

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under part 752 of this Chapter;

(iii) Claims arising from intentional torts, except those referred to in § 750.23(b);

(iv) Claims arising from the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(2) Additional claims not payable. Although not expressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare United States v. Johnson, 481 U.S. 681 (1987); Feres v. United States, 340 U.S. 135 (1950) with Brooks v. United States, 337 U.S. 49 (1949);

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations, 32 CFR part 751;

(iii) Any claim by employees of non-appropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in 32 CFR part 756;

(iv) Any claim for personal injury or death covered by the Federal Employees’ Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

(vi) That portion of any claim for personal injury or property damage, caused by the negligence or fault of a Government contractor, to the extent such contractor may have assumed liability under the terms of the contract (see United States v. Seckinger, 397 U.S. 203 (1969) and § 750.23(c)(2));

(vii) Any claim against the Department of the Navy by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

§ 750.26 The administrative claim.

(a) Proper claimant. See §750.5 of this part.

(b) Claim presented by agent or legal representative. A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of the individual’s authority to file a claim on behalf of the claimant.

(c) Proper claim. A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General’s regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in
§ 750.27 a determination that the administrative claim is incomplete. A suit may be dismissed on the ground of lack of subject matter jurisdiction based on claimant’s failure to present a proper claim as required by 28 U.S.C. 2675(a).

(d) Presentment. A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. Claims officers shall coordinate with all other affected agencies and ensure a lead agency is designated. 28 CFR 14.2.

§ 750.27 Information and supporting documentation.

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

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

(ii) Decedent’s employment or occupation at time of death, including monthly or yearly earnings and the duration of last employment;

(iii) Full names, addresses, birth dates, relationship, and marital status of the decedent’s survivors, including identification of survivors dependent for support upon decedent at the time of death;

(iv) Degree of support provided by decedent to each survivor at time of death;

(v) Decedent’s general physical and mental condition before death;

(vi) Itemized bills for medical and burial expenses;

(vii) If damages for pain and suffering are claimed, a physician’s detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent’s physical condition during the interval between injury and death; and,

(viii) Any other evidence or information which may affect the liability of the United States.

(2) Personal injury. (i) A written report by attending physician or dentist on the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, any any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided;

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

(iii) A statement of expected expenses for future treatment;

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

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

(vi) Any other evidence or information which may affect the liability of the United States for the personal injury or the damages claimed.

(3) Property damage. (i) Proof of ownership;

(ii) A detailed statement of the amount claimed for each item of property;

(iii) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;

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

(v) Any other evidence or information which may affect the liability of the United States for the property damage claimed.

(b) Failure to submit necessary documentation. If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after notice of the deficiency, including reference to 28 CFR 14.4, the information is still not supplied, two follow-up requests should be sent by
§ 750.32 Suits under the Federal Tort Claims Act (FTCA).

(a) Venue. Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. 28 U.S.C. 1402.

(b) Jury trial. There is no right to trial by jury in suits brought under the FTCA. 28 U.S.C. 2402.

(c) Settlement. The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. 28 U.S.C. 2677.

(d) Litigation support—(1) Who provides. The adjudicating authority holding a claim at the time suit is filed shall be responsible for providing necessary assistance to the Department of Justice official or U.S. Attorney responsible for defending the Government's interests.

(2) Litigation report. A litigation report, including a legal memorandum emphasizing anticipated issues during litigation, shall be furnished to the appropriate Department of Justice official or U.S. Attorney.
§ 750.33 Pretrial discovery. Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided. The Judge Advocate General should be notified promptly when special problems are encountered in providing the requested assistance.

(4) Preservation of evidence. Tort litigation is often accomplished over an extended period of time. Every effort shall be made to preserve files, documents, and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines defense of a case.

§ 750.33 Damages.

(a) Generally. The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs. 28 U.S.C. 1346(b).

(b) Limitations on liability. The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages. 28 U.S.C. 2674.

(c) Setoff. The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including CHAMPUS payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101–800) must be considered. Brooks v. United States, 337 U.S. 49 (1949).

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

§ 750.34 Settlement and payment.

(a) Settlement agreement—(1) When required. A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

(i) Settled for less than the full amount claimed, or

(ii) The claim was not presented on a Standard Form 95.

(2) Contents. Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. 28 CFR 14.10(b). In cases where partial payment will benefit both claimant and the Government, such as payment for property damage to an automobile, the settlement agreement shall be tailored to reflect the terms of the partial settlement. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorneys fees. 28 U.S.C. 2678.

(b) DON role in settlement negotiations involving the U.S. Attorney or DOJ. Agency concurrence is generally sought by the Department of Justice or U.S. Attorney’s office prior to settlement of suits involving the DON. Requests for concurrence in settlement proposals shall be referred to the appropriate DON adjudicating authority with primary responsibility for monitoring the claim. Adjudicating authorities shall consult with the Judge Advocate General concerning proposed settlements beyond their adjudicating authority.

(c) Payment of the claim—(1) Statutory authority. Pursuant to 28 U.S.C. 2672
and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of $100,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title 28 CFR 14.6 requires consultation with the Department of Justice prior to compromise or settlement of a claim in any amount when:

(i) A new precedent or a new point of law is involved;
(ii) A question of policy is or may be involved;
(iii) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim;
(iv) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $100,000.00; or
(v) The DON is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(2) **Specific delegation and designation—(i) Payment authority.**

<table>
<thead>
<tr>
<th>Delegated and designated authority</th>
<th>Federal Tort Claims Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge Advocate General ............</td>
<td>Unlimited.</td>
</tr>
<tr>
<td>Deputy Judge Advocate General .....</td>
<td>Unlimited.</td>
</tr>
<tr>
<td>Assistant Judge Advocate General (General Law).</td>
<td>Unlimited.</td>
</tr>
<tr>
<td>Deputy Assistant Judge Advocate General (Claims and Tort Litigation) and Deputy Division Director.</td>
<td>$100,000.00.</td>
</tr>
<tr>
<td>Head, Federal Tort Claims Branch, Claims and Tort Division, OJAG.</td>
<td>$50,000.00.</td>
</tr>
<tr>
<td>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.</td>
<td>$25,000.00.</td>
</tr>
</tbody>
</table>

Any payment of over $100,000.00 must be approved by the Department of Justice. In addition, the authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) may deny Federal Tort Claims in any amount.

(ii) **Territorial responsibility.**

<table>
<thead>
<tr>
<th>Responsible command</th>
<th>Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAVLEGSVCOFF Washington, DC</td>
<td>Maryland, the District of Columbia, and Northern Virginia area (zip 220–223).</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Norfolk</td>
<td>Virginia (less Northern Virginia area—zip 220–223), and West Virginia, North Carolina (counties of Currucuck, Camden, Pasquotank, 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.</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Charleston</td>
<td>North Carolina (less counties of Currucuck, Camden, Pasquotank, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, Onslow), and Georgia (less Counties of Charlton, Camden, and Glynn).</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Jacksonville</td>
<td>That portion of Florida east of the western boundaries of Gadsen, Liberty, and Franklin Counties and Georgia (counties of Charlton, Camden, and Glynn).</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Pensacola</td>
<td>Florida (Pensacola/Panama City area (zip 324–325)), Alabama, Louisiana and Mississippi (that portion south of Washington, Humphreys, Holmes, Atalaya, Winston, and Noxubee Counties, and that portion of the Gulf of Mexico East of longitude 90 W).</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Memphis</td>
<td>Missouri, Tennessee, Kentucky, Arkansas, and that portion of Mississippi north of the southern boundaries of Washington, Humphreys, Holmes, Atalaya, Winston, and Noxubee Counties.</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Great Lakes</td>
<td>North Dakota, South Dakota, Nebraska, Minnesota, Michigan, Iowa, Wisconsin, Illinois, and Indiana.</td>
</tr>
<tr>
<td>NAVLEGSVCOFF Corpus Christi</td>
<td>Texas.</td>
</tr>
<tr>
<td>NAVLEGSVCOFF San Diego</td>
<td>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).</td>
</tr>
</tbody>
</table>
§ 750.35 Attorneys' fees.

Attorney's fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award. 28 U.S.C. 2678.

§ 750.36 Time limitations.

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

(b) Amendments. Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentation of an amendment. 28 CFR 14.2(c).

(c) Suits. A civil action is barred unless suit is filed against the United States not later than 6 months after the date of mailing of notice of final denial of the claim. 28 U.S.C. 2401(b). The failure of the DON to make final disposition of a claim within 6 months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. 28 U.S.C. 2675(a).

§§ 750.37–750.40 [Reserved]

Subpart C—Military Claims Act

§ 750.41 Scope of subpart C.

This section prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage, loss, or destruction of property:

(a) Caused by military personnel or civilian employees of the Department of the Navy (DON) (hereinafter DON personnel). For the purposes of this section, DON
personnel include all military personnel of the Navy and Marine Corps, volunteer workers, and others serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON. DON personnel does not include DON contractors or their employees.

(b) Incident to noncombat activities of the DON. Claims for personal injury or death of a member of the Armed Forces or Coast Guard, or civilian officer or employee of the U.S. Government whose injury or death is incident to service, however, are not payable.

(c) Territorial limitation. There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under that statute. See 10 U.S.C. 2733(b)(2).

(d) Suit. The MCA authorizes the administrative settlement and payment of certain claims. The United States has not consented to be sued.

§ 750.42 Statutory authority.

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

§ 750.43 Claims payable.

(a) General. Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under this provision when:

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment; or

(2) Incident to noncombat activities of the DON. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the U.S. Government has historically assumed a broad liability, even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Examples include practice firing of missiles and weapons, sonic booms, training and field exercises, and maneuvers that include operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether or not in time of war, and use of DON personnel during civil disturbances are excluded.

(b) Specific claims payable. Claims payable by the DON under §750.43(a) (1) and (2) shall include, but not be limited to:

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

(2) Property bailed to the DON. Claims for damage to or loss of real 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,
§ 750.44 Claims not payable.

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or his agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by the law.

(b) Any claim resulting from action by the enemy or resulting directly or indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:
   (2) Foreign Claims Act. 10 U.S.C. 2734.
   (3) 10 U.S.C. 7622, relating to admiralty claims. See part 752 of this Chapter.
   (e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in §750.43(b) (2) and (3)].
   (f) Any claim for rent of real or personal property [except as provided in §750.43(b) (2) and (3)].
   (g) Any claim involving infringement of patents.
   (h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.
   (i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.
   (j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service. 10 U.S.C. 2733(b)(3).
   (k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.
   (l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.
   (m) Any claim based solely on compassionate grounds.

§ 750.45 Filing claim.

(a) Who may file. Under the MCA, specifically, the following are proper claimants:
   (1) U.S. citizens and inhabitants.
   (2) U.S. military personnel and civilian employees, except not for personal injury or death incident to service.
   (3) Persons in foreign countries who are not inhabitants.
   (4) States and their political subdivisions (including agencies).
   (5) Prisoners of war for personal property, but not personal injury.
   (6) Subrogees, to the extent they paid the claim.

(b) Who may not file. (1) Inhabitants of foreign nations for loss or injury occurring in the country they inhabit.
   (2) U.S. Government agencies and departments.
§ 750.47 Measure of damages for property claims.

Determine the measure of damages in property claims arising in the United States or its territories, Commonwealth, or possessions under the law of the place where the incident occurred. Determine the measure of damages in property claims arising overseas under general principles of American tort law, stated as follows:

(a) If the property has been or can be economically repaired, the measure of
§ 750.48 Measure of damages in injury or death cases.

(a) Where an injury or death arises within the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the location where the injury arises.

(b) Where an injury or death arises in a foreign country and is otherwise cognizable and meritorious under this provision, damages will be determined in accordance with general principles of American tort law. The following is provided as guidance.

(1) Measure of Damages for Overseas Personal Injury Claims. Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, compensation for lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) Wrongful Death Claims Arising in Foreign Countries. (i) Allowable compensation includes that in paragraph (b)(1) of this section, burial expenses, loss of support and services, loss of companionship, comfort, society, protection, and consortium, and loss of training, guidance, education, and nurturing, as applicable.

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

§ 750.49 Delegations of adjudicating authority.

(a) Settlement Authority. (1) The Secretary of the Navy may settle claims in any amount. The Secretary may pay the first $100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304. See 10 U.S.C. 2733(d).

(2) The Judge Advocate General has delegated authority to settle claims for $100,000.00 or less.

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

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to settle claims for $15,000.00 or less.

(5) Officers in charge of Naval Legal Service Office Detachments, when specifically designated by cognizant commanding officers of Naval Legal Service Offices; and the Claims Officer at the U.S. Naval Station, Panama Canal have delegated authority to settle claims for $10,000.00 or less.

(6) Overseas commands with a Judge Advocate General’s Corps officer or a judge advocate of the Marine Corps attached, have delegated authority to settle claims for $5,000.00 or less.

(b) Denial Authority. (1) The Secretary of the Navy may deny a claim in any amount.

(2) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) have delegated authority to deny claims in any amount.

(3) All other adjudicating authorities have delegated authority to deny claims only to the amount of their settlement authority.

(c) Officials with Authority to make Advance Payments. (1) The Secretary of the Navy has authority to make advance payments up to $100,000.00.

(2) The Judge Advocate General has delegated authority to make advance payments up to $100,000.00.

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

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to make advance payments up to $5,000.00.

(5) Officers in Charge of Naval Legal Service Office Detachments, when specifically designated by cognizant Commanding Officers of Naval Legal Service Offices; and the Staff Judge Advocate at the U.S. Naval Station, Panama Canal have delegated authority to make advance payments up to $3,000.00.

(6) Overseas commands with a Judge Advocate General’s Corps officer or a judge advocate of the Marine Corps attached, have delegated authority to make advance payments up to $3,000.00.

(d) Conditions for Advance Payments. Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA (10 U.S.C. 2733);

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed.
for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 U.S.T. 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss

(i) Was caused by a member or employee of the DON acting within the scope of employment or

(ii) Occurred “incident to noncombat activities” of the DON as defined in §750.43.

§750.51 Final disposition.

(a) Claimant to be notified. The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

(b) Final denial. A final denial, in whole or in part, of any MCA claim shall be in writing and sent to the claimant, or his attorney or legal representative, by certified or registered mail, return receipt requested. The notification of denial shall include a statement of the reason or reasons for denial and that the claimant may appeal. The notification shall also inform the claimant:

(1) The title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim.

(2) No form is prescribed for the appeal, but the grounds for appeal should be set forth fully.

(3) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

§750.52 Appeal.

(a) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal shall be in writing and state the grounds relied upon. An appeal is not an adversary proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

(b) Upon receipt, the adjudicating authority examines the appeal, determines whether the appeal complies with this regulation, and reviews the claims investigative file to ensure it is complete. The claim, with the complete investigative file and a memorandum of law, will be forwarded to the appellate authority for action. If the evidence in the file, including information submitted by the claimant with the appeal, indicates the appeal should be approved, the adjudicating authority may treat the appeal as a request for reconsideration.

(c) Processing of the appeal may be delayed pending further efforts by the adjudicating authority to settle the claim. Where the adjudicating authority does not reach a final agreement on an appealed claim, it shall send the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The appellate authority shall notify the claimant in writing of the determination on appeal; that such determination constitutes the final administrative action on the claim; and there is no right to sue under the MCA.

§750.53 Cross-servicing.

(a) See §750.13 or information about single-service claims responsibility under DODDIR 5515.8 of 9 June 1990.

(b) Claims Settlement Procedures. Where a single service has been assigned a country or area claims responsibility, that service will settle claims cognizable under the MCA under the regulations of that service. The forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.
§ 750.64 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;
2. Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance as requested; and cooperate in defending the action on the merits.

(b) Requests for Indemnification. All requests for indemnification for personal liability of DON personnel for acts or omissions arising out of assigned duties shall be forwarded to the Judge Advocate General for action.

§ 750.65 Attorney’s fees.

Attorney’s fees not in excess of 20 percent of any settlement may be allowed. Attorney’s fees so determined are to be paid out of the amount awarded and not in addition to the award. These fee limitations shall be incorporated in any settlement agreement secured from a claimant.

§§ 750.56–750.60 [Reserved]

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

§ 750.61 Scope of subpart D.

This section provides information on payment of claims against the United States, not payable under any other statute, caused by the act or omission, negligent, wrongful, or otherwise involving fault, of Department of the Navy (DON) military and civilian personnel (hereinafter DON personnel) acting outside the scope of their employment.

§ 750.62 Statutory authority.

Section 2737 of title 10, United States Code, provides authority for the administrative settlement in an amount not to exceed $1,000.00 of any claim against the United States not cognizable under any other provision of law for damage, loss, or destruction of property or for personal injury or death caused by military personnel or a civilian official or employee of a military department incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation. There is no right to sue. There are no territorial limitations and the Act has worldwide application.

§ 750.63 Definitions.

(a) Civilian official or employee. Any civilian employee of the DON paid from appropriated funds at the time of the incident.
(b) Vehicle. Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land. See 1 U.S.C. 4.
(c) Government installation. Any Federal facility having fixed boundaries and owned or controlled by the U.S. Government. It includes both military bases and nonmilitary installations.

§ 750.64 Claim procedures.

(a) The general provisions of subpart A of this part shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be investigated and processed under 10 U.S.C. 2737 and this section.
(b) A claim is presented when the DON receives from a claimant or the claimant’s duly authorized agent, written notification of a nonscope claim incident accompanied by a demand for money damages in a sum certain.
(c) A claimant may amend a claim at any time prior to final action. Amendments will be submitted in writing and signed by the claimant or the claimant’s duly authorized agent.
(d) Claims submitted under the provisions of the Federal Tort Claims Act

405
§ 750.65 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act or omission for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was presented.

§ 750.66 Officials with authority to settle.

Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General (General Law); Deputy Assistant Judge Advocate General (Claims and Tort Litigation Division); Head, Federal Tort Claims Branch (Claims and Tort Litigation Division); Head, Military Claims Branch (Claims and Tort Litigation Division), and commanding officers of Naval Legal Service Offices may settle a nonscope claim.

§ 750.67 Scope of liability.

(a) Subject to the exceptions in §750.68 of specific claims not payable, the United States shall not pay more than $1,000.00 for a claim against the United States, not cognizable under any other provision of law, except Article 139, UCMJ.

(b) Article 139, UCMJ, 10 U.S.C. 939, is not preemptive. The prohibition in 10 U.S.C. 2737 on paying claims “not cognizable under any other provisions of law” applies only to law authorizing claims against the United States. Article 139 authorizes claims against servicemembers. See part 755 of this chapter.

§ 750.68 Claims not payable.

(a) A claim for damage, loss, or destruction of property or the personal injury or death caused wholly or partly by a negligent or wrongful act of the claimant or his agent or employee.

(b) A claim, or any part thereof, that is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(c) A subrogated claim.

§ 750.69 Measure of damages.

Generally, the measure-of-damage provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with §§750.47 and 750.48 of subpart C, except damages for personal injury or death under this section shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.
PART 751—PERSONNEL CLAIMS REGULATIONS

Subpart A—Claims Against the United States

Sec. 751.1 Scope of subpart A.
751.2 Claims against the United States: In general.
751.3 Authority.
751.4 Construction.
751.5 Definitions.
751.6 Claims payable.
751.7 Claims not payable.
751.8 Adjudicating authorities.
751.9 Presentment of claim.
751.10 Form of claim.
751.11 Investigation of claim.
751.12 Computation of award.
751.13 Payments and collections.
751.14 Partial payments.
751.15 Reconsideration and appeal.
751.16–751.20 [Reserved]

Subpart B—Demand On Carrier, Contractor, or Insurer

751.21 Scope of subpart B.
751.22 Carrier recovery: In general.
751.23 Responsibilities.
751.24 Notice of loss or damage.
751.25 Types of shipments and liability involved.
751.26 Demand on carrier, contractor, or insurer.
751.27 Preparation and dispatch of demand packets.
751.28 Assignment of claimants rights to the government.
751.29 Recoveries from carrier, contractor, or insurer.
751.30 Settlement procedures and third party responses.
751.31 Common reasons for denial by carrier or contractor.
751.32 Forwarding claims files for offset action.
751.33 Unearned freight packet.
751.34 GAO appeals.
751.35 Forms and instructions.


SOURCE: 57 FR 5055, Feb. 12, 1992, unless otherwise noted.

Subpart A—Claims Against the United States

§ 751.1 Scope of subpart A.

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

§ 751.2 Claims against the United States: In general.

(a) Maximum amount payable. The Military and Civilian Employees’ Personnel Claims Act (Personnel Claims Act), 31 U.S.C. 3701, 3702, and 3721, provides that the maximum amount payable for any loss or damage arising from a single incident is limited to $40,000.00. Claims for losses occurring prior to 31 October 1988 are limited to $25,000.00.

(b) Additional instructions. The Judge Advocate General of the Navy may issue additional instructions or guidance as necessary to give full force and effect to this section.

(c) Preemption. The provisions of this section and the Personnel Claims Act are preemptive of other claims regulations. Claims not allowable under the Personnel Claims Act may, however, be allowable under another claims act.

(d) Other claims. Claims arising from the operation of a ship’s store, laundry, dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.3 Authority.

The Personnel Claims Act provides the authority for maximum payment up to $40,000.00 for loss, damage, or destruction of personal property of military personnel or civilian employees incident to their service. The Act provides for the recovery from carriers, warehouse firms, and other third parties responsible for such loss, damage, or destruction. No claim may be paid unless it is presented in writing within 2 years of the incident giving rise to the claim.

§ 751.4 Construction.

The provisions of this section and the Personnel Claims Act provide limited compensation to service members and civilian employees of the DON for loss and damage to personal property incurred incident to service. This limited compensation is not a substitute for private insurance. Although not every loss may be compensated under the
Personnel Claims Act, its provisions shall be broadly construed to provide reasonable compensation on meritorious claims. Adjudications must be based on common sense and the reasoned judgment of the claims examiner giving the benefit of realistic doubt to the claimant.

§ 751.5 Definitions.

(a) Proper claimants—(1) Members of the DON. All Navy and Marine Corps active duty members and reservists on active duty for training under Federal law whether commissioned, enrolled, appointed, or enlisted. A retired member may only claim under this Act if loss or damage occurred while the claimant was on active duty or in connection with the claimant’s last movement of personal property incident to service.

(2) Civilian employees of the Navy. Federal employees of the naval establishment paid from appropriated funds. This term does not include Red Cross employees, USO personnel, and employees of Government contractors (including technical representatives).

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

(4) Separation from service. Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provision of these regulations when such claim accrued prior to separation or termination.

(b) Improper claimants. Insurers, assignees, subrogees, vendors, lienholders, contractors, subcontractors and their employees, and other persons not specifically mentioned as proper claimants.

(c) Unusual occurrence. Serious events and natural disasters not expected to take place in the normal course of events. Two different types of incidents may be considered unusual occurrences: those of an unusual nature and those of a common nature that occur to an unexpected degree of severity. Examples of unusual occurrences include structural defects in quarters, faulty plumbing maintenance, termite or rodent damage, unusually large size hail, and hazardous health conditions due to Government use of toxic chemicals. Examples of occurrences that are not unusual include potholes or foreign objects in the road, ice and snow sliding off a roof onto a vehicle, and tears, rips, snags, or stains on clothing. Claims that electrical or electronic devices were damaged by a power surge may be paid when lightning has actually struck the claimant’s residence or objects outside the residence, such as a transformer box, or when power company records or similar evidence shows that a particular residence or group of residences was subjected to a power surge of unusual intensity. In areas subject to frequent thunderstorms or power fluctuations, claimants are expected to use surge suppressors, if available, to protect delicate items such as computers or videocassette recorders.

(d) Personal property. Property including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV’s), mobile homes, and boats.

(e) Intangible property. Property that has no intrinsic marketable value such as bankbooks, checks, promissory notes, non-negotiable stock certificates, bonds, baggage checks, insurance policies, money orders, and travelers checks.

(f) Vehicles. Includes automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks, mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft. Mobile homes and other property used as dwelling places are not considered vehicles.

§ 751.6 Claims payable.

Claims for loss, damage, or destruction of property may be considered as
set out below if possession of the property was reasonable and useful under the circumstances and the loss did not result from the negligence of the claimant.

(a) Transportation and storage losses.
   (1) Incurred during transportation under orders, whether in possession of the Government, carrier, storage warehouse, or other Government contractor;
   (2) Incurred during travel under orders, including temporary duty.
   (3) Incurred during travel on a space available basis on a military aircraft, vessel, or vehicle.
   (4) Do-it-yourself (DITY) moves. In certain circumstances, loss of or damage to property during a DITY move is compensable. Claimants, however, are required to substantiate the fact of loss or damage in shipment. Claimants who do not prepare inventories have difficulty substantiating thefts. In addition, unless evidence shows that something outside the claimant’s control caused the damage, breakage is presumed to be the result of improper packing by the claimant. For example, if a claimant’s truck is rear-ended by a drunk driver during a DITY move, it is out of claimant’s control. If the 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 Government and the carrier. In such cases the claimant must claim against the carrier.
(b) Losses at assigned quarters or other authorized places. Damage or loss caused by fire, explosion, theft, vandalism, lightning, flood, earthquake, and unusual occurrences. Losses due to theft may only be paid if the claimant took reasonable measures to safeguard the property and the theft occurred as a result of a forced entry. Claimants are expected to secure windows and doors of their barracks, quarters, wall lockers, and other storage areas. Claimants are expected to store valuables in a secure area within their barracks, quarters, and storage areas. Claimants are also expected to take extra measures to protect cash, valuable jewelry, and similar small, easily pilferable items. Normally, such items should be kept in a locked container within a secured room. It is also advisable that the locked container be large enough that it is not convenient for a thief to carry off. Bicycles located at quarters or on base must be secured to a fixed object. Overseas housing is considered assigned quarters for claimants who are not local inhabitants.
(c) Vehicle losses. (1) Incurred while a vehicle is used in the performance of military duty, if such use was authorized or directed for the convenience of the Government, provided the travel did not include commuting to or from the permanent place of duty, and did not arise from mechanical or structural defect of the vehicle. There is no requirement that the loss be due to fire, flood, hurricane, or other unusual occurrence, or to theft or vandalism. As a general rule, however, travel is not considered to be for the convenience of the Government unless it was pursuant to written orders authorizing use for which the claimant is entitled to reimbursement. The claimant must be free from negligence in order to be paid for a collision loss. Travel by the claimant to other buildings on the installation is not considered to be under orders for the convenience of the Government. Travel off the installation without written orders may only be deemed to be for the convenience of the Government if the claimant was expressly directed by his superior to use POV to accomplish the mission. The issuance of written orders after the fact raises the presumption that travel was not for the convenience of the Government. The maximum payment of $2,000.00 authorized by the Allowance List-Depreciation Guide still applies to loss of or damage to vehicles and contents. This maximum does not apply to DITY moves.
(2) Incurred while a vehicle is shipped at Government expense, provided the loss or damage did not arise from mechanical or structural defect of the vehicle during such shipment. Damage caused during shipment at the claimant’s expense or while the vehicle is being moved to or from the port by an agent of the claimant is not compensable.

(3) Incurred while a vehicle is located at quarters or other authorized place of lodging, including garages, carports, driveways, assigned parking spaces, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. Vandalism is damage intentionally caused. Stray marks caused by children playing, falling branches, gravel thrown by other vehicles, or similar occurrences are not vandalism. The amount payable on vandalism claims is limited to $2,000.00.

(4) Incurred while a vehicle is located at places other than quarters but on a military installation, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. “Military installation” is used broadly to describe any fixed land area, wherever situated, controlled, and used by military activities or the Department of Defense (DOD). A vehicle properly on the installation should be presumed to be used incident to the claimant’s service. A vehicle that is not properly insured or registered in accordance with local regulations is not properly on the installation. A vehicle left in a remote area of the installation that is not a designated long-term parking area for an undue length of time is presumed not to be on the installation incident to service.

(5) Theft of property stored inside a vehicle. Claimants are expected to lock doors and windows. Neither the passenger compartment nor the trunk of a vehicle is a proper place for the long-term storage of property unconnected with the use of the vehicle. The passenger compartment of a vehicle does not provide adequate security, except for very short periods of time for articles that are not of high value or easily pilferable. Car covers and bras are payable if bolted or secured to the vehicle with a wire locking device.

(6) Rental vehicles. Damage to rental vehicles is considered under paragraphs of the Joint Federal Travel Regulations (JFTR), rather than as a loss incident to service.

(d) Mobile homes and contents in shipment. Claims for damage to mobile homes and contents in shipment are payable unless the damage was caused by structural or mechanical defects (see §751.12(g) below on mobile homes).

(e) Borrowed property (including vehicles). Loss or damage to borrowed property is compensable if it was borrowed for claimant’s or dependent’s own use. A statement will be provided by the owner of the property attesting to the use of the property by the claimant.

(f) Clothing and articles being worn. Repairs/replacement of clothing and articles being worn while on a military installation or in the performance of official duty may be paid if loss is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. This paragraph shall be broadly construed in favor of compensation, but see §751.5(c) for the definition of unusual occurrence. Articles being worn include hearing aids, eyeglasses, and items the claimant is carrying, such as a briefcase.

(g) Personal property held as evidence or confiscated property. If property belonging to the victim of a crime is to be held as evidence for an extended period of time (in excess of 2 months) and the temporary loss of the property will work a grave hardship on the claimant, a claim for the loss may be considered for payment. This provision will not be used unless every effort has been made to determine whether secondary evidence, such as photographs, may be substituted for the item. No compensation is allowed to a person suspected of an offense for property seized from that same person in the investigation of that offense. This also applies to property a foreign government unjustly confiscates or an unjust change in a foreign law that forces surrender or abandonment of property.

(h) Theft from possession of claimant. Theft from the person of the claimant is reimbursable if the theft occurred by use of force, violence, or threat to do...
bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreation facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

(i) Property used for the benefit of the Government. Compensation is authorized where property is damaged or lost while being used in the performance of Government business at the direction or request of superior authority or by reason of military necessity.

(j) Money deposited for safekeeping, transmittal, or other authorized disposition. Compensation is authorized for personal funds delivered to and accepted by military and civilian personnel authorized by the commanding officer to receive these funds for safekeeping, deposit, transmittal, or other authorized disposition, if the funds were neither applied as directed by the owner nor returned to the owner.

(k) Fees—(1) For obtaining certain documents. The fees for replacing birth 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 §751.7). A reasonable estimate fee is compensable if it is not going to be credited toward the cost of repair. If it is to be credited toward the cost of repair, it is not compensable regardless of whether the claimant chooses to have the work done. When an estimate fee is claimed, the file must reflect whether the fee is to be credited.

§ 751.7 Claims not payable.

(a) Losses in unassigned quarters in the United States. Claims for property damaged or lost at quarters occupied by the claimant within the United States that are not assigned or otherwise provided by the Government.

(b) Currency or jewelry shipped or stored in baggage. Claims for lost money, currency, or jewelry shipped or stored in baggage are not payable. Coin or paper money included in collections is payable only if listed on an inventory prepared at origin.

(c) Enemy property or war trophies. This includes only property that was originally enemy property or a war trophy that passed into the hands of a collector and was then purchased by a claimant.

(d) Unserviceable or Worn-Out Property.

(e) Loss or Damage to Property to the Extent of any Available Insurance Coverage as Set Forth in §751.26 of this part.

(f) Inconvenience or loss of use. Expenses arising from late delivery of personal property, including but not limited to the expenses for food, lodging, and furniture rental, loss of use, interest, carrying charges, attorney’s fees, telephone calls, additional costs of transporting claimant or family members, time spent in preparation of claim, or cost of insurance are not compensable. While such claims do not lie against the Government, members should be referred to the Personal Property Office for assistance in filing their inconvenience claims against the commercial carriers (NAVSUP Publication 490, Transportation of Personal Property).

(g) Items of speculative value. Theses, manuscripts, unsold paintings, or a similar creative or artistic work done by the claimant, friend, or a relative is limited to the cost of materials only. The value of such items is speculative.
§ 751.8 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 if the primary purpose for which the item was purchased, or if the item is designed for professional use and is not normally intended for personal use.

(j) Motor vehicles. Collision damage is not payable unless it meets the criteria for payment as property used for the benefit of the Government as established in §751.6(c)(1).

(k) Violation of law or directives. Property acquired, possessed, or transported unlawfully or in violation of competent regulations or directives. This includes vehicles, weapons, or property shipped to accommodate another person, as well as property used to transport contraband.

(l) Sales tax. Sales taxes associated with repair or replacement costs will not be considered unless the claimant provides proof that the sales tax was actually paid.

(m) Appraisal fees. An appraisal, as distinguished from an estimate of replacement or repair, is defined as a valuation of an item provided by a person who is not in the business of selling or repairing that type of property. Normally, claimants are expected to obtain appraisals on expensive items at their own expense.

(n) Quantities of property not reasonable or useful under the circumstances are not compensable. Factors to be considered are claimant’s living conditions, family size, social obligations, and any particular need to have more than average quantities, as well as the actual circumstances surrounding the acquisition and loss.

(o) Intangible Property, such as Bankbooks, Checks, Promissory Notes, Stock Certificates, Bonds, Bills of Lading, Warehouse Receipts, Baggage Checks, Insurance Policies, Money Orders, and Traveler’s Checks are not compensable.

(p) Property Owned by the United States, Except where the Claimant is Responsible to an Agency of the Government other than the DON.

(q) Contractual coverage. Losses, or any portion thereof, that have been recovered or are recoverable pursuant to contract are not compensable.

§ 751.8 Adjudicating authorities.

(a) Claims by Navy personnel. (1) The following are authorized to adjudicate and authorize payment of personnel claims up to $40,000.00:

(i) The Judge Advocate General;

(ii) Deputy Judge Advocate General;

(iii) Any Assistant Judge Advocate General;

(iv) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(v) Commanding officers of Naval Legal Service Offices.

(2) The Staff Judge Advocate attached to Naval Supply Center, Oakland is authorized to adjudicate and pay claims up to $25,000.00.

(3) The Staff Judge Advocate attached to Naval Station, Panama Canal is authorized to adjudicate and pay claims up to $10,000.00.

(4) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000.00:

(i) Officers in charge of Naval Legal Service Office Detachments;

(ii) The Staff Judge Advocate attached to Naval Station, Keflavik; and

(iii) Any personnel attached to a Naval Legal Service Office when specifically designated by the commanding officer of that Naval Legal Service Office.

(5) Any individual, when personally designated by the Judge Advocate General, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, not to exceed $40,000.00.

(b) Claims by Marine Corps personnel.

(1) The following individuals are authorized to adjudicate and authorize
§ 751.9 Payment of personnel claims up to $40,000.00:

(i) Commandant of the Marine Corps;
(ii) Deputy Chief of Staff, Manpower and Reserve Affairs Department;
(iii) Director, Human Resources Division;
(iv) Head, Personal Affairs Branch;
(v) Deputy Head, Personal Affairs Branch;
(vi) Head, Personnel Claims Section; and
(vii) Any individual, when personally designated by the Commandant of the Marine Corps, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, and not to exceed $40,000.00.

(2) The following individuals are authorized to adjudicate and authorize payment of personnel claims up to $25,000.00:

(i) Head, Adjudication Unit;
(ii) Head, Carrier Recovery Unit; and
(iii) Head, Administration Unit.

§ 751.9 Presentment of claim.

(a) General. A claim shall be submitted in writing and, if practicable, be presented to the claims office or 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 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
§ 751.10 Form of claim.

The claim should be submitted on DD Form 1842 (Claim for Personal Property) accompanied by DD Form 1844 (List of Property). If DD Forms 1842 and 18441 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant (see §751.5) or by a person with a power of attorney for a proper claimant. A copy of the power of attorney must be included with the claim.

§ 751.11 Investigation of claim.

Upon receipt of a claim filed under the Personnel Claims Act, the claim shall be stamped with the date and receiving office, and be referred to a claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate.

§ 751.12 Computation of award.

The Judge Advocate General will periodically publish an Allowance List-Depreciation Guide specifying rates of depreciation and maximum payments applicable to categories of property. The Allowance List-Depreciation Guide will be binding on all DON claims personnel. The value of the loss is determined and adjusted to reflect payments, repairs, or replacement by carriers or insurers, or lost potential insurance or carrier recoveries.

(a) Repair of items. For items that can be economically repaired, the cost of repair or an appropriate loss in value is the measure of the loss. The cost of repair may be the actual cost, as demonstrated by a paid bill, or reasonable estimated costs, as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property.

(1) Loss of value (LOV)—(i) Minor damage not worth repairing. An LOV, rather than replacement cost, should be awarded when an item suffers minor

1Copies of these forms may be obtained by contacting the claims office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred.
Department of the Navy, DoD § 751.12

415

damage that is not economical to repair but the item remains useful for its intended purpose. An LOV is particularly appropriate when the item is not of great value and has preexisting damage (PED). An LOV is also appropriate to compensate claimants for minor damage, such as a chip or surface crack to a figure or knickknack. For example, if an inexpensive, fiberboard coffee table with extensive PED is scratched, repair of the scratch would exceed the value of the table. Under the circumstances, LOV is appropriate.

(ii) Damage to upholstered furniture. If damage can be repaired imperceptibly by cleaning or reweaving, the claimant is only entitled to repair cost. If repairs would be somewhat noticeable but the damage is to an area not normally seen, repair costs plus an LOV would be appropriate. Alternatively, if repairs would be somewhat noticeable but the item is of no great value and has already suffered PED, repair costs and LOV would be appropriate even if the damage is in an obvious area. If, however, repairs would be so noticeable as to destroy the usefulness of the item, the item should be reupholstered or replaced. What is noticeable will depend on the nature and value of the item, and the nature of the damage, and claims personnel should exercise sound judgment to avoid being too lenient or too harsh.

(iii) Cosmetic damage to nondecorative items. LOV should also be awarded to compensate claimants for cosmetic damage to items that were not purchased for purposes of display or decoration. For example, the casing of a washing machine is dented. The washing machine is not decorative in nature and still functions perfectly. An LOV, rather than replacement of the washing machine or the casing, is the appropriate measure of the claimant’s loss.

(2) PED to repairable items. PED is damage to an item that predates the incident giving rise to a claim. PED is most commonly identified by the use of symbols on household goods shipment inventories. Whenever PED is listed on an inventory, claims personnel must determine whether the PED did in fact exist and whether the cost of repairing the item includes repairing PED. The fact that a claimant signed the inventory that listed PED is conclusive evidence that PED did exist unless the member has taken written exceptions on the inventory to the carrier’s description of PED. These findings are essential for recovery purposes. Often inspecting the item or calling the repairman who prepared the estimate is the only way to make an effective determination.

(i) Estimates that do not include repair of PED. If the estimate does not include repair of PED, even if PED is listed on the inventory, no deduction should be made. This fact should be recorded on the chronology sheet and on carrier recovery documents.

(ii) Estimates that include repair of PED. If repair of PED is included in the estimate, the percentage attributable to repair of PED is deducted.

(3) Mechanical defects. The Personnel Claims Act only provides compensation for losses incurred incident to service. Damage resulting from a manufacturer’s defect or from normal wear and tear is not compensable. Damage to the engine or transmission of an old vehicle during shipment is probably due to a mechanical defect. Internal damage to appliances, such as old televisions, is also often due to a mechanical defect, particularly when their 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.
§ 751.12

(4) Wrinkled clothing. Clothing wrinkled in shipment presents special problems. Normally, unless the wrinkling is so severe as to amount to actual damage, the cost to press wrinkles out of clothing after a move is not compensable. The mere fact that clothing was “wadded up” or “used as packing material” is not in itself sufficient. The wrinkling must be such that professional pressing is necessary to make the clothing usable. This determination will depend on the wrinkling and the nature of the material.

(5) Wet and mildewed items. A claimant has a duty to mitigate damages by drying wet items to prevent further deterioration. Items that have been wet are not necessarily damaged and claimants who throw them away have difficulty substantiating that a loss has occurred. Although a deeply seated mildew infestation is almost impossible to remove completely, items lightly infested can often be cleaned.

(b) Replacement of items. A claimant is entitled to the value of missing and destroyed items. An item that has sustained damage is considered destroyed if it is no longer useful for its intended purpose and the cost of repairing it exceeds its value. Value is measured in the following ways:

(1) Similar used items. If there is a regular market for used items of that particular type, the loss may be measured by the cost of a similar item of similar age. Prices obtained from industry guides or estimates from dealers in this type of property are acceptable to establish value. There is a regular market on used cars and the value of a used automobile is always measured according to the N.A.D.A. Official Car Guide rather than the depreciated replacement cost. Similarly, the Mobile Home Manufactured Housing Replacement Guide may be used to value a destroyed mobile home. Where there is no regular market in a particular type of used item, however, estimates from dealers in “collector’s Items” should be avoided.

(2) Depreciated replacement cost. This is the normal measure of a claimant’s loss. A catalog or store price for a new item similar in size and quality is depreciated using the Allowance List-Depreciation Guide to reflect wear and tear on the missing or destroyed item. The replacement cost for identical items—particularly decorative items—should be used whenever the item is readily available in the local area, but a claimant who is eligible to use the Navy Exchange (NEX) and the NEX Mall Order Catalog should not be allowed a higher replacement cost of an item, such as a television, from a specialty store when the NEX carries an item comparable in size, quality, and features from another manufacturer.

(3) “Fair and reasonable” (F&R) awards. A fair and reasonable award should be used sparingly when other measures would compensate the claimant appropriately. Overuse of such awards impedes carrier recovery and “F&R” should never be used when a more precise measure of damages is available. An F&R award for a missing or destroyed item should reflect the value of an item similar in quality, description, age, condition, and function to the greatest extent possible. An F&R award for a damaged item should reflect either the amount a firm would charge for repair or the reduced value to the greatest extent possible. Whenever such an award is made, the basis for the award should be explained on the chronology sheet, in the comments block of DD Form 1844 (List of Property), or in a separate memorandum. A fair and reasonable award may be considered in the following instances:

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

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

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

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

(v) The claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

(c) Depreciation. The Personnel Claims Act is only intended to compensate claimants for the fair market value of their loss. Except in unusual cases, a used item that has been lost or destroyed is worth less than a new item of the same type. The price of a
new replacement item must be depreciated to award the claimant the value of the lost or destroyed item. Average yearly and flat rates of depreciation have been established to determine the fair value of used property in various categories. These rates are listed in the Allowance-List Depreciation Guide. The listed depreciation rate should be adjusted if an item has been subjected to greater or lesser wear and tear than normal or if the replacement cost the claimant provides is for a used item rather than a new one. Yearly depreciation is not taken during periods of storage and normally no depreciation is taken on repair costs or on replacement cost for items less than 6 months old, excluding the month of purchase and the month the claim accrued (but see §751.12(c)(3)).

(1) Depreciating replacement parts. No depreciation should be taken on replacement parts for damaged items unless these are parts separately purchased or normally replaced during the useful life of these items. The replacement cost for these latter items should be depreciated. For example, the glass top to a table is not normally replaced during the useful life of the table and should not be depreciated.

(2) Depreciating fabric for reupholstery. Fabric is normally replaced during the useful life of upholstered furniture. When upholstered furniture is reupholstered because the damage is too severe to be repaired and an LOV is not appropriate, the cost of new fabric is depreciated at a rate of 5 percent per year. If the item has been reupholstered since it was purchased, depreciation is measured from the date the item was last reupholstered, rather than from the date the item was originally purchased. Labor costs are allowed as claimed. If the estimate does not list separate costs for fabric and labor, the labor costs may be assumed to be 50 percent of the total bill.

(3) Rapidly depreciating items. Tires, most clothing items, and most toys rapidly lose their value, as the high depreciation rate for these items reflects. Depreciation should be taken on such items even when they are less than 6 months old. As a rule of thumb, half of the normal yearly or flat rate depreciation should be taken on such items when they are between 3 and 6 months old at the time of loss.

(4) Obsolescence. Even though depreciation is not taken during periods of storage, obsolescence should be claimed on those items that have lost value because of changes in style or technological innovations.

(5) Military uniforms. Normally, no depreciation should be taken on military uniforms. Depreciation, however, should be taken on military uniform items that are being phased out or that belong to persons separating from the service. Socks and underwear are not considered military uniform items.

(d) Salvage value. Whenever a claimant has been fully compensated for a destroyed item that still has some value, the claimant has the option of retaining the item and having the claims office deduct an amount for the salvage value, or turning the item over to the Government or to the carrier if the carrier will fully reimburse the Government.

(1) Turn-in to the Government. On all claims, except CONUS domestic shipments, if the claimant does not choose to retain the items and accepts a reduction in the amount paid on the claim for salvage value, the claims office will require the claimant to turn them into a disposal unit designated by the Personal Property Office. Normally, the amount that the Government may obtain from selling such items is very low. If the claims office determines that the salvage value is less than $25.00, the claimant may be advised to dispose of the items by other means, either by throwing the item away or by turning it over to a charitable organization. Claimants may also be directed to make alternative disposition of items that have been refused by the designated disposal unit. This alternate disposition must be noted on the chronology sheet that is kept as part of the claims file. Claims personnel will not divert such items to personal use or use them to furnish Government offices. In determining whether an item has salvage value, the size of the item and the distance the claimant must travel to turn it in should be considered. A claimant must
make his own arrangements to transport salvageable items prior to payment. Claims personnel should ask the claimant’s command to make transportation available to assist the claimant in appropriate cases, particularly when the item is large or bulky. Sound discretion prohibits requiring a claimant living far from a designated disposal unit to turn in an item of relatively slight value.

(2) **Turn-in to the carrier.** On CONUS domestic shipments, the carrier may choose to pick up items for which it will fully reimburse the Government. Pursuant to a Joint Military-Industry Memorandum on Salvage, items that are hazardous to keep around, such as mildewed items or broken glass (except items such as figurines and crystal with a per item value of more than $50.00), may be disposed of as the claimant chooses. Claimants must retain other items for a maximum of 120 days from the date of delivery to allow the carrier to pick them up. Pursuant to this memorandum of understanding, the carrier has until the end of the inspection period or 30 days after receipt of the demand, whichever is greater, to identify such items. Claims offices must identify files in which the carrier is entitled to salvage and must process these claims for recovery action within 30 days so that the claimant does not dispose of salvageable items before the end of the period allotted for carrier pick-up.

(3) **Maximum allowances.** If the claimant will not be fully compensated for an item because a maximum allowance is applied, he will not be required to turn in the item.

(e) **Standard abbreviations.** The claims examiner’s intent should be clear and unmistakable to anyone reviewing the remarks section of DD Form 1844. The following standardized abbreviations are used in completing the remarks section. Other abbreviations should not be used. Whenever one or more of these abbreviations will not adequately explain how the claimant has been compensated, a brief explanation should be inserted in the remarks section, in the comments section on the bottom of DD Form 1844, or on the chronology sheet that is kept in each claims file.

(1) **AC:** Amount claimed. The amount claimed was awarded to the claimant. This abbreviation is not used if the claimant has presented an estimate of repair.

(2) **AGC:** Agreed cost of repairs. The claimant did not present an estimate but instead, after discussing the matter with claims personnel, entered an amount that represents the claimant’s guess as to how much it would cost to repair the damaged item. The claims office may accept this amount as a fair estimation of the cost of repair based on the amount of damage, the value of the item, and the cost of similar repairs in the area. A claimant may be allowed up to $50.00 as an AGC without an inspection and between $50.00 and $100.00 if claims personnel have inspected the item. The use of AGC is an integral part of small claims procedures.

(3) **CR:** Carrier recovery. The claimant was paid this amount by the carrier for the item. The payment is recorded in the remarks column, and the total carrier payment is deducted at the bottom of DD Form 1844 in the same manner as insurance recovery.

(4) **D:** Depreciation. Yearly depreciation was taken on the destroyed or missing item in accordance with the appropriate depreciation guide in effect at the time of the loss. Deviations from standard rates must be explained.

(5) **DV:** Depreciated value. A claimant’s repair costs exceeded the value of the item, so the depreciated value was awarded instead. Whenever a claimant claims a repair cost that is very high, relative to the age and probable replacement cost, the replacement cost should be obtained and the depreciated value determined.

(6) **ER:** Estimate of repair. The claimant provided an estimate of repair that was used to value the loss. If multiple estimates were provided, they should be numbered and referred to as exhibits.

(7) **EX:** Exhibit. When numerous documents have been provided to substantiate a claim, they should be numbered and referred to as exhibits.

(8) **FR:** Flat rate depreciation. Flat rate depreciation was taken on an item in accordance with the Depreciation Guide in effect at the time of the loss.
Deviations from the normal rate must be explained.

(9) **F&R**: Fair and reasonable. A fair and reasonable award was made (see §751.12(b)(3)).

(10) **LOV**: Loss of value. An LOV was awarded (see §751.3(a)(1)).

(11) **MA**: Maximum allowance. The adjudicated value, listed in the “Amount Allowed” column, exceeds a maximum allowance. The amount in excess of the maximum allowance is subtracted at the bottom of the DD Form 1844.

(12) **N/P**: Not payable. The item is not payable. The reason for this comment should be noted (i.e., “not substantiated”).

(13) **OBS**: Obsolescence. A deduction was made for obsolescence.

(14) **PCR**: Lost potential carrier recovery. A deduction was made for lost PCR.

(15) **PED**: Preexisting damage. A deduction was made for PED.

(16) **PP**: Purchase price. The purchase price was used to value the loss. Normally, the purchase price is not an adequate measure of the claimant’s loss. If, however, the claimant used the replacement cost of a dissimilar item or otherwise failed to substantiate the replacement cost, a recent purchase price may be used at the discretion of claims personnel, if a true replacement cost is not available.

(17) **NEX**: Navy Exchange replacement cost. A replacement from the NEX was used.

(18) **RC**: Replacement cost. A replacement cost was used. The store or catalog from which the replacement cost was taken should be listed.

(19) **SV/N**: Item has no salvage value. A destroyed item was determined to have no salvage value.

(20) **SV/R**: Salvage value, item retained. A destroyed item was determined to have salvage value and the claimant chose to keep the item. Accordingly, a deduction was made for the salvage value.

(21) **SV/T**: Salvage value, item turned in. A destroyed item was determined to have salvage value and the claimant chose not to keep the item. If the item is part of a CONUS domestic shipment, the claimant must turn the item in prior to payment on the claim.

(f) Sets. Normally, when component parts of a set are missing or destroyed, the claimant is only entitled to the replacement cost of the missing or destroyed components. In some instances, however, a claimant would be entitled to replacement of the entire set or to an additional LOV. Some claimants will assert that all of the items in a room are part of a set. Pieces sold separately, however, are ordinarily not considered parts of a set, and pieces that merely complement other items, such as a loveseat purchased to complement a particular hutch, are never considered part of a set. When a component part of a set is missing or destroyed and cannot be replaced with a matching item, or has to be repaired so that it no longer matches other component parts of the set, the following rules apply:

(1) The set is no longer useful for its intended purpose. When a set is no longer useful for its intended purpose because component parts are missing or destroyed the entire set may be replaced. Note that several firms will match discontinued sets of china and crystal and that replacement of the set is not authorized if replacement items can be thus obtained. Generally, with china and crystal the value of the set as a whole is not destroyed unless more than 25 percent of the place settings are unusable. Exceptions may be made if the claimant can demonstrate a particular need for a certain number of place settings because of family size or social obligations. In those rare instances when an entire set is replaced, the claimant will be required to turn in undamaged pieces.

(2) The set is still useful for its intended purpose. When missing pieces cannot be matched and there is measurable decrease in the value of the set, but the set is still useful for its intended purpose, the claimant is awarded the value of the missing pieces plus an amount for the diminution in value of the set as a whole. The amount awarded as an LOV will vary depending on the exact circumstances.

(3) **Mattresses and upholstered furniture are recovered.** A mattress and box spring set is covered during normal
§ 751.12

use. Such sets are still useful for their intended purpose if one piece of the set has to be recovered in a different fabric. No award will be made for the undamaged piece. When one piece of a set of upholstered furniture suffers damage that cannot be repaired or recovered in matching fabric, recovering the entire set or recovering the damaged piece plus LOS 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:

(i) They are responsible for placing the mobile home and its tires, tubes, frames, and other parts in fit condition to ship and for loading the mobile home to withstand the stresses of normal transportation. They will not be compensated for any damage that results either from a latent defect in the construction of the mobile home (except when the carrier is aware of the defect and the servicemember is not) or from their failure to place the mobile home in fit condition to ship.

(ii) They are responsible for paying for necessary repairs en route. Such repairs can amount to several hundred or even several thousand dollars, and some mobile homes have been left in storage at the servicemember’s expense hundreds of miles from destination because the owner could not pay for necessary repairs.

(iii) They are responsible for resealing the roof and weatherproofing the mobile home after delivery. The cost of this is not compensable, nor is any damage caused by the servicemember’s failure to have it done.

(iv) They are responsible for removing obstructions, grading the roadway, or otherwise preparing the site to make it accessible for the carrier’s equipment at both origin and destination.

(v) Because of the risk that damage will result for which they cannot be compensated, servicemembers should strongly consider purchasing private insurance coverage. A claimant usually must purchase separate insurance for property shipped inside the mobile home and most mobile home carriers will sell some sort of insurance coverage for damage to the mobile home itself. Often, when a mobile home has been moved repeatedly, the risk of uncompensated loss is so high that the servicemember should consider selling the home rather than attempting to ship it.

(2) Inspection Prior to Shipment. Transportation personnel should inspect the home prior to shipment in all instances. All defects should be recorded. In particular:

(i) A mobile home should not be shipped with a servicemember’s furniture and other household goods inside. The maximum safe weight of appliances and additional property is very low. An overweight mobile home tends to blow tires and break apart during shipment. Servicemembers should be advised long before shipment that they will have to make other arrangements for shipping such items at their own expense.

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

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

(iv) Structural changes to the interior of the home, particularly those
that involve cutting through beams, should be examined closely and a civil engineer should be called in to render an opinion. Frequently, it is not safe to ship mobile homes in which the claimant has altered the interior framing.

(3) Latent Defects. Many carriers will attempt to escape liability by attributing all damage to latent manufacturing defects. A loss due to such a defect, like a loss due to any other mechanical defect, is not considered incident to service. When an engineer's report or other evidence shows that damage was indeed caused by a defect rather than by the carrier's failure to take the necessary care, the following rules apply:

(i) If both the carrier and the claimant knew or should have known of the defect, and if the claimant took no corrective action and had the mobile home shipped anyway, the claim is not payable.

(ii) If the carrier knew or should have known of the defect, and the claimant could not reasonably have been expected to know of it, the claim is payable and liability should be pursued against the carrier.

(iii) If neither the claimant nor the carrier could reasonably be expected to know of the defect, the claim is not payable.

(4) Substantiation of a claim. Prior to adjudication of such claims, the mobile home should be inspected and the following evidence obtained, if possible:

(i) DD Form 1800 (Mobile Home Shipment Inspection at Destination). This document shows the condition of the home at origin prior to shipment. This document is prepared by the Transportation Office (TO) and is signed by the servicemember, the carrier's representative, and the Government inspector. It is vital and a claim should not be paid without it. At destination, damages noted at delivery should be annotated and the form dated and signed by the driver and the servicemember. Damages may be listed on this form or on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

(ii) DD Form 1863 (Accessorial Services-Mobile Home). For shipments after 1 November 1987, DD Form 1863 lists all services the carrier is required to provide, including line-haul, payment of tolls, overdimension charges, permits and licenses, provision of anti-sway devices, axles with wheels and tires, temporary lights, and escort services. All costs and services may not appear on the GBL. For shipments prior to 1 November 1987, damages may also be listed on this form.

(iii) DD Form 1840/1840R. Beginning 1 November 1987, later-discovered damages must be listed on DD Form 1840R and dispatched to the carrier within 75 days of delivery. Timely notice on mobile home shipments differs slightly from such notice on other shipments. Item 306 of the carrier's rate solicitation provides that "upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late discovered loss or damage, including personal property within the mobile home, will be noted on the DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt."

(iv) DD Form 1412 (Inventory of Items Shipped in House trailer). Prior to 1 November 1987, the servicemember prepared DD Form 1412. After 1 November 1987, the carrier is required to prepare this in coordination with the servicemember.

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

(vi) Driver's statement. The mobile home carrier should be requested to provide (within 14 days) a statement from the driver of the towing vehicle explaining the circumstances surrounding the damage as well as detailed travel particulars. If the mobile home carrier does not respond, the file should be so annotated. Such statements are often self-serving and should be reviewed critically to determine whether the carrier is attributing damage to a latent defect.

(vii) Owner's statement. The claimant should provide a statement concerning the age of the mobile home, the date and place purchased, any prior damage or repairs, all prior moves, and prior claims.
§ 751.13

(viii) Estimates of repair. When possible, the claimant should obtain two estimates of repair from firms in the business of repairing, rather than selling, mobile homes. Such estimates should list the approximate value of the home before and after damage, a detailed breakdown of the repairs needed and their cost, and the cause of damage.

(ix) Engineer's statement. Where the facts indicate the possibility of a latent defect, the claimant should be assisted in obtaining a statement from a qualified engineer or vehicle maintenance professional with expertise in mobile homes explaining the cause of damage. The claims office should coordinate in advance with facilities engineers or with local reserve units with engineering expertise to provide such inspection where possible.

(5) Compensable damage. In adjudicating the claim, the claimant may be paid for loss of or damage to the mobile home except when the damage is due to a latent defect, to the servicemember's failure to place the home in fit condition to ship, or to the servicemember's failure to have the roof resealed. The servicemember may also be compensated for the reasonable cost of repair estimates provided by firms in the business of mobile home repair and of opinions prepared by qualified engineers. The claimant may not be compensated for services the carrier failed to perform or performed improperly or for other incidental expenses. The claimant should be referred to the transportation office for these. Such services (listed on DD Form 1843 and the GBL correction notice) include:

(i) Escort or pilot services, ferry fees, tolls, permits, overdimension charges, or taxes.
(ii) Storage costs or parking fees en route.
(iii) Expand charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.
(iv) Wrecker service.
(v) Connecting or disconnecting utilities.
(vi) Blocking, unblocking, or removing or installing skirting.

(vii) The cost of separating or reassembling and resealing a double-wide mobile home.

(6) Carrier liability and attempted waivers. In the absence of additional coverage, the carrier's maximum liability for personal property shipped with the mobile home is $250.00. The carrier is fully liable for damages to the mobile home itself. Carriers are also liable for damage caused by third parties with whom they contract, such as wrecker services. Some carriers may still try to obtain from waivers, from the servicemember. A waiver signed by the servicemember, however, is not binding on the United States. The Navy is the contracting party and the owner has not authority to sign a waiver agreement or any other document purporting to exempt the carrier from the liability imposed under the GBL.

§ 751.13 Payments and collections.

Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2 or in superseding messages, if applicable.

§ 751.14 Partial payments.

(a) Partial payments when hardship exists. When claimants need funds to feed, clothe, or house themselves and/or their families as a result of sustaining a compensable loss, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment is made, a copy of the payment voucher and all other information related to the partial payment shall be placed in the claim file. Action shall be taken to ensure the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(b) Marine hardship payments. The Marine claimant's Transportation Management Office (TMO) shall ensure
compliance with all requirements of §751.14(a), and may request authority for payment by message from the Commandant of the Marine Corps (MHP–40).

(c) Effect of partial payment. Partial payments are to be subtracted from the adjudicated value of the claim before payment of the balance due. Overpayments are to be promptly recouped.

§ 751.15 Reconsideration and appeal.

(a) General. When a claim is denied either in whole or in part, the claimant shall be given written notification of 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 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 §751.15(a), the forwarding endorsement shall include the specific reasons why the requested relief was not granted and shall address the specific points or complaints raised by the claimant’s request for reconsideration.

(c) Appeals procedure for claims submitted by Marine Corps personnel. Where any of the Marine Corps adjudication authorities listed in §751.8(b) fail to grant the relief requested, or otherwise resolve the claim, the satisfaction of the claimant, the request for reconsideration shall be forwarded together with the entire original file and the adjudicating authority’s recommendation, to the Judge Advocate General.

§§ 751.16–751.20 [Reserved]

Subpart B—Demand On Carrier, Contractor, or Insurer

§ 751.21 Scope of subpart B.

Subpart B addresses the recovery process for loss or damage occurring during the storage or transport of household goods and other personal property for which military personnel and civilian employees were paid under the provisions of 31 U.S.C. 3721. The authority for pursuing recovery action is found at 31 U.S.C. 3711.

§ 751.22 Carrier recovery: In general.

(a) Responsibility. Recovery of amounts due for personal property lost or damaged while in transit or in storage at Government expense is a joint Personal Property Office/Naval Legal Service Office responsibility. In order to establish liability and to effectively pursue a recovery claim against a carrier, warehouseman, or other third party, it is essential that all required action be accomplished in an expeditious manner. Failure of the property owner or any Government agent to exercise diligence in the performance of duties may render collection of the claim impossible and thereby deprive the Government of rightful revenue. Claims approving and settlement authorities will ensure that all actions required of the property owner and naval personnel are accomplished promptly.

(b) Elements of collection. There are four elements in the successful assertion and collection of a recovery claim. They are:

(1) Proving that a transit loss occurred;

(2) Determining who had responsibility for the goods at the time of the transit loss;

(3) Calculating the amount of damages; and
§ 751.23 Responsibilities.

(a) Notice of loss. Claims office personnel must ensure that Notice of Loss or Damage, DD Form 1840R, is properly completed and dispatched to the liable third party or parties within 75 days of delivery of the property.

(b) Counseling of claimant. Claims office personnel should coordinate with the local personal property office to ensure proper counseling regarding potential claim procedures.

(c) Documents. Claims office personnel must obtain from the claimant or from the transportation office the following documents needed to process recovery actions:

1. A copy of the GBL or other document used for shipment or storage.
2. A copy of the inventory.
3. A copy of the DD Form 1840 and DD Form 1840R.
4. Where storage in transit was extended from 180 days to 270 days, a copy of the authorization from the transportation office allowing this extension at Government expense.
5. Where storage converted from Government paid storage to storage at owner’s expense, a copy of the claimant’s contract with the warehouse.
6. When necessary, a copy of DD Form 1164, Service Order for Personal Property, from the transportation office.
7. When necessary, DD Form 619–1, Statement of Accessorial Services Performed, from the transportation office.

(d) Carrier inspection. Claims office personnel should inform claimants that the carrier has the right to inspect damaged goods within 75 days of delivery, or 45 days of dispatch of DD Form 1840R, whichever is later, and that damaged items must be held out for carrier inspection during that period. Essential items such as washer, dryer, television etc., may be repaired prior to that time if necessary.

(e) Repair estimates. Claims personnel must ensure that repair estimates describe the specific location and damage claimed and that the same damage is claimed on DD Form 1844, Schedule of Property and Claims Analysis Chart. Repair estimates that merely note “refinished” or “repaired” are not acceptable.

(f) DD Form 1844. Claims personnel must ensure that DD Form 1844 is properly completed with the nature and extent of the loss or damage to each item fully described, the correct inventory numbers supplied, and correct item weights utilized from the Military-Industry Table of Weights (when these weights are required for the code of service involved).

(g) Demands on third parties. Claims personnel must ensure that written demands against appropriate third parties are prepared as described in §751.26 and §751.27. No demand will be made where it conclusively appears that the loss or damage was caused solely by Government employees or where a demand would otherwise be clearly improper under the circumstances. If it is determined that a demand is not required, a brief written statement setting forth the basis for this determination will be included on the chronology sheet. Pursuant to the Joint Military-Industry Agreement on Claims of $25.00 or Less, claims of $25.00 or less will not be pursued because administrative costs outweigh recovery proceeds.

§ 751.24 Notice of loss or damage.

(a) Exceptions. The claimant is required to take exceptions and note any loss of damage at the time of delivery on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery). Later discovered damage must be noted on the DD Form 1840R (Notice of Loss or Damage) and delivered to the claims office or Personal Property Office within 70 days of delivery. Failure to take exceptions at delivery and note later discovered damage will result in deduction on any lost potential carrier recovery from payment of the claim. Failure to note on the DD Form 1840 items missing at the time of delivery may result in denial of claims for those items.

(b) DD Form 1840/1840R. The DD Form 1840/1840R is printed in carbon sets of five with DD Form 1840 on the front side and DD Form 1840R on the reverse side. DD Form 1840/1840R is provided by the carrier to the member at delivery. Carriers were required to use this revised DD Form 1840/1840R beginning 15
August 1988 for international shipments and 15 September 1988 for domestic shipments. This is the only document the carriers will accept for reporting loss and damage to household goods. The requirement to list all known loss and damage at the time of delivery on the DD Form 1840 is a joint responsibility of the claimant and the carrier. If the carrier fails to give the claimant a DD Form 1840 at the time of the delivery, the carrier is liable for all damage and does not have to be notified in the 75-day timeframe.

(c) Military-Industry Memorandum of Understanding on Loss and Damage Rules. The Military-Industry Memorandum of Understanding on Loss and Damage Rules became effective in 1985 with the implementation of the new DD Form 1840/1840R. This document should be thoroughly studied and completely understood.

§ 751.25 Types of shipments and liability involved.

(a) Codes 1 and 2 (domestic including Alaska). Increased released valuation, also referred to as “Basic Coverage,” became effective within CONUS and Alaska on 1 April 1987 for intrastate shipments (shipments within a single State), and on 1 May 1987 for interstate shipments (shipments from one State to another). For Codes 1 and 2 shipments picked up after these dates, the carrier’s released valuation (the carrier’s maximum liability for loss and damage) increased from $.60 per pound per article to $1.25 multiplied by the net weight of the shipment ($2.50 for shipments to and from Alaska). For Codes 1 and 2 shipments picked up prior to these dates, carrier liability remains at $.60 per pound per article and is calculated the same as for Code 4 shipments. There are also two higher levels of coverage available in which the owner pays the difference between the basic coverage and the higher level requested: High or higher increased released valuation (Option 1) and full replacement protection (Option 2). These higher carrier released valuation rates only apply to Codes 1 and 2 shipments and they do not affect the liability of a non-temporary storage (NDS) 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 reflected on the GBL by a special language. For Codes 1 and 2 shipments picked up after the effective dates mentioned above, the carrier’s released valuation is $1.25 multiplied by the new weight of the shipment ($2.50 multiplied times the net weight of the shipment for shipments to and from Alaska). For example, if the weight of an IRV shipment moved from Kansas to New York is 10,000 pounds, the most the carrier could be held liable for would be $12,500 (10,000 pounds times $1.25=$12,500). If the same shipment was moved from Alaska to New York, the maximum carrier liability would instead be $25,000 (10,000 pounds times $2.50=$25,000).

(2) Higher Increased Released Valuation (Option 1). This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance or for a shipment whose value exceeds the statutory maximum. If the claimant is due additional recovery money, the words “claimant due carrier recovery” must be added in the claims file. Option 1 must be annotated on the original GBL. A GBL correction notice is acceptable only if the carrier or his agent has notice of the correction before pick-up. Option 1 may be listed in block 27 or block 30 either as a lump sum, such as “Option 1—$30,000,” or as a multiple, such as “Option 1—$5.00 times the net weight.” The carrier’s maximum liability is whatever higher valuation the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests Option 1 coverage of $30,000.00 and has this listed on the GBL. The carrier’s maximum liability is $30,000.00. Under basic coverage, the carrier’s maximum liability for this shipment would only be $12,500.00. The claimant must initially file a claim with the carrier. The Government will only accept a claim if the carrier denies the claim, if delay would...
cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. The claim is adjudicated in the normal fashion, applying depreciation and maximum allowances. Demand is then made on the carrier for the full value of the item lost or damaged. When recovery is effected, the Government keeps an amount equal to that paid to the claimant and disperses the remaining recovery to the claimant.

(3) **Full Replacement Protection (Option 2).** This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance, for a shipment whose value exceeds the statutory maximum, or because the claimant does not wish to have the replacement cost of destroyed or missing items depreciated to their fair market value. The minimum coverage available under Full Replacement Protection is $21,000.00 or $3.50 times the net weight of the shipment, whichever is greater. A member who chooses this coverage must initially file a claim with the carrier, allowing the carrier the right to repair or replace items. The Government will only accept a claim if the carrier denies the claim, if delay would cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. If a claim is submitted to the Government, the claim is adjudicated normally, applying depreciation and maximum allowances. The claimant should be informed that any additional amount will be forwarded after recovery action is effected against the carrier. Option 2 must be annotated on the original GBL. A GBL correction notice is acceptable only if the carrier or his agent receives notice of the correction before pick-up. Option 2 may be listed in block 27 or block 30 either as a lump sum, such as “Full Replacement Protection—$50,000.00,” or as a multiple, such as “Full Replacement Protection—$3.50 times the net weight.” The carrier’s maximum liability is the higher value the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests full replacement protection of $3.50 times the net weight of the shipment and has this listed on the GBL. The carrier’s maximum liability is $35,000.00 (10,000 pounds times $3.50=$35,000.00). Under basic coverage, the carrier’s maximum liability for this shipment would only be $12,500.00.

(4) **Calculating liability on IRV, Option 1, and Option 2 shipments.** (i) Under IRV and Option 1, the carrier’s maximum liability for loss or damage to a single item is limited to the repair cost or depreciated replacement cost of the item. Under Option 2, the carrier’s maximum liability for a single item is the repair cost or the undepreciated replacement cost of the item. The carrier’s maximum liability for the entire claim is limited to the released valuation, which is either the lump sum declared by the owner or the net weight of the shipment times the applicable multiplier. The net weight of the shipment is normally listed in block 4 of DD Form 1840 (block 3 of DD Form 1840 dated September 84). If the net weight is missing, it should be obtained from the transportation office. (ii) In completing the carrier liability section of DD Form 1844, ignore the Joint Military-Industry Table of Weights. Assert the amount adjudicated on each item for which the carrier is liable in the carrier liability column. Where the Government payment was limited by application of a maximum allowance (or by depreciation on full replacement cost claims), assert the full, substantiated value. Total the amounts for which the carrier is liable in the carrier liability column. If this total exceeds the maximum carrier liability for the entire claim, the maximum carrier liability should be entered on DD Form 1843 as the amount demanded. Do not, however, change the total of the amounts for which the carrier is liable on the DD Form 1844. (iii) If the amount the claimant receives from the Government is limited by application of a maximum allowance (or by depreciation on full replacement protection claims) leaving the claimant with an uncompensated loss, the claimant may be due reimbursement from recovery money after recovery is effected on the claim. Claimants with uncompensated losses who have basic coverage are only entitled to reimbursement from recovery money if the amount recovered exceeds the amount paid by the Government (unless the loss was in excess of the...
statutory maximum). Claimants with uncompensated losses who purchased Option 1 or Option 2 are entitled to reimbursement up to the value of their additional coverage. Such files should be marked: “claimant due carrier recovery.” The claimant should be informed that recovery from the carrier is dependent on the amount and quality of the substantiation the claimant provided, and that the actual recovery may be less than anticipated. The claimant should further be informed that considerable time will elapse before recovery is effected and reimbursement made. Such claims should be processed for recovery action as expeditiously as possible.

(b) Codes 4 and 6 (International and Hawaii). On Codes 4 and 6, international GBL shipments, carrier liability is computed at $.60 per pound multiplied by the weight of the article or carton as prescribed by the Joint Military-Industry Table of Weights. In cases where the entire shipment is lost or damaged, liability will be computed on the net weight of the shipment times $.60 per pound. The net weight of the shipment may be obtained from the origin transportation office.

(c) Codes 5 and T (International and Hawaii). (1) A Code 5 shipment is the movement of household goods in Military Traffic Management Command (MTMC) approved door-to-door shipping containers (wooden boxes) and where a carrier provides line-haul service from origin residence to a military ocean terminal. The Government, through the Military Sealift Command (MSC), provides ocean transportation to the designated port of discharge, and the carrier provides line-haul service to the destination residence.

(2) A Code T shipment is the movement of household goods where the carrier provides containerization at origin and transportation to the designated port of discharge, and the carrier provides line-haul service to the destination residence.

(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,” and 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, excluding 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,” and 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, excluding 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.
§ 751.25

properly prepared inventory should reflect the size of each individual carton, give a general description of carton contents, and note preexisting damage. The complete inventory, not just a portion, must have been prepared as a proper household goods inventory. If an inventory is only partially prepared as a proper household goods descriptive inventory, gross weight will be used.

(e) Local moves and NTS. There are basically two types of NTS shipments: A direct delivery from NTS by the same company that stored the property and a delivery from NTS which was picked up at the warehouse by a GBL carrier. Direct deliveries of household goods from NTS are often erroneously construed as local moves. It is sometimes difficult to tell the difference between the two since a shipment delivered from NTS by the warehouseman is usually also a short distance (local) move. The type of contract involved determines whether or not the shipment is considered a local move, a direct delivery from NTS, or a carrier delivery picked up from NTS. These distinctions are important since different liability is involved.

(1) Local move. A local move is a shipment performed under a local contract that authorizes property to be moved from one residence to another within a specified area (usually a move from off base to on base, or the reverse). The contract for a local move is the purchase order prepared by the 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 entirely against the delivering carrier at whatever rate is appropriate for the code of service involved, unless the carrier prepares an exception sheet (rider) noting damage or loss at the time the goods are picked up from the warehouse. The exception sheet must be signed by a warehouse representative.
If a valid exception sheet exists, liability for items noted on the exception sheet is assessed against the NTS warehouse at $50.00 per inventory line item. An exception sheet should be prepared by the GBL carrier who picks up the goods from NTS even if that carrier is the same company that stored the goods. This is necessary in order to relieve the carrier from liability as a carrier. If either the carrier alone, or both the carrier and the NTS facility, fail to pay their proper liability, the file is forwarded to the Naval Material Transportation Office, (NAVMTO), Norfolk, Virginia for offset action.

(f) Direct Procurement Method (DPM).

(1) A DPM move is a method in which the Government manages the shipment from origin to destination. Contracts are issued to commercial firms for packing, containerization, local drayage, and storage services, or Government facilities and employees provide these services. Separate arrangements are made with carriers and separate documents are issued for each segment throughout. DPM contractors are also known as packing and crating (P&C) contractors, as local drayage contractors, or just as local contractors.

(2) GBL's for DPM shipments are usually only issued to motor freight carriers.

(i) Block 3 on the GBL entitled “service code” will contain the letters A, B, H, or V, followed by a second letter A, H, K, N, P, R, W, X, or Y. These two letter codes identify the GBL as a DPM contract.

(ii) Block 18, “consignee,” and Block 19, “from,” on the GBL contain the name and address of another carrier or transportation office rather than the name and address of the claimant.

(iii) Block 27, “description of shipment,” on most GBL’s contains the statement, “household goods released at a value of 10 cents per pound per article.” This refers to the motor freight carrier’s liability only. The origin and destination contractors’ liability is still $.60 per pound times the weight of the article or carton, as indicated in the Joint Military/Industry Table of Weights.

(iv) If liability lies against the motor freight carrier, the term “article” is defined as the weight of each packed item, such as the weight of a broken dish within a carton rather than the net weight of a carton, as used against the origin and destination contractors. Liability is computed against the motor freight carrier at a rate of $.10 per pound times the weight of the article.

(3) Since 1 January 1981 the destination contractor has been held liable for loss and damage unless it can prove that it is not at fault, i.e., took exceptions prior to receipt of goods. The motor freight carrier is liable for any damage or loss noted against it during its portion of the move. If the motor freight carrier has noted specific damage when it received the shipment, liability is charged against the origin contractor at $.60 per pound times the weight of the article or carton. Damage noted against the origin contractor or motor freight carrier should be indicated on a valid shipping document and generally involves distinct damage to or missing containers. These documents must be signed by all parties involved in the transfer of the goods.

(4) The destination contractor must receive timely notice of loss or damage via DD Form 1840/1840R and a demand packet. If exceptions were taken against the origin contractor or motor freight carrier on a transfer document, they should receive only demand packets.

(5) In determining destination or origin contractor’s liability, the term “article” has been defined as each shipping carton or container and the contents thereof, less any exterior crate or shipping carton. The net weight of each article (carton or box) packed within the exterior crate or carton may be used to determine the contractor’s liability for a damaged or missing item originating out of that carton.

(6) Claims offices should obtain a copy of the DPM contract from the local contracting office or transportation office in order to identify which company has the DPM contract and verify the limits of the liability clause. Contracts are awarded on a calendar-year basis.

(g) Mobile homes. Mobile home claims represent such a small percentage of claims received that claims personnel
§ 751.25

are often unfamiliar with the requirements and documentation necessary to process such claims. For an explanation of the adjudication of such claims and the forms used to effect shipment, see §751.12(g) above.

(1) Carrier liability.—(i) For damage to the mobile home. Carrier liability for damage to a mobile home is generally the full cost of repairs for damage incurred during transit. A mobile home carrier is excused from liability when the carrier can introduce substantial proof that a latent structural defect (one not detectable during the carrier’s preliminary inspection) caused the loss or damage.

(ii) For damage to contents. The carrier’s liability for loss or damage to household or personal effects inside the mobile home (such as clothing and furniture, or furnishings which were not part of the mobile home at the time it was manufactured) is limited to $250.00 unless a greater value is declared in writing on the GBL. Under the Mobile Home One-Time-Only (MOTO) rate system, effective for shipments after 1 November 1987 the owner no longer prepares his own inventory. Under the MOTO system, the carrier in coordination with the owner is required to prepare a legible descriptive inventory on DD Form 1412, Inventory of Articles Shipped in House Trailer.

(iii) Agents of the mobile home carrier. If the shipment is transferred to 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.

(iv) Water damage. Water damage to a double-wide or expando-type mobile home is usually due to the carrier’s failure to provide protective covering over areas of the mobile home exposed to the elements. Carrier recovery should be pursued for water damage to these types of mobile homes.

(v) Waivers signed by the claimant. The carrier may attempt to escape liability by having the owner execute a waiver of liability. Such waivers are not binding upon the United States.

(vi) Extensions of storage in transit (SIT). The extension of SIT past 180 days is only applicable to household goods and holdbaggage shipments. It is not applicable to the shipment of mobile homes. If a mobile home remains in SIT past 180 days, storage is at the owner’s expense.

(2) Notice. Item 306 of the carrier’s rate solicitation states that: “Upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late(r) discovered loss or damage, including personal property within the mobile home, will be noted on DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt.” Notification to the carrier may be made on any of the documents. Claims personnel will dispatch the DD Form 1840R in accordance with §751.14.

(3) Preparation of demands. The carrier is liable for the full amount of substantiated damage to the mobile home itself (less estimate fees), plus up to $250.00 for loss or damage to contents (unless the claimant purchased increased released valuation on the contents). Prepare a demand for this amount. In addition to the DD Form 1843 and DD Form 1844, the demand packet should include the following documents:

(i) DD Form 1800, Mobile Home Inspection Record;

(ii) DD Form 1863, Assessorial Services, Mobile Home;

(iii) DD Form 1840/1840R, Joint Statement of Loss or Damage at Delivery/Notice of Loss;

(iv) DD Form 1412, Inventory of Items Shipped in House Trailer;

(v) DD Form 1841, Government Inspection Report;
(vi) Driver’s statement, from the
driver of the towing vehicle;
(vii) Claimant’s statement con-
cerning previous moves;
(viii) Estimates of repair, preferably
two, from firms in the business of re-
pairing mobile homes; and
(ix) Engineer’s statement, or state-
ment by other qualified professionals.
(4) References. Chapter 3 and Appen-
dix E of DOD 4500.34–R, pertain to mo-
obile home shipment and contain much
valuable information. Another source
is NAVSUP 490, Chapter 10 “Mobile
Homes of Military Personnel.”

§ 751.27 Preparation and dispatch of
demand packets.

Demand on a carrier or contractor
shall be made in writing on DD Form
1843 (Demand on Carrier) with a copy of
the adjudicated DD Form 1844 (Sched-
ule of Property) attached.

(a) Demand packets. A demand is a
monetary claim against a carrier, con-
tractor, or insurer, to compensate for
loss or damage incurred to personal
property during shipment or storage.
DD Form 1843 represents the actual de-
mand. 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 docu-
ments. Demand packets should be
mailed in official DON envelopes. No
demand packet should be prepared for
claim files that have been closed be-
cause 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 de-
mand packet will include the fol-
lowing:
(1) DD Form 1843, Demand on Carrier/
Contractor;
(2) DD Form 1844, Schedule of Prop-
erty and Claim Analysis Chart;
(3) DD Form 1841, Government In-
specation Report (if available);
(4) DD Form 1164, Service Order for
Personal Property (when applicable);
§ 751.28 Assignment of claimants rights to the government.

The claimant shall assign to the Government, to the extent of any payment made on the claim, all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based. The claimant shall also furnish such evidence as may be required to enable the Government to enforce its claim. If the claimant refuses to cooperate, steps may be taken to ensure return of monies paid on the item which the Government is trying to collect.

§ 751.29 Recoveries from carrier, contractor, or insurer.

(a) Recoveries. If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same loss, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim, excess recoveries from carriers, and other third parties shall be paid to the member as long as the total amount paid does not exceed the value of the claim as adjudicated.

(b) Recovered property. When lost property is found, the claimant may, at his option, accept all or part of the property and return the full payment or a pro-rated share of the payment received from the Government on the claim for the recovered property. Surrendered property shall be disposed of under applicable salvage and disposal procedures.

§ 751.30 Settlement procedures and third party responses.

(a) Settlement procedures. In the interest of expeditious office administration, correspondence to carriers and contractors should be kept to a minimum. Normally, one rebuttal to a third party’s denial of liability is sufficient, unless the carrier or contractor raises new arguments or provides new information.

(1) Checks from third parties. Accept checks for the amount demanded from carriers and contractors. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier’s arguments for reducing liability to determine if they are acceptable. If the third party’s basis for reducing liability is acceptable in the light of all evidence, deposit the check and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as “CLOSED.”

(2) Third party offers of settlement. If a carrier or contractor offers to settle the claim, review the carrier’s arguments for reducing liability to determine if they are acceptable. If the third party’s basis for reducing liability is acceptable in the light of all evidence, inform the carrier that the offer is accepted, but that offset action will be initiated if a check for that amount is not received within 45 days. If a check
in the amount acceptable to the Government is received, deposit it and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as “CLOSED.” If a check in the proper amount is not received within 45 days, send the request to NAVMTO, Norfolk (or appropriate contract officer) for offset action (see §751.32 of this part).

(3) Unacceptable third party checks and offers of settlement. If a third party’s basis for denying liability is not valid, respond to that carrier or contractor. Return unacceptable checks. Explain the reasons for not accepting the check or offer, and request the amount that is justified under the circumstances in the light of all the evidence. If a release was included, amend the release to the revised amount and sign, date, witness, and return it. Warn the carrier or contractor that the claim will be forwarded for offset action if a check for the amount justified under the circumstances is not received within 45 days. Suspend the file for 45 days and if a check in the proper amount is received, deposit it and dispatch the unearned freight letter, if applicable. If a check in the proper amount is not received within 45 days, request NAVMTO, Norfolk (or appropriate contract officer) to take offset action.

(4) Third party denials of liability. Upon receipt, review the carrier or 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.”

(i) Acceptable 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.

(ii) Partially acceptable and unacceptable third party reasons for denial. If the carrier or contractor’s basis for denying liability is acceptable only in part or is completely unacceptable, follow the procedures in subparagraph (3) above, requesting the amount that is justified under the circumstances in the light of all the evidence. If a response is not received within 45 days, or if the third party’s reply is not responsive, request NAVMTO, Norfolk (or appropriate contract officer) take offset action as described above.

(b) Depreciation. In determining payments to claimants, the depreciation rates from the Allowance List—Depreciation Guide are used. In determining third party liability, however, a different depreciation guide, the Joint Military/Industry Depreciation Guide is used instead. In most instances, the depreciation rates are the same in both guides, and claims personnel are not required to consult the Joint Military/Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands. If, however, a carrier or contractor objects to the depreciation rate utilized for certain items, consult the Joint Military/Industry Depreciation Guide and use the depreciation rate found in that guide if it differs from the rate in the Allowance List—Depreciation Guide.

§751.31 Common reasons for denial by carrier or contractor.

The following are common reasons given for denial of an entire claim, or for individual items on a claim. Each reason for denial is followed by a short discussion of the validity of such a denial.

(a) The carrier alleges that valid exceptions were made at the time of pickup from the NTS facility. When a carrier provides an exception sheet it contends was made at time of transfer, this exception sheet must bear the signature of a representative of the NTS facility. Without a signed exception sheet there is no evidence that the NTS facility was made aware of these exceptions and given the opportunity to confirm or deny the alleged condition of the items in question. The burden of proof is on the carrier to provide the valid exception sheet and establish its freedom from liability.

(b) The carrier denies liability for missing or damaged item packed in cartons because it did not pack the shipment and the cartons did not show outside damage. When a carrier accepts a shipment in apparent good order, it is responsible for damage to packed items, unless it can prove that the packing was improper and was the sole cause of the damage.

(c) The carrier contends that the mildew damage occurred in NTS and not during its transport of the shipment. Mildew formation is more likely to occur in NTS than in transport. Unsupported by evidence, however, an allegation that mildew formation occurred during NTS
§ 751.31  32 CFR Ch. VI (7–1–02 Edition)

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 mold or mold during the NTS storage.

(d) The carrier claims that damage is due to “inherent vice.” Although the carrier may allege that damage was due to “inherent vice,” the mere allegation of “inherent vice” is insufficient to relieve the carrier of liability. The burden of proof is on the carrier to establish that an “inherent vice” existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to “inherent vice” is seldom acceptable.

(e) The carrier contends that it was denied the right to inspect. Often a carrier will state that it made several attempts to make an inspection, but the shipper failed to keep the appointment. If such a case exists, the proper procedure for the carrier to follow is to contact the claims office for assistance in accomplishing the inspection within a timely manner. A carrier's efforts to obtain the inspection should be documented in the file by claims personnel. Lack of an inspection alone, however, does not relieve the carrier of liability and is insufficient to rebut a well-established prima facie case of liability.

(f) The carrier denies liability on missing items because the items do not appear on the new inventory made at pickup from the NTS facility. When a carrier picks up a shipment from NTS and chooses to prepare a new inventory, it must use identical or cross-referenced numbers. If an article such as a chair or a lawnmower is missing, it must be indicated as “missing” on the new inventory. Whether or not a new inventory is made, an exception sheet must be prepared and the missing articles must be noted thereon. To relieve the carrier of liability, both the new inventory and the exception sheet must be signed by representatives of the NTS facility and the carrier.

(g) The carrier denies liability due to “act of God.” An act of God is an event that could not have been prevented by human prudence. It is generally seen as an occurrence in which human skill or watchfulness could not have foreseen the disaster. The burden of proof is on the carrier to establish that an “act of God” existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to an “act of God” is generally not acceptable. The carrier cannot avoid liability if it has been negligent in exposing the goods to potential danger or if it failed to take reasonable steps to reduce the extent of the injury once the danger was discovered.

(h) The carrier contends that the claimant’s repair estimate is excessive and that its own repair firm can do the job cheaper. A claimant has the right to select a repair firm provided the cost is reasonable and not in excess of the item’s value. The carrier is liable for the reasonable cost of repairing damaged merchandise that includes labor, material, overhead, and other incidental expenses incurred in reconditioning or putting the goods in salable condition. If the carrier did not provide the claims office with an acceptable, lower estimate to use in adjudicating the claim, and if the claimant’s estimate is reasonable, then the carrier is liable for the amount paid the claimant.

(i) The carrier contends that liability should have been predicated on the agreed weight of a sofa and not a hide-a-bed. This argument only applies when carrier liability is based on weight. At the time the inventory is prepared, the carrier’s driver must establish whether a sofa is merely a sofa, or one that converts into a bed. Failure to properly identify the item on the inventory does not relieve the carrier of liability for the greater weight of a sofa bed.

(j) The carrier argues that it is not responsible for warpage, rust, etc., due to climatic changes. This argument does not relieve a carrier of liability unless the carrier offers substantial evidence to show that the damages resulted solely from unusual circumstances beyond its control, as with an “act of God,” or that it occurred while the property was in the hands of another contractor, as reflected upon a valid NTS exception sheet. The burden of...
proof is on the carrier to establish that the damage was not due to its negligence and that circumstances beyond its control were the sole cause of the loss. Because the carrier can rarely establish this, denial due to "climatic changes" is rarely acceptable.

§ 751.32 Forwarding claims files for offset action.
(a) General. Claim files are forwarded with a recommendation for offset action when 120 days have passed since a demand and a response has not been received from the carrier or contractor. Files are also forwarded for offset action when an impasse is reached. An impasse occurs when legitimate efforts to collect the fully justified amount demanded have reached a standstill and the carrier has no valid basis for denial. Prior to forwarding files for offset action, claims personnel must ensure that timely notice has been given, that all necessary documents are included, and that the demand and any correspondence were mailed to the proper carrier or contractor at its correct address. When applicable, claims personnel must also ensure that an unearned freight packet is included.

(b) Claim files forward to local contracting offices. Claims forwarded to local contracting offices for offset action include claims involving local moves and DPM shipments in which the origin and/or destination contractor is determined to be liable. When the contractor fails to reply to a demand within 120 days or fails to make an acceptable offer, the file should be forwarded to the local contracting office with a request for offset action.

(c) Unjustified denials and inadequate settlement offers by carrier or contractor—
(1) GBL carriers. If a GBL carrier or insurer has refused to acknowledge or respond to a demand within a reasonable time (usually 30 days), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if settlement has been delayed beyond 120 days (see §751.32(a)), the claim shall be forwarded to the NLSC activity serving the geographical location recommending set-off action be taken against the carrier or contractor. The 120-day period begins to run on the date initial demand was made. The NLSC activity shall review the file and if the warehouseman's liability is correctly computed, forward the file to the appropriate MTMC Regional Storage Management Office for set-off.

§ 751.33 Unearned freight packet.
(a) Preparation. An unearned freight packet should be prepared when the loss or destruction of an item in shipment is attributable to a GBL carrier. Unearned freight packets should be addressed to the carrier, and not to the agents of GBL carriers, NTS contractors, or other contract movers. An unearned freight packet is required when a mobile home is lost or completely destroyed. An unearned freight packet includes:
   (1) A Request For Deduction of Unearned Freight Charges;
   (2) A copy of DD Form 1843;
   (3) A copy of DD Form 1844; and
   (4) A copy of the GBL.
(b) Dispatch. The unearned freight packet is not dispatched to the NAVMTO, Norfolk until the carrier has paid its agreed liability or when offset has been accomplished.

§ 751.34 GAO appeals.
(a) General. Sections 1 through 12 and 52 through 65 of Title 4, GAO Manual,
Policy and Procedures Manual for Guidance of Federal Agencies, and 4 CFR parts 30–32 set forth procedures for carriers to appeal setoff action. Before a carrier can appeal a setoff action to GAO, the command requesting setoff action must make an administrative report to GAO.

(b) Procedures for appeals. (1) The carrier must request appeal from the command requesting setoff action and request a GAO review.

(2) The command requesting setoff action will review the appeal and if it is determined the setoff action was appropriate, will do an administrative report and notify the carrier when this has been accomplished.

(3) The administrative report and complete claims file will be forwarded to the NLSC activity serving the geographic location for review prior to forwarding to GAO.

(4) The complete claims package, including all correspondence with the carrier, will then be forwarded to GAO.

(c) The administrative report and enclosures must support the setoff action.

(d) GAO Manual. All NLSC activities have been provided a copy of a manual published by the Claims Group General Government Division, U.S. General Accounting Office entitled Procedures of the U.S. General Accounting Office for Household Goods Loss and Damage Claims. Other commands dealing with carrier recoveries should get a copy of the manual from the NLSC activity servicing the local area.

§ 751.35 Forms and instructions.

Copies of all of the forms and instructions discussed in this part may be obtained if needed, from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

PART 752—ADMARITALY CLAIMS

Sec. 752.1 Scope.
752.2 Organization.
752.3 Claims against the Navy.
752.4 Affirmative claims.
752.5 Salvage.


§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

[39 FR 9662, Mar. 15, 1974]

§ 752.2 Organization.

(a) Administrative authority of the Secretary of the Navy. The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1994)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1994)).

(b) Admiralty and Maritime Law Division of the Office of the Judge Advocate General. The Navy’s admiralty-tort claims are processed and adjudicated in the Admiralty and Maritime Law Division of the Office of the Judge Advocate General. All correspondence with the Admiralty and Maritime Law Division should be addressed to the Office of the Judge Advocate General (Code 11), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

(c) Mission and policy. The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements
cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) Admiralty-tort claims. As indicated above, the Admiralty and Maritime Law Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) Admiralty-contract claims. Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) Damage caused by Navy contract stevedores. Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) Resolving conflicts. Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty and Maritime Law Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty and Maritime Law Division and the Office of Counsel, MSC, as to how the incident should be handled.

§ 752.3 Claims against the Navy.

(a) Settlement authority. 10 U.S.C. 7622 (1994) provides settlement authority for

(1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

The limit on the Secretary's settlement authority is payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress for payment. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $100,000. Under the Secretary's delegation, settlements not exceeding $100,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law). Authority has also been delegated to Deputy Commander in Chief, U.S. Naval Forces, Europe, and to Commander Sixth Fleet, to pay admiralty claims against the Navy not exceeding $10,000, and to
§ 752.4  

(b) Settlement is final. The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) Settlement procedures. Where the amount paid is over $100,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of annual Department of Defense appropriations.

(d) Limitation period. The Secretary’s settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.


§ 752.5  

Salvage.

(a) Scope. This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy’s administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime
Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy’s settlement authority.

(b) Affirmative claims. Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365 (1994). Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OACL), 2531 Jefferson Davis Highway, NC/3 Room 11E54, Arlington, VA 22242-5160. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367 (1994).


PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

§ 755.1 Statutory authority.

Article 139, UCMJ, redress of injuries to property, is the basis for this chapter.

§ 755.2 Scope.

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

§ 755.3 Claims not cognizable.

The following claims are not cognizable under this chapter.

(a) Claims resulting from simple negligence.

(b) Claims of subrogees.

(c) Claims for personal injury or death.

(d) Claims arising from acts or omissions within the scope of employment of the offender.

(e) Claims for reimbursement for damage, loss, or destruction of Government property.

§ 755.4 Limitation on claims.

(a) Time limitations. A claim must be submitted within 90 days of the incident giving rise to it.

(b) Acts of property owner. When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or damage of the property, assessments will not be made against members of the naval service in excess of the amount for which they are found to be directly responsible, i.e., comparative responsibility for the loss will be the
§ 755.5 Complaint by the injured party and investigation.

(a) A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

(b) Where the claim alleges misconduct by members of the command, a commanding officer to whom the claim is submitted shall convene an investigation under this Manual to inquire into the matter. Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the commanding officer of the command of the alleged offenders. Where the command of the alleged offenders cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

(c) The investigation shall inquire into the circumstances surrounding the claim, gather all relevant information about the matter (answering the who, what, where, when, why, and how questions) and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations. The investigation shall determine the amount of damage suffered by the property owner.

(d) The investigation shall make recommendations about the amount to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against all individuals.

§ 755.6 Action where offenders are members of one command.

(a) Action by commanding officer. The commanding officer shall ensure the alleged offenders are shown the investigative report and are advised they have 20 days within which to submit a statement or additional information on the incident. If the member declines to submit information, he shall so state in writing within the 20 day period. The commanding officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of the command. If the commanding officer finds the claim payable under these regulations, he shall fix the amount to be assessed against the offenders.

(b) Review. If the commanding officer has authority to convene a general court-martial, no further review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial convening authority, the investigation and the commanding officer's action thereon shall be forwarded to the officer exercising general court-martial jurisdiction (OEGCM) over the command for review and action on the claim. That officer's action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

(c) Charge against pay. Where the amount does not exceed $5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds $5,000.00, the claim, the investigation, and the commanding officer's recommendation shall be forwarded for review prior to checkage to Headquarters, U.S. Marine Corps (Code JAR) or the Judge Advocate General, as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of
§ 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal change will be noted in the OEGCM’s decision.

(b) Appeal. In claims involving $5,000.00 or less, a claimant or member who has been assessed pecuniary liability may appeal the decision to the OEGCM. An appeal must be submitted within 5 days of the receipt of the OEGCM’s decision. Appeals will be forwarded, via the OEGCM, to the Judge Advocate General for review and final action. In the event of an appeal, the imposition of the OEGCM’s decision will be held in abeyance pending the final action by JAG. If it appears that good cause exists that would make it impracticable for an appeal to be submitted within 5 days, the OEGCM may, in his discretion, grant an extension of time, as appropriate. His decision on extensions is final and nonappealable.

§ 755.9 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender. The two proceedings are independent. Acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, but is not determinative on the issue of responsibility for damages under these regulations.

PART 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

Sec. 756.1 Scope.
756.2 Definitions.
756.3 Notification.
756.4 Responsibility.
756.5 Investigation.
756.6 Negotiation.
756.7 Payment.
756.8 Denial.
756.9 Claims by employees.


SOURCE: 57 FR 4736, Feb. 7, 1992, unless otherwise noted.

§ 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal
§ 756.2 Definitions.

(a) Nonappropriated-fund instrumentality (NAFI). An instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) Nonappropriated-funds. Funds generated through the use and patronage of NAFI’s, not including funds appropriated by Congress.

(c) Employees of NAFI. Civilian personnel employed by NAFI’s whose salaries are paid from nonappropriated-funds. Also, military personnel working part-time at NAFI’s when compensated from nonappropriated-funds.

§ 756.3 Notification.

(a) Some NAFI’s, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the 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 potential liability by the activity.

§ 756.4 Responsibility.

The primary responsibility for the negotiation and settlement of claims resulting from nonappropriated-fund activities is normally with the NAFI and its insurer. NAFI’s, however, are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Department of the Navy and if the degree of control and supervision by the Navy is more than casual or perfunctory. Compare United States v. Holcombe, 277 F.2d 143 (4th Cir. 1960) and Scott v. United States, 226 F. Supp. 846, (D. Ga. 1963). Consequently, to the extent sovereign immunity is waived by the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2672, 2674–2680, the United States remains ultimately liable for payment of NAFI claims.

§ 756.5 Investigation.

Claims arising out of the operation of NAFI’s, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities in order to protect the residual liability of the United States. All claims should be submitted to the command having cognizance over the NAFI involved.

§ 756.6 Negotiation.

(a) General. Claims from NAFI’s should be processed primarily through NAFI claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated fund activity claims.

(b) When the NAFI is insured. When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The appropriate naval adjudicating authority as shown in 32 CFR 750.34(c)(2)(ii) has the responsibility of monitoring the negotiations conducted by the insurer or TPA. Monitoring is normally limited
§ 756.9

(d) Other claims. A NAFI’s private insurance policy is usually not available to cover losses which result from some act or omission of a mere participant in a nonappropriated-fund activity. In the event the NAFI declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.8 Denial.

Claims resulting from nonappropriated-fund activities may be denied only by the appropriate naval adjudicating authority. Such a denial is necessary to begin the 6-month limitation on filing suit against the United States for claims filed under the Federal Tort Claims Act. Denial of a claim shall be in writing and in accordance with subparts A or B of part 750 of this chapter, as appropriate. The appropriate naval adjudicating authority should not deny claims which have initially been processed and negotiated by the Navy, the recommended award will be forwarded to the insurer or TPA for payment.

§ 756.7 Payment.

(a) Claims that can be settled for less than $1000.00. A claim not covered by insurance (or not paid by the insurer), that can be settled for $1000.00 or less, may be adjudicated by the commanding officer of the activity concerned or designee. The claim shall be paid out of funds available to the commanding officer.

(b) Claims that cannot be settled for less than $1000.00. A claim negotiated by the Navy, not covered by insurance, that cannot be settled for less than $1000.00, shall be forwarded to the appropriate nonappropriated-fund headquarters command for payment from its nonappropriated-funds.

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

(d) Other claims. A NAFI’s private insurance policy is usually not available to cover losses which result from some act or omission of a mere participant in a nonappropriated-fund activity. In the event the NAFI declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.9 Claims by employees.

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

(b) Personal injury or death of foreign nationals employed outside of the continental United States. Employees who are not citizens or permanent residents, and who are employed outside the continental United States, are protected by private insurance of the NAFI or by other arrangements (5 U.S.C. 8172). When a nonappropriated-fund activity
PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Subpart A—Property Damage Claims

757.1 Scope of subpart A. Subpart A describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts.

757.2 Statutory authority. The regulations published in 4 CFR chapter II control the collection and settlement of affirmative claims. This section supplements the material contained in those regulations. Where this section conflicts with the materials and procedure published in 4 CFR chapter II, the latter controls.

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757.4 Claims that may be collected.

(a) Against responsible third parties for damage to Government property, or the property of nonappropriated-fund activities. It should be noted, however, that as a general rule, the Government does 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

757.2 Statutory authority.

(a) General. With the exception of MCRA claims, all affirmative claims for money or property in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 3711). Department of Defense Directive 5515.11 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).

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(d) Other claims. Any other claim for money or property in favor of the United States cognizable under the
Federal Claims Collection Act not specifically listed above.

§ 757.5 Assertion of claims and collection procedures.

(a) General. The controlling procedures for administrative collection of claims are established in 4 CFR part 102.

(b) Officials authorized to pursue claims. The following officers are authorized to pursue and collect all affirmative claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(2) Commanding officers of Naval Legal Service Offices and applicable Detachments, except Naval Legal Service Offices in countries where another service has single service responsibility in accordance with DOD Directive 5515.8.2

(c) Dollar limitations. All of the officers listed in § 757.5(b) are authorized to compromise and terminate collection action on affirmative claims of $20,000.00 or less.

(d) Determining liability. Liability must be determined in accordance with the law of the place in which the damage occurred, including the applicable traffic laws, elements of tort, and possible defenses.

(e) Assertion of a claim. (1) Assertion of the claim is accomplished by mailing to the tortfeasor a “Notice of Claim.” The notice is to be mailed certified mail, return receipt requested, and should include the following information:

(i) Reference to the statutory right to collect;

(ii) A demand for payment or restoration;

(iii) A description of damage;

(iv) The date and place of the incident; and

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

(2) See also 4 CFR part 102.

(f) Full payment. When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to the collection activity, such as the “Commanding Officer, Naval Legal Service Office, (Name).” The check or money order shall then be forwarded to the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual.

(g) Installment payments. See 4 CFR 102.11 for specific procedures. In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Installment payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor’s ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government’s claim in not more than 3 years. Installment payments of less than $50.00 per month should be accepted only if justified on the grounds of financial hardship or for some other reasonable cause. In all installment arrangements, a confession of judgment note setting out a repayment schedule should be executed.

(h) Damage to nonappropriated-fund instrumentality (NAFI) property. Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the nonappropriated-fund activity for deposit with that activity. In those situations where the recovery involves damage to both NAFI-owned property and other Government property, e.g., destruction of an exchange building resulting in damage to both the building and the exchange-owned property inside, recovery for the exchange-owned property shall be forwarded to the NAFI. Recovery for building damage shall be deposited in accordance with § 757.5(f) above.

(i) Damage to industrial-commercial property. When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual. When a claim is based on a
§ 757.6 Waiver, compromise, and referral of claims.

(a) Officials authorized to compromise claims. The officers identified in §757.5(b) may collect the full amount on all claims, and may compromise, execute releases or terminate 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 $100,000.00. Claims in excess of $100,000.00 may not be compromised for less than the full amount or collection action terminated without approval from the Department of Justice (DOJ).

(c) Notification. The Judge Advocate General shall be notified prior to all requests made to the DOJ to compromise, terminate collection, or referral for further collection action or litigation.

(d) Litigation Reports. Litigation reports prepared in accordance with 4 CFR part 103 shall be forwarded to the DOJ along with any case file forwarded for further collection action or litigation as required by the Federal Claims Collections Standards.

§§ 757.7–757.10 [Reserved]

Subpart B—Medical Care Recovery Act (MCRA) Claims

§ 757.11 Scope of subpart B.

Subpart B describes the assertion and collection of claims for medical care under the Medical Care Recovery Act (MCRA). The MCRA states that when the Federal Government provides treatment or pays for treatment of an individual who is injured or suffers a disease, the Government is authorized to recover the reasonable value of that treatment from any third party legally liable for the injury or disease.

§ 757.12 Statutory authority.


§ 757.13 Responsibility for MCRA action.

(a) JAG designees. (1) Primary responsibility for investigating, asserting, and collecting Department of the Navy (DON) MCRA claims and properly forwarding MCRA claims to other Federal departments or agencies rests with the following officers:

(i) Commanding officers and officers in charge, Naval Legal Service Command (NLSC) activities, in their areas of geographic responsibility;

(ii) Officer in charge, U.S. Sending State Office, Rome in his area of geographic responsibility.

(2) JAG designees may assert and receive full payment on any MCRA claim. They may, however, agree to compromise or waive only claims for $40,000.00 or less. Claims in excess of $40,000.00 may be compromised or waived only with DOJ approval. Such claims will be forwarded to the Judge Advocate General in accordance with §757.6. See §757.7 for further discussion of waiver and compromise.

(b) Navy Medical Treatment Facilities (MTF). (1) Naval MTF's are responsible for
§ 757.14 Claims asserted.

(a) General. The DON asserts MCRA claims when medical care is furnished to Navy and Marine Corps active duty personnel, retirees, or their dependents, and third-party tort liability for the injury or disease exists. Claims are asserted when the injured party is treated in a military MTF or when the DON is responsible for reimbursing a non-Federal care provider. Claims for medical care furnished are also asserted using alternate theories of recovery if the MCRA does not apply. See § 757.14(e).

(b) Independent cause of action. The MCRA creates an independent cause of action for the United States. The Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the injured person to properly file and/or serve a complaint on the third party, that may prevent the injured person from recovering, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the injured person. The right arises directly from the statute; the statutory reference to subrogation pertain only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government’s claim.

(c) Liable parties. MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in § 757.15.

(d) Reasonable value of medical care. The reasonable value of medical care provided to an injured person is determined:

(1) By using the rates set by the Office of Management and Budget and published in the Federal Register for ensuring potential MCRA claims are brought to the attention of the appropriate NLSC activity or U.S. Sending State Office (USSSO).

(2) The MTF reports all potential MCRA cases by forwarding a copy of the daily injury log entries and admissions records to the cognizant NLSC activity or USSSO within 7 days of treatment for which a third party may be liable. The NLSC activity or USSSO makes the determination of liability.

(i) MTF computes the value of the care it provided on NAVJAG Form 5890/12. Rates used to compute this value are published annually in the Federal Register by the Office of Management and Budget.

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

(iii) An “interim” report is prepared for inpatients only. An interim report is prepared every 4 months until the patient is released, transferred or changed to an outpatient status.

(iv) A “final” report is prepared for all patients when inpatient and outpatient treatment is completed or the patient’s care is transferred to another facility. A narrative summary should accompany the final report in all cases involving inpatient care. In addition, the back side of NAVJAG Form 5890/12 is completed as part of the final report when the value of Federal Government care exceeds $1,000.00.

(c) The Office of Medical and Dental Affairs (OMA). The office pays emergency civilian medical expenses incurred by active duty members. This office furnishes MCRA claims information to the NLSC activity or USSSO. The address is Bldg. 30H, U.S. Naval Training Center, Great Lakes, IL 60088–5200.

(d) Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) contractors. CHAMPUS contractors forward reports of payments in injury cases to the appropriate NLSC activity. Responsible JAG designees should, however, initiate regular contact with contractors within their geographic area to ensure all relevant cases have been reported.

(e) Department of Justice (DOJ). Only the DOJ may authorize compromise or waiver of an MCRA claim in excess of $40,000.00; settle an MCRA claim which was previously forwarded by the DON to DOJ for action; or settle an MCRA claim in which the third party has filed a suit against the United States or the injured person as a result of the incident which caused the injury.
§ 757.15 Claims not asserted.
In some cases, the MCRA or public policy considerations limit the DON’s assertion of claims against apparent third-party tortfeasors. MCRA claims are not asserted against:

(a) Federal Government agencies. Claims are not asserted against any department, agency or instrumentality of the United States. “Agency or instrumentality” includes self-insured, non-appropriated-fund activities but does not include private associations.

(b) Injured servicemembers, dependents and employers of the United States. Claims are not asserted directly against a servicemember, the dependent of a servicemember, or an employee of the United States who is injured as a result of his willful or negligent acts. The United States does assert, however, against medical care and treatment insurance coverage the member, employee, or dependent might have.

(c) Employers of merchant seamen. Claims are not asserted against the employer of a merchant seaman who receives Federal medical care under 42 U.S.C. 249.

(d) Department of Veterans Affairs care for service-connected disability. Claims are not asserted for care provided to a veteran by the Department of Veterans Affairs when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided an individual before he is transferred to a Department of Veterans Affairs hospital.

§ 757.16 Claims asserted only with JAG approval.
The responsible NLSC activity or USSSO will investigate potential MCRA claims against the following third parties and forward a copy of their claims file, along with recommendations on assertion, to the Judge Advocate General:

(a) Certain Government contractors. JAG approval is required before asserting an MCRA claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

(b) Foreign Governments. JAG approval is required before asserting MCRA claims against foreign governments, their political subdivisions, Armed Forces members, or civilian employees.

(c) U.S. personnel. JAG approval is required before asserting MCRA claims against U.S. servicemembers, their dependents and employees of the United States, or their dependents for injury to another person.

§ 757.17 Statute of limitations.

(a) Federal. The United States, or the injured party on behalf of the United States, must file suit within 3 years after an MCRA action accrues.
U.S.C. 2415. Generally this is 3 years from the date of initial Federal treatment or Federal Government payment to a private care provider, whichever is first.

(b) State. Some State statutes of limitations may also apply where recovery is based on authority such as workers’ compensation statutes, no-fault insurance statutes, no-fault medical payments, or uninsured motorist provisions of insurance contracts.

§ 757.18 Asserting the claim.

(a) Initial action by JAG designee. When advised of a potential MCRA claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When the DON has reimbursed a non-Federal provider for health care or when CHAMPUS has made payment for a Navy health care beneficiary, the DON will assert any resulting MCRA claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency which will assert a resulting MCRA claim.

(i) Where Navy or Marine Corps members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DON will usually assert any MCRA claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a Navy MTF provides care to personnel of another Federal agency or department, that other agency or department will usually assert any claim on behalf of the United States.

(3) If the claim is not one which the DON should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DON should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA.

(b) Investigating the claim. While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. Usually the file will contain:

(1) Identification of each person involved in the incident including name, address, occupation, and nature of involvement;

(2) Police, social service, and other Federal, State and local agency reports on the incident;

(3) Completed copies of NAVJAG Form 5890/12 or equivalent forms from other agencies and departments;

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

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

(6) Calculations of the reasonable value of the Government’s MCRA claim;

(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.

See footnote 3 to §757.2.
§ 757.18

(c) Claims forwarded to JAG or DOJ. In those cases where the file must be forwarded to JAG or DOJ, the file will also include:

1. A summary of the case which includes the circumstances of the incident which caused the injury, the source, extent and value of medical care provided and a brief of the applicable law on the liability of the third party;
2. Copies of all correspondence; and
3. Recommended disposition.

(d) Request for assistance in conducting investigation. When an injury for which the DON may assert an MCRA claim occurs at a place where the DON does not have a command, unit, or activity conveniently located for conducting an inquiry into the circumstances underlying the injury, the NLSC activity or USSSO having responsibility for administering any resulting MCRA claim may request assistance from any other command, unit, or activity within the DOD. Such assistance may take the form of a complete inquiry into the circumstances underlying the incident or it may only cover part of the necessary inquiry and fact gathering. If a NLSC activity or USSSO receives a similar request from another command, unit or activity within the DOD, every effort should be made to honor the request. Assistance will normally be provided without reimbursement from the requesting service.

(e) Notice of claim. (1) The JAG designee will assert appropriate MCRA claims by mailing, certified mail, return receipt requested, a notice of claim (SF 96) to identified third-party tortfeasors and their insurers, if known. Many insured tortfeasors fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may preclude such an invocation by giving the requisite notification itself. The purpose of the insurance clause is satisfied if the insurer receives actual notice of the incident, regardless of the informant. This notice should be mailed as soon as it reasonably appears an identified third party may be liable for the injuries to the injured person. It is not necessary or desirable to delay mailing this notice until the completion of the investigation convened to inquire into the circumstances underlying the incident causing the injury. The prompt assertion of the claim will ensure that the Government is named on the settlement draft. If the United States is not so named, and the claim has been asserted, the insurer settles at its own risk.

(2) The JAG designee will also notify the injured person or his legal representative of the Government’s interest in the value of the medical care provided by the United States. This notice will advise that:
   i. The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government;
   ii. The injured person is required to cooperate in the efforts of the United States to recover the reasonable value of medical care furnished or paid for by the Federal Government;
   iii. The injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;
   iv. The injured person may seek legal guidance concerning any possible claim for personal injury;
   v. The injured person is required to furnish information concerning legal action brought against any individual involved in the incident and provide the name of counsel representing the parties to such an action; and
   vi. The injured person should not execute a release or settle a claim arising from the incident causing the injury without first notifying the JAG designee.

(f) Administering the claim. (1) After investigating and asserting the claim, the JAG designee will maintain contact with all parties, their legal representatives, and insurers.

(2) An effort should be made to coordinate collection of the Federal Government’s MCRA interest with the injured person’s action to collect his own claim for damages.

(i) Attorneys representing an injured person may be authorized to include the Federal Government’s MCRA claim
§ 757.19 Waiver and compromise.

(a) General. A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed $40,000.00. A third party’s liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than $40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds $40,000.00, the claim file will be forwarded to JAG in accordance with §§ 757.18 (b) and (c).

(b) Waiver. The JAG designee may waive the Federal Government’s MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection would cause undue hardship to the injured person. In assessing undue hardship, the following circumstances of the injured person should be considered:

1. Permanent disability or disfigurement;
2. Lost earning capacity;
3. Out-of-pocket expenses;
4. Financial status;
5. Disability, pension and similar benefits available;
6. Amount of settlement or award from third-party tortfeasor; and
7. Any other factors which objectively indicate fairness requires waiver.

(c) Compromise. The JAG designee may, upon written request of the injured person or legal representative,
§ 757.20 Receipt and release.

(a) Payment. The JAG designee may receive payment in part or in full for any claim for which he is responsible. Written acknowledgment of this receipt will be mailed to the party making payment and a copy of the acknowledgment kept in the claim file.

(b) Release. The JAG designee will execute and deliver a release to third parties making full or compromised payment on the Federal Government’s MCRA interest. A copy of the release will be kept in the claims file.

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Subpart A—Introduction

§ 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see §761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see §761.3(b)).

(3) The Trust Territory of the Pacific Islands (see §761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.


§ 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons,
§ 761.3 Authority.

(a) Naval Defensive Sea Areas and Naval Airspace Reservations. By Executive orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See §761.4(b) for delineation of areas where entry controls are suspended.)


(b) The control of entry into or movement within defense areas by persons, ships, or aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, facilities and other installations within or contiguous to defense areas. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(c) This part will be administered so as to provide for the prompt processing of all applications and to insure uniformity of interpretation and application, insofar as changing conditions permit.

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

§ 761.3


(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943–1948 Comp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See §761.4(d) for delineation of areas where entry controls are suspended.

(b) Administrative areas. By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named areas including their appurtenant reefs and territorial waters:


(c) Trust Territory of the Pacific Islands. The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of July 7, 1962 (27 FR 4499; 3 CFR, 1959–1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1961 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see §761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: Provided, That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: Provided,
§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) Suspension of restrictions. Restrictions imposed under the authority of the above cited Executive Orders on entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

1. All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation
2. Honolulu Defensive Sea Area.
3. Kiska Island Naval Defensive Sea Area.
4. Kodiak Island Naval Defensive Sea Area.
5. Unalaska Island Naval Defensive Sea Area.
6. Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.
7. The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]
§ 761.5 Definitions.

(a) Defense area. A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) Department of Defense. The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) Entry authorization. A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) Entry Control Commander. A commander empowered to issue entry authorizations for one or more defense areas (see §761.9).

(e) Excluded person. A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for him to enter any defense area has been denied, suspended or revoked.

(f) Foreign nationals. Persons who are not citizens or nationals of the United States.

(g) Military installation. A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(h) Public vessel or aircraft. A ship or aircraft owned by or belonging to a government and not engaged in commercial activity.

(i) Territorial sea—(1) Trust Territory. In accordance with title 19, section 101(3), of the Trust Territory Code "* * * that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory." (2) Other areas. That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term "coast" includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(j) Trust Territory Registry. Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(k) U.S. Registry. Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(l) U.S. Armed Forces. Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.


Subpart B—Criteria and Basic Controls

§ 761.6 Criteria.

(a) General. (1) Entry authorizations may be issued only after an Entry Control Commander, or a duly authorized subordinate acting in his behalf, has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability, or effectiveness of any military installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of national defense.

(b) Adverse. Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

456
(1) Prior noncompliance with entry control regulations or failure to observe terms under which any entry authorization may have been granted;¹
(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;¹
(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;
(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;
(5) Performing, or attempting to perform, duties, or otherwise acting so as to serve the interest of another government to the detriment of the United States;
(6) Deliberate unauthorized disclosure of classified defense information;
(7) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means;
(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;¹
(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments; arson, unlawful trafficking in drugs, murder, kidnaping, blackmail, or sex offenses involving minors or perversion.
(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;¹
(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;¹
(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant’s favor;¹
(13) Conviction of larceny of property of the United States, willful injury to or destruction of property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.¹

(c) Aliens. (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of National Defense, and then only for specified periods and under prescribed conditions.
(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the obtaining of a United States visa. Naval authorization for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.
(3) Alien spouses and bona fide dependents of U.S. citizen employees of the United States may, if otherwise qualified, be granted entry authorization so long as the U.S. citizen sponsor or principal remains on duty or resident within the defense area.
(d) Renewals. Entry authorizations having been granted and utilized may be extended or renewed upon request at
the expiration of the period for which the entry was originally authorized or extended, provided the justification for remaining in the area or for making a reentry meets the criteria set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation of this part and may result in denial of future authorizations.


§ 761.7 Basic controls.

(a) General. Except for such persons, ship, or aircraft as are issued an authorization to enter by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation of the airspace over other defense areas.

(b) Excluded persons—(1) Entry prohibited. Excluded persons, as defined in §761.5(e), are prohibited from entering any defense area. In a bona fide emergency which requires an excluded person’s presence in or transit through a military installation which is also a defense area, the commanding officer of the installation may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required.

(2) Carrying prohibited. Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in this part, as passenger, officer or crew member.

(c) Control of violators. No commanding officer of a military installation shall permit any ship or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdiction and request disposition instructions from the appropriate Entry Control Commander.

(d) Trust Territory. An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll).

(e) Military areas. Entries authorized under this Instruction do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military installations.

(1) Waiver prohibited. No officer of the U.S. Armed Forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.


Subpart C—Entry Authorization

§ 761.8 General.

(a) As indicated in §761.7(a), certain persons, ships, and aircraft must be specifically authorized under the provisions of this part to enter defense areas.

(b) When entering or transiting a defense area each person, ship, or aircraft must have a valid authorization or satisfactory evidence thereof.

§ 761.9 Entry Control Commanders.

The following commanders are designated Entry Control Commanders.
§ 761.10 Persons: Group authorizations.

Persons in the following categories, except those persons who have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation.

(b) Military members of the U.S. Armed Forces or U.S. civil service employees of the Department of Defense when traveling on official orders.

(c) U.S. ambassadors, cabinet members, elected U.S. Government officers and U.S. citizen civil service employees of the U.S. Government traveling on official orders on U.S. Government business may enter defense areas as required by their orders.

(d) Dependents of military members of the U.S. Armed Forces, or U.S. citizen dependents of U.S. civil service employees traveling on official orders and entering for purposes of joining a principal permanently stationed in an area covered by this part.

(e) U.S. Navy Technicians, U.S. Army Contract Technicians, or U.S. Air Force Contract Technicians, who are traveling on official (does not include invitational) travel orders on U.S. Government business, may enter defense areas as specifically required by such orders.
§ 761.11 Persons: Individual authorizations.

(a) Application; filing. Applications for authorization to enter defense areas shall be filed with one of the following:

(1) Chief of Naval Operations.
(2) Commander in Chief, U.S. Atlantic Fleet.
(3) Commander in Chief, U.S. Pacific Fleet.
(4) Any Naval Sea Frontier Commander.
(5) Any Naval Fleet or Force Commander.
(6) Any Naval District Commandant.
(7) Any Naval Attache. The Commander or Attaché with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter.

(b) Form. (1) Applications for entry authorizations will be made on the standard form Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, “Remarks”:

21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)
22. Proposed duration of visit.
23. Estimated date of arrival.
24. Address to which authorization should be mailed.

In the event that a DD 398 form is not available, a locally produced form containing identical information including the certification and signature of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

(i) Name of applicant.
(ii) Date and place of birth.
(iii) Citizenship.
(iv) Residence for last ten (10) years.
(v) Employers and their addresses for last ten (10) years.
(vi) Results of Local Agency Check, if pertinent.
(vii) Place to be entered and date of entry.
(viii) Purpose of entry and duration of stay.

(ix) Comments and/or recommendations of forwarding officer as appropriate.
(x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) Processing. The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:
(1) Initiate or conduct such investigation as may be required to establish facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in §761.6.
(2) Request additional information from the applicant if required, or
(3) Issue an entry authorization as requested or modified as circumstances require, or
(4) Deny the request and advise the applicant of his right to appeal, or
(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) Authorizations. Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U.S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U.S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.


§ 761.13 Ships: Individual authorizations.

(a) Applications; form; filing. Applications for authorization, to navigate ships within the limits of defense areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:
(1) Name of ship.
(2) Place of registry and registry number.
(3) Name, nationality and address of operator.
(4) Name, nationality and address of owner.
(5) Gross tonnage of ship.

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clearances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

(d) Privately owned local craft, registered with and licensed by appropriate local U.S. Government authorities, and owned and operated by local inhabitants who have been granted an authorization to enter the local defense area at the discretion of the local commanders.

(e) Foreign flag ships traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(f) Ships operating under a group authorization issued by the Chief of Naval Operations.

(g) Ships in distress, subject to local clearances and control by senior officer present.

(6) Nationality and numbers of officers and crew (include crewlist when practicable).

(7) Number of passengers (include list when practicable).

(8) Last port of call prior to entry into area for which clearance is requested.

(9) Purpose of visit.

(10) Proposed date of entry and estimated duration of stay.

(b) Processing. Authorization for single entries or for multiple entries for a period not to exceed one year may be granted or denied by an Entry Control Commander. Authorizations for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 Aircraft: Group authorizations.

Aircraft in the following categories, except those aircraft which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) U.S. public aircraft to enter all defense areas.

(b) U.S. private aircraft which are under charter to the Department of Defense (including the Military Airlift Command), or operating under a contract with the Department of Defense providing for the employment of such aircraft to overfly U.S. island positions to enter defense areas as authorized by controlling Defense Department agency. If landing at U.S. military facilities is required, see §761.15(a).

(c) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(d) Aircraft operated by companies authorized to utilize naval facilities in defense areas for regular commercial activity, to enter defense areas associated therewith. For landing clearance at U.S. military facilities, see §761.15(a).

(e) Any aircraft in distress, subject to local clearance and control by senior officer present.

§ 761.15 Aircraft: Individual authorizations.

(a) Special procedures. In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If landing at U.S. naval aviation facilities, an Aviation Facility License must be obtained, in accordance with Secretary of the Navy Instruction 3770.1B, Use of Department of the Navy aviation facilities by other than United States Department of Defense aircraft.

(2) If landing at U.S. Air Force aviation facilities, a Civil Aircraft Landing Permit must be obtained, in accordance with Department of the Airforce Regulation 55–20, Use of United States Air Force installations by other than United States Department of Defense aircraft.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) Application; Form; Filing. Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the appropriate entry control commander as indicated in §761.9 with information copies to the Chief of Naval Operations, Commander in Chief, U.S. Atlantic (or Pacific) Fleet, as appropriate, and other local commanders who are known to be concerned. Applications shall include the following:

(1) Type and serial number of aircraft (the number of aircraft in flight if a mass movement is involved), nationality and name of registered owner.

(2) Name and rank of senior pilot.

*(3) Number in crew.

*(4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.

(5) Purpose of flight.

(6) Plan of flight route, including:

(i) Point of origin of flight and its destination.

(ii) Estimated date and times of arrival and departure at all airspaces covered by this part 761 including stops within the Trust Territory, when pertinent.

*See “Note” to this paragraph.
§ 761.19  Forms.

The following forms shall be used in connection with the processing of applications for authorization to enter defense areas and for revocation of authorizations as indicated:

(a) Application. Statement of Personal History (Form DD 398, Stock Number 0102–004–220) may be obtained from NAVPUBFORMCEN, Building 26, 5801 Tabor Ave., Philadelphia, PA 19120.

(b) Entry authorization. (1) Defense Area Entry Authorization (OPNAVForm 4600–2 (Rev. 5–59) may be obtained from Office of the Chief of Naval Operations (OP–09B33), Navy Department, Washington, DC 20350.

(2) Letter or message authorization.

(c) Disapproval of request for entry authorization.

My Dear [Name]: Your application of [Date] has been reviewed and we regret to advise you that the requested authorization for [Purpose] is not granted as the entry at this time for the purpose stated is not considered to be in the interest of national defense.
§ 761.20

The application may be resubmitted again in six months at which time it will be reconsidered in the light of then existing circumstances.

If you desire to appeal this decision, you may do so by submitting a letter to this office setting forth in full why you consider that the granting of the application would be in the interest of national defense and any other information that you believe will be of value to this person considering the appeal. Your letter will be forwarded to the appropriate authority for review and you will be advised in due course of his determination.

Sincerely yours,

Sincerely yours,

[d]

Revocation of entry authorization.

MY DEAR __________: This is to notify you that entry authorization to enter __________ granted by (issuing activity) on ________ is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

Subpart D—Additional Instructions

§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

PART 762 [RESERVED]

PART 763—RULES GOVERNING PUBLIC ACCESS

Subpart A—Entry Regulations for Kaho‘olawe Island, Hawaii

Sec.

763.1 Purpose.

763.2 Definition.

763.3 Background.

763.4 Entry restrictions.

763.5 Entry procedures.

763.6 Violations.


SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.
Subpart A—Entry Regulations for Kaho‘olawe Island, Hawaii

§ 763.1 Purpose.

The purpose of this subpart is to promulgate regulations for entry to Kaho‘olawe Island, Hawaii, and its adjacent waters.

§ 763.2 Definition.

For the purpose of this subpart, Kaho‘olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

§ 763.3 Background.

(a) Kaho‘olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No. 10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho‘olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho‘olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho‘olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho‘olawe Island except under the controlled circumstances set forth in this subpart.

§ 763.4 Entry restrictions.

(a) Entry by any person upon Kaho‘olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all areas of Kaho‘olawe Island reserved for naval purposes by Executive Order 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho‘olawe Island for any purpose is prohibited without advance authorization from Commander Naval Base. This prohibition applies to all waters described in 33 CFR 204.223(4).


§ 763.5 Entry procedures.

(a) It is the policy of the Commander Naval Base to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho‘olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the visitor(s) and the island’s archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological resources, persons and organizations wishing access to Kaho‘olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander Naval Base (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander Naval Base (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander Naval Base), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, special projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho‘olawe Island
§ 763.6 Violations.

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

Whoever * * * goes upon any * * * naval * * * reservation * * * for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of $5,000 or both.
§ 765.12 Navy and Marine Corps absentees; rewards.

The following is set forth as it applies to Navy and Marine Corps absentees. The term “absentee,” as used in this section, refers to a service member who commits the offense of absence without leave. Cf. article 86 of the Uniform Code of Military Justice (10 U.S.C. 886).

(a) Payment of rewards—(1) Authority. When authorized by military officials of the Armed Forces, any civil officer having authority to arrest offenders may apprehend an individual absent without leave from the military service of the United States and deliver him into custody of the military authorities. The receipt of Absentee Wanted by the Armed Forces (DD Form 553) or oral or written notification from military officials or Federal law enforcement officials that the person is absent and that his return to military control is desired is authority for apprehension and will be considered as an offer of a reward. When such a reward has been offered, persons or agency representatives (except salaried officers or employees of the Federal Government, or service members) apprehending or delivering absentees or deserters to military control will be entitled to a payment of

(i) $50 for the apprehension and detention until military authorities assume control, or
(ii) $75 for the apprehension and delivery to military control.

Payment of reward will be made to the person or agency representative actually making the arrest and the turnover or delivery to military control. If two or more persons or agencies join in performing these services, payment may be made jointly or severally but the total payment or payments will not exceed $50 or $75 as applicable. Payment of a reward is authorized whether the absentee or deserter voluntarily surrenders to civil authorities or is apprehended. Payment is not authorized for information merely leading to the apprehension of an absentee or deserter.

(2) Payment procedure. The disbursing officer, special disbursing agent or agent officer of the military activity to which an absentee or deserter is first delivered will be responsible for payment of the reward. Payment of rewards will be made on SF 1034 or NAVCOMPT Form 2277 supported by a copy of DD Form 553 or other form or notification that an individual is absent and that his return to military control is desired, and a statement signed by the claimant specifying that he apprehended (or accepted voluntary surrender) and detained the absentee or deserter until military authorities assumed control, or that he apprehended (or accepted voluntary surrender) and delivered the absentee or deserter to
§ 765.13 Insignia to be worn on uniform by persons not in the service.

(a) Under title 10 U.S.C., section 773, members of military societies composed of persons discharged honorably or under honorable conditions from the United States Army, Navy, Air Force or Marine Corps, regular or reserve, may, when authorized by regulations prescribed by the President, wear the uniform duly prescribed by such societies to be worn by the members thereof.
(f) Marine Corps Uniform Regulations may be examined and individual copies of pertinent provisions thereof may be purchased in accordance with §701.1 of this chapter.

(Sec. 773, 70A Stat. 35; 10 U.S.C. 773)
expected where such use or imitation reasonably would:

(i) Imply any official or unofficial connection between the Marine Corps and the user;

(ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;

(iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing products and services such as insurance, real estate, or financial services; or

(iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps.

(3) Acceptable use of imitation of the Marine Corps insignia. No request for permission is required when a use or imitation of the Marine Corps emblem, names, or initials includes prominent display of the disclaimer, “Neither the United States Marine Corps nor any other component of the Department of Defense has approved, endorsed, or authorized this product (or promotion, or service, or activity)” as an integral part of the use of imitation. A “prominent display” is one located on the same page as the first use of the insignia, prominent in that use, and printed in letters at least one half the size and density of the insignia.

(d) Action—(1) When permission required. Commercial or noncommercial use or imitation of the Marine Corps emblem, names, or initials is prohibited unless permission is first obtained in writing from the CMC, except when such use does not suggest that the use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(2) Delegation of authority. The CMC hereby redelegates, pursuant to the authorization in paragraph 4 of the Secretary of the Navy 5030.7, authority to grant written permission to use the Marine Corps emblem, names, or initials to the Director, Administration Resource Management (ARDE). Prior to granting approval for commercial usage of the Marine Corps insignia, the CMC (ARDE) shall forward such requests to the Head, Marine Corps Exchange Service Branch, Facilities and Services Division, Installations and Logistics Department (CMC (LFE)) and to the Counsel for the Commandant (CMC (CL)) for comment and concurrence. All other requests shall be routed to the Director, Judge Advocate Division (CMC (JAR)) for comment and concurrence.

(3) Procedures for obtaining written permission. Requests for written permission to use or imitate the Marine Corps emblem, names, or initials shall be in writing and shall be directed to the CMC (ARDE). The request should, at a minimum, contain the following information:

(i) Name and address of the requester.

(ii) A description of the type of activity in which the requester is engaged or proposes to engage.

(iii) A statement of whether the requester considers the proposed use or imitation to be commercial or non-commercial, and why.

(iv) A brief description and illustration or sample of the proposed use or imitation, as well as a description of the product or service in connection with which it will be used. This description will provide sufficient detail to enable the Marine Corps to determine whether there is a reasonable tendency to suggest such use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(v) In the case of a noncommercial use of imitation, a copy of the charter, constitution, bylaws, and similar organizational documents of the requester, together with a detailed description of its function or purpose. Insufficiently specific requests will be returned for additional information.

(e) Reserve applicability. This Order is applicable to the Marine Corps Reserve.

§ 765.14

32 CFR Ch. VI (7-1-02 Edition)

PART 766—USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY CIVIL AIRCRAFT

Sec. 766.1 Purpose.
766.2 Definition of terms.
766.3 Authority.
766.4 Policy.
766.5 Conditions governing use of aviation facilities by civil aircraft.
766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.
766.7 How to request use of naval aviation facilities.
766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.
766.9 Insurance requirements.
766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).
766.11 Fees for landing, parking and storage.
766.12 Unauthorized landings.
766.13 Sale of aviation fuel, oil, services and supplies.

SOURCE: 35 FR 14451, Sept. 15, 1970, unless otherwise noted.
NOTE: The provisions of this part 766 are SECNAV Instruction 3770.1B of 30 June 1970.

§ 766.1 Purpose.
This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than U.S. Department of Defense aircraft.

§ 766.2 Definition of terms.
For the purpose of this part certain terms are defined as follows:
(a) Alternate use. Use of the aviation facility, specified in the flight plan, to which an aircraft may divert when a landing at the point of first intended landing becomes impractical because of weather. (Aircraft may not be dispatched, prior to takeoff from the airport of origin, to a facility licensed for alternate use.)
(b) Civil aircraft. Domestic or foreign aircraft operated by private individuals or corporations, or foreign government-owned aircraft operated for commercial purposes. This includes:
(1) Contract aircraft. Civil aircraft operated under charter or other contract to any U.S. Government department or agency.
(2) Leased aircraft. U.S. Government-owned aircraft delivered by the Government to a lessee subject to terms prescribed in an agreement which does not limit the lessee’s use of the aircraft to Government business.
(c) Civil aviation. All flying activity by civil aircraft including:
(1) Commercial aviation. Transportation by aircraft of passengers or cargo for hire and the ferrying of aircraft as a commercial venture.
(2) General aviation. All types of civil aviation other than commercial aviation as defined above.
(d) Facility. A separately located and officially defined area of real property in which the Navy exercises a real property interest and which has been designated as a Navy or Marine Corps aviation facility by cognizant authority; or where the Department of the Navy has jurisdiction over real property agreements, expressed or implied, with foreign governments, or by rights of occupation. (This definition does not include aircraft carriers nor any other type of naval vessel with a landing area for aircraft.)
(e) Government aircraft. Aircraft owned or operated by any department or agency of either the United States or a foreign government (except a foreign government-owned aircraft operated for commercial purposes). Also aircraft owned by any department, agency, or political subdivision of a State, territory, or possession of the United States when such local government has sole responsibility for operating the aircraft. Government aircraft includes:
(1) Military aircraft. Aircraft used in the military services of any government.
(2) Bailed aircraft. U.S. Government-owned aircraft delivered by the Government to a Government contractor for a specific purpose directly related to a Government contract.
(3) Loaned aircraft. U.S. Government-owned aircraft delivered gratuitously by any Department of Defense agency to another Government agency, to a U.S. Navy or Marine Corps Flying Club, or to a U.S. Army or Air Force Aero Club.
§ 766.3 Authority.

Section 1107(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1507, 1508) states that “Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other agency having jurisdiction thereof deems advisable and may by regulation prescribe.” (See §766.13 for restrictions imposed by the Federal Aviation Act of 1958.)

§ 766.4 Policy.

Navy and Marine Corps aviation facilities are established to support the operation of Navy and Marine Corps aircraft. Equipment, personnel and material are maintained only at a level necessitated by these requirements and shall not be used to support the operation or maintenance of civil aircraft or non-U.S. Government aircraft, except as noted below. (Nothing in this part, however, should be interpreted to prohibit any aircraft from landing at any suitable Navy or Marine Corps aviation facility in case of a bona fide emergency.) (See §766.5(i).)

(a) General. Subject to the procedures established elsewhere in this part, civil aircraft and government aircraft, other than those belonging to the U.S. Government may use Navy or Marine Corps facilities, if necessary, provided,

(1) They do not interfere with military requirements, and the security of military operations, facilities, or equipment is not compromised.

(2) No adequate civil airport is available. (Exception to this provision may be made when the aircraft is operated in connection with official business as defined in this part.)

(3) Pilots comply with regulations promulgated by the cognizant military agency and the commanding officer of the facility.

(4) Civil aircraft users assume the risk in accordance with the provisions of the Aviation Facility License.

(5) Each aircraft is equipped with two-way radio which provides a capability for voice communications with the control tower on standard Navy/Marine Corps frequencies.

(j) Services in connection with Government contracts. This type of operation, cited on the Aviation Facility License, indicates the use of a facility for transporting the contractor’s supplies and personnel for the performance of work at the facility under the terms of a specific U.S. Government contract.

(k) Technical stop. An en route landing for the purpose of obtaining fuel, oil, minor repairs, or crew rest. This does not include passenger accommodations nor passenger/cargo enplaning or deplaning privileges unless specifically authorized by the Chief of Naval Operations.

(l) User. An individual, corporation, or company named in the Aviation Facility License and the Certificate of Insurance.
(6) The user, or requesting government, has obtained permission through diplomatic channels from the host country wherein the facility of intended landing is located, if applicable.

(b) Civil Aircraft owned and operated by—
   (1) Military personnel. Private aircraft owned and operated by active duty U.S. military personnel or by Navy/Marine Corps Reservists on inactive duty may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Under no conditions shall such aircraft be allowed to base or operate from a facility for personal convenience nor base at a facility under the guise of official business.
   (2) Civil employees of the U.S. Government. Private aircraft owned and operated by civil employees of the U.S. Government may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Such aircraft shall not be allowed to base or operate from a facility for personal convenience. (Employees of U.S. Government contractors are not considered civil employees of the U.S. Government.)
   (3) Non-U.S. Government personnel. An individual or corporation owned and/or operated aircraft may be authorized to land at a facility for:
      (i) Sales or service representation to authorized military agents (e.g. the exchange, commissary, or contracting officer).
      (ii) Services in connection with U.S. Government contracts. Contracting agency and contract number(s) must be cited in the application for an Aviation Facility License.
      (c) Department of defense charter or contract. Aircraft operating under a Military Traffic Management and Terminal Service (MTMTS), Military Airlift Command (MAC), or Navy charter or contract for the movement of DOD passengers or cargo may be authorized to use Navy or Marine Corps aviation facilities when required for loading, en route or terminal stops.
      (d) Test and experimental use. Aircraft being produced for a military agency under contract may use Navy/Marine Corps facilities for testing and experimental purposes, if the contract so provides, or if it is determined to be in the best interests of the U.S. Government to do so. Unless otherwise provided in the contract, an Aviation Facility License is required, and the user shall furnish a Certificate of Insurance as provided in this part.
   (e) Aircraft demonstrations. Manufacturers of aircraft or installed equipment may be authorized to use Navy/Marine Corps facilities in demonstrating and/or showing aircraft or installed equipment to officials of the U.S. Government when:
      (1) It is determined to be in the best interest of the U.S. Government.
      (2) The aircraft was produced in accordance with U.S. Government specifications either with or without the aid of Federal funds.
   (f) Joint use. When a specific agreement is entered into by the Department of the Navy pertaining to joint civil/military use of a Navy or Marine Corps facility, the terms of that agreement shall take precedence over the provisions of this part.
   (g) Diplomatic agreements. For diplomatic agreements and clearances to use U.S. Navy and Marine Corps aviation facilities in foreign countries, the provisions of this part are subject to the provisions of status of forces agreements, treaties of mutual cooperation or other international agreements. This part shall be used as a guide in negotiating agreements at the local level with representatives of a foreign military service, the U.S. Embassy, and the host government concerning the use of naval facilities by other than U.S. military aircraft. Approval shall be obtained from the Chief of Naval Operations for proposed terms which are in conflict with this part.

§ 766.5 Conditions governing use of aviation facilities by civil aircraft.

(a) Risk. The use of Navy or Marine Corps aviation facilities by civil aircraft shall be at the risk of the operator. Except as hereinafter provided for U.S. Government contractors, the Department of the Navy shall assume no
liability or responsibility by reason of the condition of the landing area, taxiways, radio and navigational aids, or other equipment or for notification of such condition; or by the acts of its agents in connection with the granting of the right to use such naval facility. No responsibility is assumed for the security of or damage to aircraft while on property owned or controlled by the U.S. Government.

(b) Military rules. Operators of civil aircraft utilizing a Navy or Marine Corps aviation facility shall be required to comply with the air and ground rules promulgated by the Department of the Navy and the commanding officer of the aviation facility. Such compliance shall pertain specifically to clearance authorization for the entry, departure, or movement of aircraft within the confines of the terminal area normally controlled by the commanding officer of the aviation facility.

d) Federal aviation regulations. Operators of civil aircraft shall be required to comply with all Federal Aviation Administration (FAA) rules and regulations including filing of flight plans. When such flight plans are required, they shall be filed with the commanding officer or his authorized representative prior to the departure of the aircraft. When such a flight plan is not required, a list of passengers and crew members, the airport of intended landing, the alternate airport, and fuel supply in hours shall be placed on file prior to takeoff, with the commanding officer or with the local company representative as appropriate.

d) Hours of operation. The use of a Navy/Marine Corps aviation facility by civil aircraft will be limited to the hours when the facility is normally in operation.

e) Weather minimums. Civil aircraft shall comply with weather minimums as follows:

(1) Visual Flight Operations shall be conducted in accordance with Federal Aviation Regulations (FAR), §91.105 of this title. If more stringent visual flight rules minimums have been established for the point of departure or destination, as noted in the aerodrome remarks section of the Department of Defense Flight Information Publication (en Route) Instrument Flight Rules—Supplement, then the ceiling and visibility must be at or above these minimums in the applicable control zone.

(2) Instrument flight operations shall be conducted in accordance with FAR, §91.116 of this title.

(f) Inspection. The commanding officer may conduct such inspection of a transiting civil aircraft and its crew, passengers and cargo as he may consider appropriate or necessary to the carrying out of his duties and responsibilities.

g) Customs, immigration, agriculture, and public health inspection. (1) The civil aircraft commander shall be responsible for compliance with all applicable customs, immigration, agriculture, and public health laws and regulations. He shall also be responsible for paying fees, charges for overtime services, and for all other costs connected with the administration of such laws and regulations.

(2) The commanding officer of the Navy/Marine Corps aviation facility will inform the appropriate public officials of the arrival of civil aircraft subject to such laws and regulations. He will not issue clearances for a civil aircraft to takeoff until such laws and regulations have been complied with. Procedures for insuring compliance with such laws and regulations shall be as mutually agreed to by the commanding officer of the aviation facility and the local public officials.

(h) Weather alternate. If a Navy/Marine Corps aviation facility has been approved for use as an alternate airport, radio clearance must be obtained from such facility as soon as the decision is made en route for such use.

(i) Emergency landings. Any aircraft may land at a Navy/Marine Corps aviation facility when necessary as a result of a bona fide emergency. However, whenever the nature of the emergency permits the pilot to select the time and place of landing, it is preferred that the pilot land his aircraft at a civil field.

(1) The commanding officer of the aviation facility will require that the pilot of the aircraft pay all fees and charges and execute the Aviation Facility License. A statement explaining the circumstances of the emergency
landing must be noted in §766.5 of the license application. If a narrative report from the pilot is available, it may be attached to the application.

(2) Clearance of runway. The Department of the Navy reserves the right to use any method to clear a runway of aircraft or wreckage consistent with operational requirements. Care will be exercised to preclude unnecessary damage in removing wrecked aircraft; however, the Navy assumes no liability as a result of such removal.

(3) Repairs. (i) Aircraft requiring major repairs may be stored temporarily in damaged condition. If repairs cannot be completed within a reasonable time, the aircraft must be removed from the facility by the owner or operator of the aircraft without delay.

(ii) No aircraft will be given a major or minor overhaul.

(iii) Engine or air frame minor components may be furnished, when not available through commercial sources, provided such supplies can be spared and are not known to be in short supply. The issuance of such supplies must be approved by the commanding officer.

(iv) Minor components in short supply or major components for which there is a repeated demand can be furnished only on message authority obtained from the Aviation Supply Office, Philadelphia, PA (for continental facilities) or local fleet air command or major aviation supply depot (for extracontinental facilities). Complete engines, airplane wings, or other major items of equipment shall not be furnished under this authority.

(v) If the commanding officer believes it is desirable to furnish requested material or services in excess of the restrictions stated herein, he shall request instructions from the Chief of Naval Operations, giving a brief description of the material or services requested together with his recommendations.

(4) Reimbursement for costs. (i) The civil user making an emergency landing will be billed in accordance with paragraphs 032500-032503 of the NAVCOMPT Manual and paragraphs 23345-23363 of the NAVSUP Manual for payment of all costs incurred by the Government as a direct result of the emergency landing. Such costs will include those associated with labor, material, rental of equipment, vehicles or tools, etc., for:

(a) Spreading foam on runway before the aircraft attempts emergency landing.

(b) Fire and crash control and rescue.

(c) Movement and storage of aircraft or wreckage.

(d) Damage to runway, lights, navigation aids, etc.

(ii) There will be no charge for naval meteorological services and naval communications facilities for the handling of arrival and departure reports, air traffic control messages, position reports and safety messages.

(iii) The determination as to whether landing fees shall be charged pursuant to an emergency landing for maintenance or repair shall be the prerogative of the commanding officer of the facility.


§ 766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.

(a) Except as indicated in paragraphs (b) and (c) of this section, the commanding officer of an active Navy/Marine Corps aviation facility may approve or disapprove landings of civil aircraft at his facility when such landing is:

(1) Directly connected with or in support of U.S. Government business (except those listed in paragraph (c) of this section).

(2) In connection with U.S. Government or community interests on an infrequent basis when no adequate civil airport is reasonably available.

(3) By aircraft owned and operated by Navy/Marine Corps Flying Clubs or U.S. Army or Air Force Aero Clubs which are operated as instrumentalities of the U.S. Government.

(4) By aircraft owned and operated by U.S. Government personnel when such use is in accordance with §766.4(b) (1) and (2).

(5) By civil aircraft either owned or personally chartered by:
§ 766.7 How to request use of naval aviation facilities.

(a) Forms required. Each applicant desiring use of a Navy/Marine Corps aviation facility will be required to:

1. Execute an application for an Aviation Facility License (OPNAV Form 3770/1 (Rev. 7–70)).

2. Submit a Certificate of Insurance (NAVFAC 7–11011/36) showing coverage as provided by § 766.9 of this part.

(b) Exceptions. Exceptions to the foregoing requirements are:

1. Aircraft owned and operated by departments or agencies of the U.S. Government for official business.

2. Aircraft owned and operated or noncommercial purposes by agencies of a foreign government, except in cases where the foreign government charges fees for U.S. Government aircraft.

3. Aircraft owned and operated by States, possessions, and territories of the United States and political subdivisions thereof, when used for official business of the owner.

4. Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs of other military services which are operated as instrumentalities of the U.S. Government.

5. Bailed aircraft, provided the bailment contract specifies that the U.S. Government is the insurer for liability.

(c) Obtaining forms. The applicant may obtain the required forms listed in paragraph (a) of this section, from the commanding officer of any Navy or Marine Corps aviation facility or from the Chief of Naval Operations (OP–53C).

+Navy units may obtain the forms through regular supply channels as a Cog “I” item.

(d) Preparation of forms. (1) The license application will be completed in quadruplicate by the applicant in accordance with detailed instructions set forth in Aviation Facility License (OPNAV Form 3770/1 (REV. 7–70)).

(2) The Certificate of Insurance will be completed by the insurer. Only the signed original certificate and one copy are required to be submitted.
§ 766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.

(a) Review of application by the commanding officer. The commanding officer will review each application for Aviation Facility License and Certificate of Insurance received and determine whether such forms have been completed by the applicant in accordance with the instructions for their preparation as indicated in the Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)) and the Certificate of Insurance (NAVFAC 7-1101/36(7-70)). As appropriate, the commanding officer will require each applicant to furnish a security deposit as stipulated in §766.7(f).

(b) Processing application. The commanding officer will approve/disapprove the application or forward it to higher authority for approval as required by §766.6(b) or (c). If the application is approved, the approving authority will then forward all copies of the license and Certificate of Insurance to the Commander, Naval Facilities Engineering Command or his designated representative for review and execution of the license.

(c) Action by the Commander, Naval Facilities Engineering Command or his designated representative. (1) Upon receipt, the Commander, Naval Facilities Engineering Command, or his designated representative, will review the license and Certificate of Insurance. He shall determine whether the insurance coverage conforms to the requirements prescribed by §766.9 of this part or to such requirements as may be promulgated from time to time by the Chief of Naval Material.

(2) Upon approval, he will then execute the license in triplicate, conform all additional copies, and make distribution as provided in paragraph (d) of this section. Applications which are not approved will be returned to the applicant with an explanation of deficiencies which must be corrected prior to execution.

(d) Distribution. (1) After execution of a license, distribution will be made as follows:

   Original—To the licensee.  
   Executed copy—To the commanding officer.  
   Executed copy—To the Commander, Naval Facilities Engineering Command or his designated representative.  
   Conformed copy—To the Chief of Naval Operations (OP-53).  
   Conformed copy—To the cognizant commander under §766.6(b).  
   Conformed copy—To the disbursing officer serving the performing activity in the case of local deposits, and to the Office of the Navy Comptroller (NAFC3) in the case of central deposits held at the Washington, DC level.  
   Conformed copy—To the Military Airlift Command (MAC) for DOD contract or charter airlift operations.  
   Conformed copy—To the Military Traffic Management and Terminal Service (MTMTS) for DOD contract or charter airlift operations.
§ 766.9 Insurance requirements.

(a) Control of insurance. The Commander, Naval Facilities Engineering Command, or his designee, shall be responsible for requiring aircraft owners or operators to procure and maintain liability insurance conforming to the standards prescribed by the Chief of Naval Material. The insurance policy must be obtained at the expense of the civil aircraft owner or operator and with a company acceptable to the U.S. Navy.

(b) Insurance coverage. Except for those aircraft exempted by paragraph (c) below, each civil aircraft is required to be covered by insurance of the types and minimum limits established by the Chief of Naval Material. The Certificate of Insurance, must state all coverages in U.S. dollars. Current minimums are:

1. Privately owned commercially-operated aircraft used for cargo carrying only and aircraft being flight-tested or ferried without passengers will be insured for:
   (i) Bodily injury liability. At least $100,000 for each person in any one accident with at least $1 million for each accident.
   (ii) Property damage liability. At least $1 million for each accident.

2. Privately owned noncommercially-operated aircraft of 12,500 pounds or more certified maximum gross takeoff weight will be insured for:
   (i) Bodily injury liability (excluding passengers). At least $100,000 for each person in any one accident with at least $500,000 for each accident.
   (ii) Property damage liability. At least $500,000 for each accident.
   (iii) Passenger liability. At least $100,000 for each passenger, with a minimum for each accident determined as follows: multiply the minimum for each passenger, $100,000 by the next highest whole number resulting from taking 75 percent of the total number of passenger seats (exclusive of crew seats). For example: The minimum passenger coverage for each accident for an aircraft with 94 passenger seats is computed: 94 x 0.75 = 70.5 — next highest whole number resulting in 71. Therefore, 71 x $100,000 = $7,100,000.

3. Privately owned noncommercially-operated aircraft of less than 12,500 pounds will be insured for:
   (i) Bodily injury liability (excluding passengers). At least $100,000 for each person in any one accident with at least $500,000 for each accident.
   (ii) Property damage liability. At least $500,000 for each accident.
   (iii) Passenger liability. At least $100,000 for each passenger, with a minimum for each accident determined by multiplying the minimum for each passenger, $100,000 by the total number of passenger seats (exclusive of crew seats).

4. Aircraft insured for a single limit of liability must have coverage equal to or greater than the combined required minimums for bodily injury, property damage, and passenger liability for the type of use requested and for the passenger capacity and gross takeoff weight of the aircraft being operated. For example: the minimum single limit of liability acceptable for an aircraft operating as described in paragraph (b)(2) of this section is $1,000,000 + $1,000,000 + $7,100,000 = $9,100,000.

5. Aircraft insured by a combination of primary and excess policies must have combined coverage equal to or greater than the required minimums for bodily injury, property damage, and passenger liability, for the type of use, and for the passenger capacity and gross takeoff weight of the aircraft.

6. Each policy must specifically provide that:
   (i) The insurer waives any right to subrogation the insurer may have against the United States by reason of
any payment under the policy for damage or injury which might arise out of or in connection with the insured’s use of any Navy installation or facility.

(ii) The insurance afforded by the policy applies to the liability assumed by the insured under OPNAV Form 3770/1, Aviation Facility License.

(iii) If the insurer cancels or reduces the amount of insurance afforded under the listed policy, the insurer shall send written notice of the cancellation or reduction to Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, DC 20390 by registered mail at least 30 days in advance of the effective date of the cancellation; the policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent, regardless of the effective date specified therein.

(iv) If the insured requests cancellation or reduction, the insurer shall notify the Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, DC 20390 immediately upon receipt of such request.

(c) Exemption. Government aircraft, as defined in §766.2(e) are exempt from the insurance requirements specified above. However, this exemption applies to bailed aircraft only if the contract under which the aircraft is bailed specifies that insurance is not required.

§766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).

(a) Cancellation. (1) If the user fails to comply with the terms of the Aviation Facility License (OPNAV Form 3770/1) or of any applicable regulations, all current Aviation Facility Licenses for that user will be canceled. A canceled Aviation Facility License cannot be reinstated; a new application must be submitted for approval as explained in §766.7.

(2) If the commanding officer of a naval aviation facility has reason to believe that the use of an Aviation Facility License is not in accordance with the terms of the license he should immediately notify the Chief of Naval Operations, giving the name of the user, the Aviation Facility License number, and citing the circumstances of the misuse.

(b) Suspension. The approving authority, or the commanding officer of the facility, may suspend an approved Aviation Facility License when such licensed use would be inconsistent with Navy/Marine Corps or national defense interests. Whenever possible, the Department of the Navy will avoid suspension of licenses which have been issued for official business or scheduled air carrier use. In all cases, suspensions will be lifted as quickly as possible. A suspension will not have the effect of extending the expiration date of an approved Aviation Facility License.

§766.11 Fees for landing, parking and storage.

(a) The commanding officer of a facility will collect landing, parking and storage fees, as applicable, from all users required to have an Aviation Facility License by §766.7 except for the following:

(1) Government aircraft (see definition §766.2(g)) except that foreign government aircraft will be charged fees if their government charges similar fees for U.S. Government aircraft.

(2) Aircraft being produced under a contract of the U.S. Government.

(3) Any contract aircraft (see definition §766.2(b)(1)) or other civil aircraft which is authorized to use the facility on official business.

(4) Aircraft employed to train operators in the use of precision approach systems (GCA, ILS, et al.) provided full-stop or touch-and-go landings are not performed.

(5) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs or other military services which are operated as instrumentalities of the U.S. Government.

(6) Aircraft owned and operated by military personnel on active duty (Regular and Reserve) or retired, provided the aircraft is not used for commercial purposes.

(7) Landing fees incident to emergency landings for which the landing fee has been waived by the commanding officer in accordance with §766.5(i)(5)(i).

(b) Fee for unauthorized landing. If an aircraft lands at a Navy/Marine Corps aviation facility without obtaining prior permission (except for a bona fide
emergency landing), a landing fee in excess of the normal landing fee will be charged to cover the additional expenses incurred due to special handling and processing. The fee for an unauthorized landing will be as follows:

1. For aircraft weighing less than 12,500 pounds: $100.
2. For aircraft weighing 12,500 pounds but less than 40,000 pounds: $250.
3. For aircraft weighing 40,000 pounds but less than 100,000 pounds: $500.
4. For aircraft weighing above 100,000 pounds: $600.

(c) Normal landing fee. The normal landing fee is based on the aircraft maximum authorized gross takeoff weight, to the nearest 1,000 pounds. The maximum gross takeoff weight may be determined either from item 7F of OPNAV Form 3770/1 or from the “Airplane Flight Manual” carried aboard each aircraft. If the weight cannot be determined, it should be estimated.

CHARGE PER LANDING

Inside CONUS—0.20/1,000 pounds or any portion thereof with a minimum of $5.
Outside CONUS—0.30/1,000 pounds or any portion thereof with a minimum of $7.50.

(d) Parking and storage fees. Fixed and rotary wing aircraft parking and storage fees are based upon the gross takeoff weight of the aircraft as follows:

1. Outside a hangar. Charges begin 6 hours after the aircraft lands. The rate is 10 cents per thousand pounds for each 24-hour period or fraction thereof, with a minimum charge of $1.50 per aircraft.
2. Inside a hangar. Charges begin as soon as the aircraft is placed inside the hangar. The rate is 20 cents per 1,000 pounds for each 24-hour period or fraction thereof, with a minimum charge of $5 per aircraft.

(e) Reimbursement. Collections incident to direct (out of pocket) costs will be credited to local operating and maintenance funds. All other collections, such as for landing, parking, and storage fees will be credited to Navy General Fund Receipt Account 172426. Accumulation of costs and preparation of billing documents are prescribed in paragraphs 032500–032503 of the NAVCOMPT Manual.

§ 766.12 Unauthorized landings.

An aircraft that lands at a Navy/Marine Corps aviation facility without obtaining prior permission from an approving authority, except in a bona fide emergency, is in violation of this part. Civil aircraft landing in violation of this regulation will have to pay the fee prescribed in §766.11(b). In those cases where an unauthorized landing is made at a facility within a Naval Defense Area, proclaimed as such by Executive order of the President, civil aircraft may be impounded and the operator prosecuted as indicated in OPNAVINST 5500.11C of November 12, 1963. In any event, before the aircraft is authorized to depart, the commanding officer of the facility will:

(a) Inform the aircraft operator of the provisions of this part and the OP NAVINST 5500.11C of November 12, 1963, if applicable.
(b) Require the aircraft operator (or owner), before takeoff, to pay all fees and charges and to comply with the following procedure:

1. Execute OPNAV Form 3770/1, explaining in item 6 of that form the reason for the landing.
2. In lieu of submitting a Certificate of Insurance (NAVFAC 7–11011/36), the insurer must furnish evidence of sufficient insurance to include waiver of any right of subrogation against the United States, and that such insurance applies to the liability assumed by the insured under OPNAV Form 3770/1.
3. When it appears that the violation may have been deliberate, or is a repeated violation, departure authorization must be obtained from the Chief of Naval Operations.
4. Waiver of the requirements in paragraphs (b)(1) and (2) of this section may be obtained from the Chief of Naval Operations to expedite removal of these aircraft when such waiver is considered appropriate.

§ 766.13 Sale of aviation fuel, oil, services and supplies.

(a) General policy. In accordance with sections 1107 and 1108 of the Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), Navy/
Marine Corps Aviation fuel, oil, services, and supplies are not sold to civil aircraft in competition with private enterprise. Sections 1107 and 1108 of Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), however, does authorize the sales of fuel, oil, equipment, supplies, mechanical service, and other assistance by reason of an emergency. Such sales will be made only where there is no commercial source and only in the amount necessary for the aircraft to continue on its course to the nearest airport operated by private enterprise.

(b) Contract aircraft. The sale of aviation fuel, oil, supplies, etc. to aircraft under U.S. Government contract or charter is permitted at, and limited to, points where passengers or cargo are loaded into or discharged from the aircraft under terms of the contract or charter. Sales are not authorized at naval aviation facilities where commercial supplies and service are available.

PART 767—APPLICATION GUIDELINES FOR ARCHEOLOGICAL RESEARCH PERMITS ON SHIP AND AIRCRAFT WRECKS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE NAVY

Subpart A—Regulations and Obligations

Sec.
767.1 Purpose.
767.2 Definitions.
767.3 Policy.

Subpart B—Permit Guidelines

767.4 Application for permit.
767.5 Evaluation of permit application.
767.6 Credentials of principal investigator.
767.7 Conditions of permits.
767.8 Requests for amendments or extensions of active permits.
767.9 Content of permit holder’s final report.
767.10 Monitoring of performance.
767.11 Violations of permit conditions.
767.12 References for submission of permit application to conduct archeological research.


SOURCE: 65 FR 31080, May 16, 2000, unless otherwise noted.
§ 767.3 Policy.

(a) The Naval Historical Center’s policy has been to evaluate each DON ship and aircraft wreck on an individual basis. In some cases, the removal of DON ship and aircraft wrecks may be necessary or appropriate to protect the cultural resource and/or to fulfill other NHC goals, such as those encompassing research, education, public access, and appreciation. Recovery of DON ship and aircraft wrecks may be justified in specific cases where the existence of a cultural resource may be threatened. Therefore, recovery of some or all of a cultural resource may be permitted for identification and/or investigation to answer specific questions; or the recovery presents an opportunity for public research or education.

(b) Generally, DON ship and aircraft wrecks will be left in place unless artifact removal or site disturbance is justified and necessary to protect DON ship and aircraft wrecks, to conduct research, or provide public education and information that is otherwise inaccessible. While NHC prefers non-destructive, in situ research on DON ship and aircraft wrecks, it recognizes that site disturbance and/or artifact recovery is sometimes necessary. At such times, site disturbance and/or archeological recovery may be permitted, subject to conditions specified by NHC.

Subpart B—Permit Guidelines

§ 767.4 Application for permit.


(b) Applicants must submit three copies of their completed application at least 120 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Requests should be sent to the Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St., SE, Washington Navy Yard, DC 20374–5060.
§ 767.7 Conditions of permits.

(a) Upon receipt of a permit, permit holders must counter-sign the permit and return copies to the NHC and the applicable SHPO. Federal or State land manager, or foreign government official prior to conducting permitted activities on the site. Copies of countersigned permits should also be provided to the applicable federal land...
§ 767.8 Requests for amendments or extensions of active permits.

(a) Requests for amendments to active permits (e.g., a change in study design or other form of amendment) must conform to the regulations in this part. All necessary information to make an objective evaluation of the amendment should be included as well as reference to the original application.

(b) Permit holders desiring to continue research activities must reapply for an extension of their current permit before it expires. A pending extension or amendment request does not guarantee extension or amendment of the original permit. Therefore, you must submit an extension request to NHC at least 30 days prior to the original permit’s expiration date. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly. Applicants may apply for one-year extensions subject to annual review.

(c) Permit holders may appeal denied requests for amendments or extensions to the appeal authority listed in §767.5.

§ 767.9 Content of permit holder’s final report.

The permit holder’s final report shall include the following:

(a) A site history and a contextual history relating the site to the general history of the region;

(b) A master site map;

(c) Feature map(s) of the location of any recovered artifacts in relation to their position within the wrecksite;

(d) Photographs of significant site features and significant artifacts both in situ and after removal;

(e) If applicable, a description of the conserved artifacts, laboratory conservation records, and before and after photographs of the artifacts at the conservation laboratory;

(f) A written report describing the site’s historical background, environment, archaeological field work, results, and analysis;

(g) A summary of the survey and/or excavation process; and
(h) An evaluation of the completed permitted activity that includes an assessment of the permit holder’s success of his/her specified goals.

§ 767.10 Monitoring of performance.

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NHC on-site personnel, or other designated authorities, may periodically assess work in progress by visiting the study location and observing any activity allowed by the permit or by reviewing any required reports. The discovery of any potential irregularities in performance under the permit will be promptly reported and appropriate action will be taken. Permitted activities will be evaluated and the findings will be used to evaluate future applications.

§ 767.11 Violations of permit conditions.

The Director of Naval History, the Underwater Archeologist for DON, or his/her designee may, amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in his/her view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder and will set forth the reason for the action taken. The permit holder may appeal the action to the appeal authority listed in §767.5.

§ 767.12 References for submission of permit application to conduct archeological research.

(a) National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 et seq. (1999), and Protection of Historic Properties, 36 CFR part 800. These regulations govern the Section 106 Review Process established by the NHPA.

(b) Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation published on September 29, 1983 (48 FR 44716). These guidelines establish standards for the preservation planning process with guidelines on implementation.

(c) Archeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470aa-mm, and the Uniform Regulations, 43 CFR part 7, subpart A. These regulations establish basic government-wide standards for the issuance of permits for archeological research, including the authorized excavation and/or removal of archeological resources on public lands or Indian lands.

(d) Secretary of the Interior’s regulations, Curation of Federally-Owned and Administered Archeological Collections, 36 CFR part 79. These regulations establish standards for the curation and display of federally-owned artifact collections.


(h) Secretary of the Navy Instruction 4000.35 (SECNAVINST 4000.35, 17 August 1992). Subject: Department of the Navy Cultural Resources Program.

(i) Naval Historical Center Instruction 5510.4. (NAVHISTCENINST 5510.4, 14 December 1995). Subject: Disclosure of Information from the Naval Shipwreck Database.

PARTS 768–769 [RESERVED]

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Virginia

Sec. 770.1 Purpose.
770.2 Licenses.
770.3 Fishing regulations.
770.4 Hunting regulations.
770.5 Safety regulations.
770.6 Restrictions.
770.7 Violations and environmental regulations.
770.8 Reports.
770.9 Miscellaneous.
§ 770.1 Purpose.

This subpart provides regulations and related information governing hunting and fishing on the Marine Corps Base, Quantico, VA.

§ 770.2 Licenses.

(a) Every person who hunts or fishes on Marine Corps Base, Quantico, VA, must possess appropriate valid licenses in compliance with the Laws of the United States and the State of Virginia.

(b) In addition, hunting and fishing privilege cards, issued by the authorities at Marine Corps Base, Quantico, VA, are required for all persons between the ages sixteen and sixty-four, inclusive.

(1) The privilege card may be purchased from the Natural Resources and Environmental Affairs Branch, Building 5–9, Marine Corps Base, Quantico, VA.

(2) The privilege cards are effective for the same period as the Virginia hunting and fishing licenses.

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Check Station, Building 5–9 Station (located at the intersection of Russell Road and MCB–1) for each day of hunting. The hunting permit must be carried by the hunter and the parking permit must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned within one hour after either sunset or the hour hunting is secured on holidays or during special season.

(d) Eligibility for a Base hunting permit is predicated on:

(1) Possession of required Federal and State licenses for the game to be hunted including Marine Corps Base hunting privilege card;
§ 770.5 Safety regulations.

(2) Attendance at a safety lecture given daily except Sunday during the hunting season given at the Game Check Station. The lectures commence at the times posted in the Annual Hunting Bulletin and are posted on all base bulletin boards;

(3) Understanding of Federal, State and Base hunting regulations;

(4) And, if civilian, an executed release of U.S. Government responsibility in case of accident or injury.


§ 770.3 Fishing regulations.

(a) All persons possessing the proper state license and Base permit are permitted to fish in the areas designated by the Annual Fishing Regulations on Marine Corps Base, Quantico, VA, on any authorized fishing day. A Base Fishing Privilege Card is required for all persons aged 16 to 65.

(b) Fishing is permitted on all waters within the boundaries of Marine Corps Base, Quantico, VA, unless otherwise posted, under the conditions and restrictions and during the periods provided by Marine Corps Base, Quantico, VA. Information regarding specific regulations for each fishing area must be obtained from the Natural Resources and Environmental Affairs Branch, Building 5–9 prior to use of Base fishing facilities.

(c) In addition to the requirements of the Laws of Virginia, the following additional prohibitions and requirements are in effect at Marine Corps Base, Quantico, VA.

(1) No trout lines are permitted in Marine Corps Base waters;

(2) No Large Mouth Bass will be taken, creel'd or possessed in a slot limit of 12–15 inches in length. All Large Mouth Bass within this slot will be immediately returned to the water;

(3) No Striped Bass will be taken, creel'd or possessed under the size of twenty (20) inches in length. All Striped Bass under this size will be immediately returned to the water.


§ 770.4 Hunting regulations.

All persons possessing the proper State, Federal and Base licenses and permits are permitted to hunt in the areas designated daily by the Annual Hunting Bulletin on Marine Corps Base, Quantico, VA, on any authorized hunting day. In addition, a minimum of fifteen percent of the daily hunting spaces will be reserved to civilians on a first come, first served basis until 0600 on each hunting day, at which time, the Game Check Station may fill vacancies from any authorized persons waiting to hunt.

[65 FR 53591, Sept. 5, 2000]
§ 770.6 Restrictions.

(a) There will be no hunting on Christmas Eve, Christmas Day, New Year’s Day, or after midnight on Thanksgiving.

(b) Hunters under 18 years of age must be accompanied by an adult (21 years of age or older) while hunting or in a hunting area. The adult is limited to a maximum of two underage hunters, and must stay within sight and voice contact and no more than 100 yards away from the underage hunters.

(c) The following practices or actions are expressly forbidden: Use of rifles, except muzzleloaders of .40 caliber or larger as specified below, revolvers or pistols; use of shotguns larger than 10 gauge or crossbows (this prohibition extends to carrying such weapons on the person or in a vehicle while hunting); use of buckshot to hunt any game; use of a light, attached to a vehicle or otherwise, for the purpose of spotting game; use of dogs for hunting or tracking deer; training deer dogs on the Reservation; training or running dogs in hunting areas between 1 March and 1 September; driving deer; baiting or salting traps or blinds; hunting on Sunday; molesting wildlife. Those personnel who are authorized to hunt on Base, desiring to train or exercise dogs other than deer dogs between 2 September and 28 February, may do so by obtaining Walking Pass to enter training areas at the Range Control Office. This Walking Pass is not permission to hunt, and carrying weapons under these conditions is prohibited.

(d) Hunting will not commence before one half hour before sunrise, and will end not later than sunset. The hours of sunrise and sunset are posted daily at the Game Checking Station.

(e) Weapons will not be loaded outside of hunting hours.

(f) There will be no use of a muzzleloader or slug shotgun after obtaining the daily or yearly game bag limits.

(g) There will be no possession or use of drugs or alcohol while checked out to hunt.

§ 770.7 Violations and environmental regulations.

Violations of hunting regulations, fishing regulations, safety regulations, or principles of good sportsmanship are subject to administrative restriction of hunting or fishing privileges and possible judicial proceedings in State or Federal courts.

(a) The Marine Corps Base Game Wardens are Federal Game Wardens. They have authority to issue summons to appear in Federal court for game violations.

(b) Offenders in violation of a Federal or State hunting or fishing laws will be referred to a Federal court.

(c) Offenders in violation of a Federal, State or Base hunting or fishing law or regulation will receive the following administrative actions.

1) The Base Game Warden shall have the authority to temporarily suspend hunting and fishing privileges.

2) Suspensions of hunting and fishing privileges will be outlined in the Annual Fish and Wildlife Procedures Manual.

(d) Civilians found in violation of a hunting or fishing regulation or law may be permanently restricted from entering the base.

(e) Serious hunting and fishing offenses include, but are not limited to: spotlighting, false statement on a license, hunting under the influence, employment of a light in an area that deer frequent, and taking game or fish during closed seasons.

§ 770.8 Reports.

Upon killing a deer or turkey, a hunter must attach the appropriate tab from his big game license to the carcass before moving the game from the place of kill. The game will then be taken to the Game Checking Station where the tab will be exchanged for an official game tag. All other game, not requiring a tag, killed on the Reservation will be immediately reported to the Game Warden when checking out at the end of a hunt.
§ 770.9 Miscellaneous.

Refer to the Annual Fishing and Hunting Bulletins that will cover any annual miscellaneous changes.

(65 FR 53592, Sept. 5, 2000)

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Silverdale, Washington


Source: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 770.15 Purpose.

The purpose of this subpart is to promulgate regulations governing entry upon Naval Submarine Base (SUBASE), Bangor.

§ 770.16 Definition.

For the purpose of this subpart, SUBASE Bangor shall include that area of land in Kitsap and Jefferson Counties, State of Washington which has been set aside for use of the Federal Government by an Act of the legislature of the State of Washington, approved March 15, 1939 (Session laws of 1939, chapter 126).

§ 770.17 Background.

(a) SUBASE Bangor has been designated as the West Coast home port of the Trident Submarine. Facilities for the repair or overhaul of naval vessels are located at SUBASE Bangor. It is vital to national defense that the operation and use of SUBASE Bangor be continued without undue and unnecessary interruption. Many areas of SUBASE Bangor are of an industrial nature, including construction sites, where inherently dangerous conditions exist.

(b) For prevention of the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of SUBASE Bangor, and prevention of injury to any such person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon SUBASE Bangor to authorized persons only.

§ 770.18 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Naval Submarine Base, Bangor, or remaining thereon by any person whatsoever for any purpose without the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative is prohibited. See, 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Department of Defense Directive 5200.8 of 25 April 1991; Secretary of the Navy Instruction 5511.36A of 21 July 1992.

[44 FR 32368, June 6, 1979, as amended at 65 FR 53592, Sept. 5, 2000]

§ 770.19 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative shall, in writing, submit a request to the Commanding Officer, Naval Submarine Base, Bangor, 1100 Hunley Road, Silverdale, WA 98315.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of SUBASE Bangor with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

[44 FR 32368, June 6, 1979, as amended at 65 FR 53592, Sept. 5, 2000]

§ 770.20 Violations.

(a) Any person entering or remaining on SUBASE Bangor, without the consent of the Commanding Officer, SUBASE Bangor or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $5,000 or imprisoned not more than six months or both.
§ 770.25 Purpose.

The purpose of this subpart is to promulgate regulations governing entry to naval installations in the State of Hawaii.

§ 770.26 Definitions.

For the purpose of this subpart the following definitions apply:

(a) Naval installations. A naval installation is a shore activity and is any area of land, whether or not fenced or covered by water, that is administered by the Department of the Navy or by any subordinate naval command. The term “naval installation” applies to all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command. Section 770.31 contains a list of the major naval installations in Hawaii. This list is not considered to be all inclusive and is included only as a representative guide. The area of water within Pearl Harbor is considered to be within a naval installation.

(b) Outleased areas. Certain portions of naval installations in Hawaii which are not for the time needed for public use or for which a dual use is feasible have been outleased to private interests. Examples of such outleased areas are the Moanalua Shopping Center and lands such as Waipio Peninsula, which has been outleased for agricultural purposes. For the purpose of this Subpart, outleased areas which are not within fenced portions of naval installations are not considered to be a part of naval installations. Rules for entry onto the outleased areas are made by the lessees, except in the case of Waipio Peninsula where the lessee (Oahu Sugar Company) is not authorized to allow anyone to enter Waipio Peninsula for any purpose not connected with sugar cane production.

§ 770.27 Background.

(a) Naval installations in Hawaii constitute a significant element of the national defense establishment. It is vital to the national defense that the use of such areas be at all times under the positive control of the Department of the Navy. Strict control must be exercised over access to naval installations in order to preclude damage accidental and intentional to Government property, injury to military personnel, and interference in the orderly accomplishment of the mission of command.

(b) There are several industrial areas within naval installations in Hawaii wherein construction activities and the use of heavy machinery pose grave risk of danger to visitors.

(c) Various types of flammable or incendiary materials and ordnance are stored at a number of locations within naval installations in Hawaii.

(d) Classified documents and equipment requiring protection from unauthorized disclosure by Executive order 12065 for reasons of national security are located at various locations within naval installations in Hawaii.

(e) In order to effect the positive control of the Navy over its installations in Hawaii, it is essential that entry onto those installations be restricted to authorized persons only.

(f) These entry regulations are being promulgated under the authority of Commander, Naval Base, Pearl Harbor, who has been assigned as immediate area coordinator for all naval installations in Hawaii by Commander-in-Chief, U.S. Pacific Fleet.

§ 770.28 Entry restrictions.

Each commander is responsible for the security of his/her command. Therefore, entry onto a command or into part of a command may be controlled by the commander through the imposition of such restrictions as may
be required by attendant circumstances. Within the State of Hawaii, entry into a naval installation is not permitted without the permission of the responsible commander.

§ 770.29 Entry procedures.
(a) Operational, security, and safety considerations take priority over requests by individuals to visit a naval installation. Consistent with such considerations, visits by members of the general public may be authorized at the discretion of the commander. The commitment of resources which would be required to safeguard the persons and property of visitors as well as military property and personnel must of necessity preclude or severely restrict such visiting. The purpose and duration of the visit and the size of the party and areas to be visited are other considerations which may affect the commander’s decision whether to permit visiting by members of the public.
(b) Any person or group desiring to enter a particular naval installation or portion thereof, shall submit a written request to the commander of the installation well enough in advance to allow a reasonable time for reply by mail. Mailing addresses for commanders of major installations covered by this subpart are listed in §770.31. Full compliance with a naval installation’s local visitor registration and entry control procedures shall be deemed the equivalent of obtaining the advance consent of the commander for entrance upon the installation for the purpose of this subpart. Authorization to enter one naval installation or a portion of one installation does not necessarily include the authorization to enter any other naval installation or all portions of an installation.

§ 770.30 Violations.
(a) Any person entering or remaining on a naval installation in the State of Hawaii, without consent of the commander or his authorized representative, shall be subject to the penalties of a fine of not more than $500 or imprisonment for not more than six months, or both. See 18 U.S.C. 1382.
(b) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed $5,000 or im-
§ 770.35 Military Sealift Command Office. Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(9) Mauna Kapu (Pacific Missile Range Facility). Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(10) Kunia Facility; FORACS III Sites; Degaussing Station, Waipio Peninsula; Damon Tract (Remnant) Opana Communications Site. Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(11) Outlying areas of the Naval Supply Center, Pearl Harbor (including the Ewa Junction Storage Area, Ewa Drum Storage Area, Manana Supply Area, Pearl City Supply Area, and the Red Hill Fuel Storage Area). Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(12) Pump Stations (Halawa, Waiau, Red Hill, and Barbers Point). Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(13) Halawa Water Storage Area; Barbers Point, Independent Water Supply Reservoir Site; Sewage Treatment Plant; Fort Kam (tri-service); Utility Corridors, Lynch Park (Ohana Nui). Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(14) Navy housing areas (including Moanalua Terrace, Radford Terrace, Makalapa, Maloelap, Halsey Terrace, Catlin Park, Hale Moku, Pearl Harbor, Naval Shipyard, McGrew Point, Halawa, Hokulani, Manana, Pearl City Peninsula, Red Hill, Iroquois Point, Puuloa, and Camp Stover). Contact: Commander, Naval Base, Pearl Harbor, HI
96860.

(b) On Kauai.

(1) Pacific Missile Range Facility, Barking Sands, Kekaha. Contact: Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, HI
96752.

(c) Other areas.

(1) Kaho‘olawe Island. Contact: Commander Naval Base, Pearl Harbor, HI
96860. Also see 32 CFR Part 763.


Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

SOURCE: 46 FR 22756, Apr. 21, 1981, unless otherwise noted.

§ 770.35 Purpose. The purpose of this subpart is to promulgate standard regulations and procedures governing entry upon U.S. Naval installations and properties in Puerto Rico.

§ 770.36 Definitions. For purposes of these regulations, U.S. Naval installations and properties in Puerto Rico include, but are not limited to, the U.S. Naval Station, Roosevelt Roads (including the Vieques Island Eastern Annexes, consisting of Camp Garcia, the Eastern Maneuver Area, and the Inner Range); the Naval Ammunition Facility, Vieques Island; and the Naval Security Group Activity, Sabana Seca.

§ 770.37 Background. In accordance with 32 CFR 765.4, Naval installations and properties in Puerto Rico are not open to the general public, i.e., they are “closed” military bases. Therefore admission to the general public is only by the permission of the respective Commanding Officers in accordance with their respective installation instructions.

§ 770.38 Entry restrictions. Except for duly authorized military personnel and civilian employees, including contract employees, of the United States in the performance of their official duties, entry upon any U.S. Navy installation or property in Puerto Rico at anytime, by any person for any purpose whatsoever without the advance consent of the Commanding Officer of the installation or
§ 770.39 Entry procedures.
(a) Any person or group of persons desiring to obtain advance consent for entry upon any U.S. Naval installation or property in Puerto Rico from the Commanding Officer of the Naval installation or property, or an authorized representative of that Commanding Officer, shall present themselves at an authorized entry gate at the installation or property concerned or, in the alternative, submit a request in writing to the following respective addresses:
   (1) Commanding Officer, U.S. Naval Station, Roosevelt Roads, Box 3001, Ceiba, PR 00635.
   (2) Officer in Charge, Naval Ammunition Facility, Box 3027, Ceiba, PR 00635.
   (3) Commanding Officer, U.S. Naval Security Group Activity, Sabana Seca, PR 00749.
(b) The above Commanding Officers are authorized to provide advance consent only for installations and properties under their command. Requests for entry authorization to any other facility or property shall be addressed to the following:
   Commander, U.S. Naval Forces, Caribbean, Box 3037, Ceiba, PR 00635.
(c) Each request for entry will be considered on an individual basis and consent will be determined by applicable installation entry instructions. Factors that will be considered include the purpose of visit, the size of party, duration of visit, destination, security safeguards, safety aspects, and the military resources necessary if the request is granted.

§ 770.40 Violations.
Any person entering or remaining on U.S. Naval installations and properties in Puerto Rico, without the advance consent of those officials hereinabove enumerated, or their authorized representatives, shall be considered to be in violation of these regulations and therefore subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months, or both," or any other applicable laws or regulations.

Subpart E—Base Entry Regulations for Naval Submarine Base New London, Groton, Connecticut


SOURCE: 48 FR 5555, Feb. 7, 1983, unless otherwise noted.

§ 770.41 Purpose.
The purpose of this subpart is to promulgate regulations and procedures governing entry upon Naval Submarine Base New London, and to prevent the interruption of the stated functions and operations of Naval Submarine Base New London, by the presence of any unauthorized person within the boundaries of Naval Submarine Base New London.

§ 770.42 Background.
Naval Submarine Base New London maintains and operates facilities to support training and experimental operations of the submarine force including providing support to submarines, submarine rescue vessels, and assigned service and small craft; within capabilities, to provide support to other activities of the Navy and other governmental activities in the area; and to perform such other functions as may be directed by competent authority.

§ 770.43 Responsibility.
The responsibility for proper identification and control of personnel and vehicle movement on the Naval Submarine Base New London is vested with the Security Officer.

§ 770.44 Entry restrictions.
Except for military personnel, their authorized dependents, or guests, and employees of the United States in the
§ 770.45

performance of their official duties, entry upon Naval Submarine Base New London, or remaining thereon by any person for any purpose without the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative is prohibited. See 18 U.S.C. 1382, the Internal Security Act of 1950 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; and Secretary of the Navy Instruction 5511.36 of December 20, 1980.

§ 770.45 Entry procedures.

(a) Any individual person or group of persons desiring the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative shall, in writing, submit a request to the Commanding Officer, Naval Submarine Base New London, at the following address: Commanding Officer (Attn: Security Officer), Box 38, Naval Submarine Base New London, Groton, CT 06349.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of Naval Submarine Base New London with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.46 Violations.

(a) Any person entering or remaining on Naval Submarine Base New London, without the consent of the Commanding Officer, Naval Submarine Base New London or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part:

   Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . shall be fined not more than $500 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5000 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington


SOURCE: 65 FR 5592, Sept. 5, 2000, unless otherwise noted.

§ 770.47 Purpose.

To promulgate regulations and procedures governing entry upon Puget Sound Naval Shipyard, and to prevent the interruption of the functions and operations of Puget Sound Naval Shipyard by the presence of any unauthorized person within the boundaries of the Puget Sound Naval Shipyard.

§ 770.48 Definition.

For the purpose of this subpart, Puget Sound Shipyard shall include that area of land, whether or not fenced or covered by water, in Kitsap County in the State of Washington under the operational control of the Commander, Puget Sound Naval Shipyard or any tenant command. This includes all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command or other Federal agency.

§ 770.49 Background.

(a) Puget Sound Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without interruption. Additionally, most of Puget Sound Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(b) For prevention of the interruption of the stated use of Puget Sound Naval Shipyard and prevention of injury to any unsupervised or unauthorized person as a consequence of the hazardous conditions that exist, as well as for other reasons, it is essential to restrict
entry upon Puget Sound Naval Shipyard to authorized persons only.

§ 770.50 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Puget Sound Naval Shipyard, or remaining thereon by any person for any purpose without advance consent of the Commander, Puget Sound Naval Shipyard or his/her authorized representative, is prohibited.

§ 770.51 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Puget Sound Naval Shipyard, at the following address: Commander, Puget Sound Naval Shipyard, 1400 Farragut Avenue, Bremerton, WA 98314-5001.

§ 770.52 Violations.

(a) Any person entering or remaining on Puget Sound Naval Shipyard, without the consent of the Commander, Puget Sound Naval Shipyard, or an authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5000.00 or imprisonment for not more than one year or both as provided in 50 U.S.C. 797.

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire


Source: 49 FR 34003, Aug. 28, 1984, unless otherwise noted.

§ 770.53 Purpose.

To promulgate regulations and procedures governing entry upon Portsmouth Naval Shipyard, and to prevent the interruption of the functions and operations of Portsmouth Naval Shipyard by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard.

§ 770.54 Background.

(a) Portsmouth Naval Shipyard maintains and operates facilities “to provide logistic support for assigned ships and service craft; to perform authorized work in connection with construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of ships and craft, as assigned; to perform manufacturing, research, development, and test work, as assigned; and to provide services and material to other activities and units, as directed by competent authority.”

(b) Portsmouth Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(c) For prevention of interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard, and prevention of injury to any such unsupervised person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Portsmouth Naval Shipyard to authorized persons only.

§ 770.55 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Portsmouth
§ 770.56

Naval Shipyard is vested with the Shipyard Security Manager (Code 1700).
[49 FR 34003, Aug. 28, 1984, as amended at 65 FR 53593, Sept. 5, 2000]

§ 770.56 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and civilian employees of the United States in the performance of their official duties, entry upon Portsmouth Naval Shipyard, or remaining thereon by any person for any purpose without the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, is prohibited. In many instances, Commander, Naval Sea Systems Command, approval is required.

§ 770.57 Entry procedures.

(a) Any person or group desiring the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Portsmouth Naval Shipyard, at the following address: Commander, Portsmouth Naval Shipyard, Portsmouth, NH 03801, Attention: Security Manager (Code 1700). For groups, foreign citizens, and news media, the request must be forwarded to the Commander, Naval Sea Systems Command, for approval.

(b) Each request for entry will be considered on an individual basis, weighing the operational, security, and safety requirements of Portsmouth Naval Shipyard, with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.58 Violations.

(a) Any person entering or remaining on Portsmouth Naval Shipyard without the consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . Shall be fined not more than $500 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this instruction is subject to a fine not to exceed $5000 or imprisonment for not more than one (1) year, or both, as provided by 50 U.S.C. 797.

PARTS 771–774 [RESERVED]

PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
775.1 Purpose.
775.2 Scope.
775.3 Policy.
775.4 Responsibilities.
775.5 Classified actions.
775.6 Planning considerations.
775.7 Time limits for environmental documents.
775.8 Scoping.
775.9 Documentation and analysis.
775.10 Relations with state, local and regional agencies.
775.11 Public participation.
775.12 Action.


SOURCE: 55 FR 33899, Aug. 20, 1990, unless otherwise noted.

§ 775.1 Purpose.

To supplement Department of Defense (DOD) regulations (32 CFR part 214) by providing policy and assigning responsibilities to the Navy and Marine Corps for implementing the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA).

§ 775.2 Scope.

The policies and responsibility assignments of this part apply to the Office of the Secretary of the Navy, the Department of the Navy (DON), and the Navy and Marine Corps operating forces and shore establishments. This part is limited to the actions of these elements with environmental effects in the United States, its territories, and possessions.
§ 775.3 Policy.

(a) The Department of the Navy will act with care to ensure that, in conducting its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool, this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This ensures that planning and decisionmaking reflect environmental values, avoid delays, and avoid potential conflicts. Care will be taken to ensure that, consistent with other national policies and national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

1. Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;
2. Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;
3. Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and
4. Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DON shall:

1. Assess environmental consequences of proposed actions that could affect the quality of the human environment in the United States, its territories, and possessions in accordance with DOD and CEQ regulations;
2. Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man’s environment;
3. Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;
4. Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;
5. Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and
6. Use ecological information in planning and developing resource-oriented projects.

§ 775.4 Responsibilities.

(a) The Assistant Secretary of the Navy for Installations and Environment (ASN(I&E)) shall:

1. Advise the Secretary of the Navy on DON policy regarding NEPA compliance.
2. Be the principal point-of-contact with the CEQ, Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense for Environment (DASD(E)), other DOD components and federal agencies concerned with NEPA matters, and with private environmental groups as applicable.
3. Direct and/or, upon recommendation, approve the preparation of Environmental Impact Statements (EIS); and, after preparation, approve and forward said statements to the EPA and DASD(E) for review and comment.
4. Approve and forward to the Navy Judge Advocate General (JAG) Findings of No Significant Impact (FONSI) for publication in the Federal Register for those actions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the quality of the human environment and for which an EIS will not be prepared.
5. Approve and forward to the Navy JAG, for publishing in the Federal Register, a Record of Decision (ROD) which will summarize for the public record the decision made by the Navy/ Marine Corps among the alternatives presented in a Final EIS.
§ 775.5  Classified actions.

(a) The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with NEPA and the CEQ regulations. Therefore, environmental documents shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as appendices so that unclassified portions can be made available to the public. Review of classified NEPA documentation will be coordinated with the Environmental Protection Agency (EPA) to fulfill requirements of section 309 of the Clean Air Act (42 U.S.C. 7609 et seg.).

(b) It should be noted that a classified EA/EIS serves the same “informed decisionmaking” purpose as does a published unclassified EA/EIS. Even though the classified EA/EIS does not undergo general public review and comment, it must still be part of the information package to be considered by the decisionmaker for the proposed action. The content of a classified EA/EIS (or the classified portion of a public EA/EIS) will therefore meet the same content requirements applicable to a published unclassified EA/EIS.
§ 775.6 Planning considerations.

(a) When integrating the NEPA process into early stages of proposed actions, action proponents will determine as early as possible the appropriate level of documentation required under NEPA, i.e., is the action a major federal action significantly affecting the human environment requiring an environmental impact statement (EIS), is the action one for which the impacts are not known or which may not be significant and, therefore, an environmental assessment (EA), is appropriate, or is the action one that has no potential for significant impacts and can be categorically excluded from further NEPA documentation. In addition, CEQ regulations (40 CFR 1501.5 and 1501.6) require early identification of lead and cooperative agencies for preparation of an EIS for which more than one agency is involved or has special expertise in environmental issues to be addressed in the EIS.

(b) The command responsible for preparation of the appropriate documentation may prepare an EA on any action at any time in order to assist in planning and decisionmaking, including the decision whether or not to prepare an EIS. If a determination is made based on information presented in an environmental assessment that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared and made available to the public in accordance with CEQ regulations (40 CFR 1506.6).

(c) CEQ regulations (40 CFR 1506.18(a)) define major federal actions subject to evaluation under NEPA to include, among other things, “new and continuing activities”. The term new activities is intended to encompass future actions, i.e., those which are not ongoing at the time of the proposal. The term continuing activities which may necessitate the preparation of a NEPA document will be applied by the Department of Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing training functions, where:

(1) The currently occurring environmental effects of which have not been previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, as a result of ongoing operations (e.g., a discovery that significant beach erosion is occurring as a result of continuing amphibious exercises, new designation of wetland habitat, or discovery of an endangered species residing in the area of the activity), or

(2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use, or in methodology/equipment) which has the potential for significant environmental impacts should be considered a proposal for a new action and be documented accordingly. Preparation of a NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

(d) Where emergency circumstances require immediate action, for the protection of lives and for public health and safety, which could result in significant harm to the environment, the activity Commanding Officer or his designee shall report the emergency action to CNO (OP-41E)/CMC (LFL) who will facilitate the appropriate consultation with CEQ as soon as practicable.

(e) CEQ regulations provide for the establishment of categorical exclusions (40 CFR 1508.4) for those actions which, after consideration by the Department of the Navy, have been found not to have a significant effect on the human environment, individually or cumulatively, under normal circumstances, and for which, therefore, neither an EA nor an EIS is required. Categorical exclusions are applicable to those kinds of Navy actions which do not significantly affect the quality of the human environment, which do not result in any significant change from existing conditions at the site of the proposed action, and whose effect is primarily economic or social. “Normal circumstances” means that the proposal, when analyzed with respect to context.
§ 775.6

and intensity, can reasonably be expected to not cause significant impacts. Even though a proposal generally fits the description set out below for categorical exclusions, the categorical exclusion should not be used if the proposed action:

(1) Would affect public health or safety;

(2) Involves a site that includes wetlands, endangered or threatened species, historical or archaeological resources, or hazardous wastes;

(3) Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(4) Establishes precedents or makes decisions in principle for future actions with significant effects, or;

(5) Threatens a violation of federal, state or local law or requirements imposed for protection of the environment.

(f) A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions shall be documented, including the exclusions found applicable, the facts supporting their use and specific consideration of whether the exceptions to the use of categorical exclusions, set out above, were applicable. The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA:

(1) Routine personnel, fiscal, and administrative activities involving military and civilian personnel, e.g., recruiting, processing, paying, and records keeping.

(2) Reductions in force wherein impacts are limited to socioeconomic factors.

(3) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new support facilities are required) to perform as operational groups, and/or repair and overhaul.

(4) Relocation of personnel into existing federally-owned or commercially-leased space which does not involve a substantial change in the supporting infrastructure (e.g., an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) Studies, data and information-gathering that involve no physical change to the environment, e.g., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising.

(6) Routine repair and maintenance of facilities and equipment in order to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

(7) Alteration of and additions to existing structures to conform or provide conformity use specifically required by new or existing applicable legislation or regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(8) Routine actions normally conducted to operate, protect, and maintain Navy-owned and/or controlled properties, e.g., maintaining law and order, physical plant protection by military police and security personnel, and localized pest management activities on improved and semi-improved lands conducted in accordance with applicable federal and state directives.

(9) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements and constraints, e.g., a building on a parking lot with associated discharges/runoff within existing handling capacities, a bus stop along a roadway, and a foundation pad for portable buildings within a building complex.

(10) Procurement activities that provide goods and support for routine operations.

(11) Day-to-day manpower resource management and research activities that are in accordance with approved plans and inter-agency agreements and which are designed to improve and/or upgrade Navy ability to manage those resources.

(12) Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). This paragraph (f)(12) does not apply to permanent closure of public roads.
Department of the Navy, DoD

§ 775.6

(13) Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(14) Routine movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations.

(15) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations, including those regulations applying to removal of asbestos, PCBs, and other hazardous materials.

(16) Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distribution systems, and/or facilities.

(17) Renewals and/or initial real estate ingrants and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

(18) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(19) Transfer of real property from the Navy to another military department or to another federal agency, and the granting of leases (including leases granted pursuant to the agricultural outleasing program where soil conservation plans are incorporated), permits and easements where there is no substantial change in land use or where subsequent land use would otherwise be categorically excluded.

(20) Disposal of excess easement interests to the underlying fee owner.

(21) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated.

(22) Pre-lease exploration activities for oil, gas or geothermal reserves, e.g., geophysical surveys.

(23) Return of public domain lands to the Department of the Interior.

(24) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use.

(25) Temporary closure of public access to Navy property in order to protect human or animal life.

(26) Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

(27) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

(28) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(29) Installation of devices to protect human or animal life, e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(30) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to regulation by federal, state, or local organizations having management responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by state authorities pursuant to their state fish and game management laws. With regard to natural resources regulated by another federal agency, the responsible
command may cooperate in any environmental analysis that may be required by the other agency’s regulations.

(31) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

(32) Routine maintenance of timber stands, including issuance of downwood firewood permits, hazardous tree removal, and sanitation salvage.

(33) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved.

§ 775.7 Time limits for environmental documents.

(a) The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of NEPA. Therefore, the NEPA process shall begin as early as possible in the decisionmaking process.

(b) The EPA publishes a weekly notice in the FEDERAL REGISTER of environmental impact statements filed during the preceding week. The minimum time periods set forth below shall be calculated from the date of publication of notices in the FEDERAL REGISTER. No decision on the proposed action may take place until the later of the following dates:

(1) Ninety days after publication of the notice of availability for a draft environmental impact statement (DEIS). Draft statements shall be available to the public for 15 days prior to any public hearing on the DEIS (40 CFR 1506.6(c)(2)).

(2) Thirty days after publication of the notice of availability for a final environmental impact statement (FEIS). If the FEIS is available to the public within ninety days from the availability of the DEIS, the minimum thirty day period and the minimum ninety day period may run concurrently. However, not less than 45 days from publication of notice of filing shall be allowed for public comment on draft statements prior to filing of the FEIS (40 CFR 1506.10(c)).

§ 775.8 Scoping.

As soon as practicable after the decision to prepare an EIS is made, an early and open process called “scoping” shall be used to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

(a) Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

(b) CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for discussion at each level of environmental review (40 CFR 1502.20). Tiering is accomplished through the preparation of a broad programmatic environmental impact statement discussing the impacts of a wide ranging or long term stepped program followed by narrower statements or environmental assessments concentrating solely on issues specific to the analysis subsequently prepared (40 CFR 1508.28).

(1) Appropriate use of tiering: Tiering is appropriate when it helps the lead agency to focus on issues which are
§ 775.10 Relations with state, local and regional agencies.

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development “clearinghouses”. These are agencies which have been established pursuant to Executive Order 12372 of July 14, 1982 (3 CFR, 1982 Comp., p. 197). The clearinghouses serve a review and coordination function for Federal activities and the proponent may gain insights on other agencies’ approaches to environmental assessments, surveys, and studies in relation to any current proposal. The clearinghouses would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 775.11 Public participation.

The importance of public participation (40 CFR 1501.4(b)) in preparing environmental assessments is clearly recognized and it is recommended that commands proposing an action develop a plan to ensure appropriate communication with affected and interested parties. The command Public Affairs Office can provide assistance with developing and implementing this plan. In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command:

(a) The magnitude of the environmental considerations associated with the proposed action;
(b) The extent of anticipated public interest; and
(c) Any relevant questions of national security and classification.

§ 775.12 Action.

The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

(a) Provide guidelines and procedures for administrative direction and implementation of this part and CEQ regulations; and
(b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

**PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL**

**Subpart A—General**

Sec.
776.1 Purpose.
776.2 Applicability.
776.3 Policy.
776.4 Attorney-client relationships.
776.5 Judicial conduct.
776.6 Conflict.
776.7 Reporting requirements.
776.8 Professional Responsibility Committee.
776.9 Rules Counsel.
776.10 Informal ethics advice.
776.11 Outside part-time practice of law.
776.12 Maintenance of files.
776.13–776.17 [Reserved]

**Subpart B—Rules of Professional Conduct**

776.18 Preamble.
776.19 Principles.
776.20 Competence.
776.21 Establishment and scope of representation.
776.22 Diligence.
776.23 Communication.
776.24 Fees.
776.25 Confidentiality of information.
776.26 Conflict of interest: General rule.
776.27 Conflict of interests: Prohibited transactions.
776.28 Conflict of interest: Former client.
776.29 Imputed disqualification: General rule.
776.30 Successive Government and private employment.
776.31 Former judge or arbitrator.
776.32 Department of Navy as client.
776.33 Client under a disability.
776.34 Safekeeping property.
776.35 Declining or terminating representation.
776.36 Prohibited sexual relations.
776.37 Advisor.
776.38 Mediation.
776.39 Evaluation for use by third persons.
776.40 Meritorious claims and contentions.
776.41 Expediting litigation.
776.42 Candor and obligations toward the tribunal.
776.43 Fairness to opposing party and counsel.
776.44 Impartiality and decorum of the tribunal.
776.45 Extra-tribunal statements.
776.46 Attorney as witness.
776.47 Special responsibilities of a trial counsel.
776.48 Advocate in nonadjudicative proceedings.
776.49 Truthfulness in statements to others.
776.50 Communication with person represented by counsel.
776.51 Dealing with an unrepresented person.
776.52 Respect for rights of third persons.
776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.
776.54 Responsibilities of a subordinate attorney.
776.55 Responsibilities regarding non-attorney assistants.
776.56 Professional independence of a covered USG attorney.
776.57 Unauthorized practice of law.
776.58–776.65 [Reserved]
776.66 Bar admission and disciplinary matters.
776.67 Judicial and legal officers.
776.68 Reporting professional misconduct.
776.69 Misconduct.
776.70 Jurisdiction.
776.71 Requirement to remain in good standing with licensing authorities.
776.72–776.75 [Reserved]

**Subpart C—Complaint Processing Procedures**

776.76 Policy.
776.77 Related investigations and actions.
776.78 Informal complaints.
776.79 The complaint.
776.80 Initial screening and Rules Counsel.
776.81 Charges.
776.82 Interim suspension.
776.83 Preliminary inquiry.
776.84 Ethics investigation.
776.85 Effect of separate proceeding.
776.86 Action by JAG.
776.87 Finality.
776.88 Report to licensing authorities.

**Subpart D [Reserved]**


SOURCE: 65 FR 15060, Mar. 21, 2000, unless otherwise noted.
§ 776.1 Purpose.

In furtherance of the authority citations (which, if not found in local libraries, are available from the Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard DC 20374-5066), which require the Judge Advocate General of the Navy (JAG) to supervise the performance of legal services under JAG cognizance throughout the Department of the Navy (DON), this part is promulgated:

(a) To establish Rules of Professional Conduct (subpart B of this part) for attorneys subject to this part;

(b) To establish procedures (subpart C of this part) for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, whether arising from professional legal activities in DON proceedings and matters, or arising from other, non-U.S. Government related professional legal activities or personal misconduct which suggests the attorney is ethically, professionally, or morally unqualified to perform legal services within the DON; and

(c) To ensure quality legal services at all proceedings under the cognizance and supervision of the JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to, all “covered attorneys.”

(b) “Covered attorneys” include:

(1) The following U.S. Government (USG) attorneys, referred to, collectively, as “covered USG attorneys” throughout this part:

(i) All active-duty Navy judge advocates (designator 2500 or 2505) or Marine Corps judge advocates (MOS 4402 or 9914).

(ii) All active-duty judge advocates of other U.S. armed forces who practice law or perform legal services under the cognizance and supervision of the JAG.

(iii) All civilian attorneys who practice law or perform legal services under the cognizance and supervision of the JAG.

(iv) All Reserve or Retired judge advocates of the Navy or Marine Corps (and any other U.S. armed force), who, while performing official DON duties, practice law or provide legal services under the cognizance and supervision of the JAG.

(v) All other attorneys appointed by JAG (or the Director, Judge Advocate (JA) Division, Headquarters Marine Corps (HQMC), in Marine Corps matters) to serve in billets or to provide legal services normally provided by Navy or Marine Corps judge advocates. This policy applies to officer and enlisted reservists, to active-duty personnel, and to any other personnel who are licensed to practice law by any Federal or state authorities, but who are not members of the Judge Advocate General’s Corps or who do not hold the 4402 or 9914 designation in the Marine Corps.

(2) The following non-U.S. Government attorneys, referred to, collectively, as “covered non-USG attorneys” throughout this part: All civilian attorneys representing individuals in any matter for which JAG is charged with supervising the provision of legal services. These matters include, but are not limited to, courts-martial, administrative separation boards or hearings, and disability evaluation proceedings.

(3) The term “covered attorney” does not include those civil service or civilian attorneys who practice law or perform legal services under the cognizance and supervision of the General Counsel of the Navy.

(c) Professional or personal misconduct unrelated to a covered attorney’s DON activities, while normally outside the ambit of these rules, may be reviewed under procedures established in subpart C of this part and may provide the basis for decisions by the JAG regarding the covered attorney’s continued qualification to provide legal services in DON matters.

(d) Although the Rules in subpart B of this part do not apply to non-attorneys, they do define the type of ethical conduct that the public and the military community have a right to expect from DON legal personnel. Covered USG attorneys who supervise non-attorney DON employees are responsible...
§ 776.3 Policy.

(a) Covered attorneys shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Whether conduct or failure to act constitutes a violation of the professional duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. Rules contained in subpart B of this part are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Department of Defense Joint Ethics Regulation, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), and the general precepts of ethical conduct to which all DON service members and employees are expected to adhere. Similarly, action taken per this part is not supplanted or barred by, and does not, even if the underlying misconduct is the same, supplant or bar the following action from being taken by authorized officials:

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual for Courts-Martial, U.S. Navy Regulations, or under other applicable authority.

(c) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation (subpart C of this part) stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this part.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each covered USG attorney unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32 of this part.

(b) Covered USG attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority. Wrongfully establishing an attorney-client relationship may subject the attorney to discipline administered per this part. See § 776.21 of this part.

(c) Employment of a non-USG attorney by an individual client does not alter the professional responsibilities of a covered USG attorney detailed or otherwise assigned by competent authority to represent that client.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, regulations, or this part, the American Bar Association’s Code of Judicial Conduct applies to all military and appellate judges and to all other covered USG attorneys performing judicial functions under JAG supervision within the DON.

§ 776.6 Conflict.

To the extent that a conflict exists between this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, this part will govern the conduct of covered attorneys engaged in legal functions under JAG cognizance and supervision. Specific and significant instances of conflict between the rules contained in subpart B of this part and the rules of other jurisdictions shall be reported promptly to the Rules Counsel.
§ 776.10 Informal ethics advice.

(a) Advisers. Covered attorneys may seek informal ethics advice either from the officers named below or from supervisory attorneys in the field. Within the Office of the JAG and HQMC, the following officials are designated to respond, either orally or in writing, to informal inquiries concerning this part in the areas of practice indicated:

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;
§ 776.11 Outside part-time practice of law.

A covered USG attorney’s primary professional responsibility is to the client, as defined by §776.4 of this part, and he or she is expected to ensure that representation of such client is free from conflicts of interest and otherwise conforms to the requirements of these rules and other regulations concerning the provision of legal services within the Department of the Navy. The outside practice of law, therefore, must be carefully monitored. Covered USG attorneys who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Failure to obtain permission before engaging in the outside practice of law may subject the covered USG attorney to administrative or disciplinary action, including professional sanctions administered per subpart C of this part. Covered USG attorneys may obtain further details in JAGINST 5803.1 (series). This requirement does not apply to non-USG attorneys, or to Reserve or Retired judge advocates unless serving on active-duty for more than 30 consecutive days.

§ 776.12 Maintenance of files.

Ethics complaint records shall be maintained by the Administrative Law Division, Office of the Judge Advocate General, and, in the case of Marine records, by the Judge Advocate Research and Civil Law Branch, JA Division, HQMC.

(a) Requests for access to such records should be referred to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard DC 20374-5066, or to Head, Judge Advocate Research and Civil Law Branch, JA Division, Headquarters Marine Corps, Washington Navy Yard DC 20380-0001, as appropriate.

(b) Local command files regarding professional responsibility complaints will not be maintained. Commanding officers and other supervisory attorneys may, however, maintain personal files but must not share their contents with others.

§§ 776.13–776.17 [Reserved]
§ 776.21 Establishment and scope of representation.

(a) Establishment and scope of representation: (1) Formation of attorney-client relationships by covered USG attorneys with, and representation of, clients is permissible only when the attorney is authorized to do so by competent authority. Military Rule of Evidence 502, the Manual of the Judge Advocate General (JAG Instruction 5800.7 (series)), and the Naval Legal Service Office and Trial Service Office Manual, define when an attorney-client relationship is formed between a covered USG attorney and a client servicemember, dependent, or employee.

(2) Generally, the subject matter scope of a covered attorney’s representation will be consistent with the terms of the assignment to perform specific representational or advisory duties. A covered attorney shall inform clients at the earliest opportunity of any limitations on representation and professional responsibilities of the attorney towards the client.

(3) A covered attorney shall follow the client’s well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

(4) A covered attorney’s representation of a client does not constitute an endorsement of the client’s political, economic, social, or moral views or activities.

(5) A covered attorney shall not counsel or assist a client to engage in conduct that the attorney knows is criminal or fraudulent, but a covered attorney may discuss the legal and moral consequences of any proposed course of conduct with a client, and may counsel or assist a client in making a good faith effort to determine the
§ 776.22 Diligence.
(a) Diligence. A covered attorney shall act with reasonable diligence and promptness in representing a client, and shall consult with a client as soon as practicable and as often as necessary upon being assigned to the case or issue.
(b) [Reserved]

§ 776.23 Communication.
(a) Communication:
(1) A covered attorney shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
(2) A covered attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
(b) [Reserved]

§ 776.24 Fees.
(a) Fees:
(1) A covered USG attorney shall not accept any salary, fee, compensation, or other payments or benefits, directly or indirectly, other than Government compensation, for services provided in the course of the covered USG attorney’s official duties or employment.
(2) A covered USG attorney shall not accept any salary or other payments as compensation for legal services rendered, by that covered USG attorney in a private capacity, to a client who is eligible for assistance under the DON Legal Assistance Program, unless so authorized by the JAG. This rule does not apply to Reserve or Retired judge advocates not then serving on extended active-duty.
(3) A Reserve or Retired judge advocate, whether or not serving on extended active-duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the attorney’s official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless so authorized by the JAG.
(4) Covered non-USG attorneys may charge fees. Fees shall be reasonable. Factors considered in determining the reasonableness of a fee include the following:
   (i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
   (ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;
   (iii) The fee customarily charged in the locality for similar legal services;
   (iv) The amount involved and the results obtained;
   (v) The time limitations imposed by the client or by the circumstances;
   (vi) The nature and length of the professional relationship with the client;
   (vii) The experience, reputation, and ability of the attorney or attorneys performing the services; and
   (viii) Whether the fee is fixed or contingent.
(5) When the covered non-USG attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
(6) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (a)(7) of this section or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the covered non-USG attorney in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the covered non-USG attorney shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
§ 776.26 Conflict of interest: General rule.

(a) Conflict of interest: General rule:

(1) A covered attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The covered attorney reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A covered attorney shall not represent a client if the representation of that client may be materiallly limited

(3) A covered attorney may reveal such information to the extent the covered attorney reasonably believes necessary to establish a claim or defense on behalf of the covered attorney in a controversy between the covered attorney and the client, to establish a defense to a criminal charge or civil claim against the attorney based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the attorney’s representation of the client.

(b) Conduct likely to result in the significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system include, but are not limited to: Divulging the classified location of a special operations unit such that the lives of members of the unit are placed in immediate danger; sabotaging a vessel or aircraft to the extent that the vessel or aircraft could not conduct an assigned mission, or that the vessel or aircraft and crew could be lost; and compromising the security of a weapons site such that the weapons are likely to be stolen or detonated. Paragraph (a)(2) of this section is not intended to and does not mandate the disclosure of conduct which may have a slight impact on the readiness or capability of a unit, vessel, aircraft, or weapon system. Examples of such conduct are: absence without authority from a peacetime training exercise; intentional damage to an individually assigned weapon; and intentional minor damage to military property.

§ 776.25 Confidentiality of information.

(a) Confidentiality of Information:

(1) A covered attorney shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A covered attorney shall reveal such information to the extent the covered attorney reasonably believes necessary to prevent the client from committing a criminal act that the covered attorney believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.
§ 776.27 Conflict of interests: Prohibited transactions.

(a) Conflict of interests: Prohibited transactions.

(1) Covered USG attorneys shall strictly adhere to current Department of Defense Ethics Regulations and shall not:

(i) Knowingly enter into any business transactions on behalf of, or adverse to, a client’s interest which directly or indirectly relate to or result from the attorney-client relationship; or

(ii) Provide any financial assistance to a client or otherwise serve in a financial or proprietary fiduciary or bailment relationship, unless otherwise specifically authorized by competent authority.

(2) No covered attorney shall:

(i) Use information relating to representation of a client to the detriment of the client unless the client consents after consultation, except as permitted or required by § 776.25 or § 776.42 of this part;

(ii) Prepare an instrument giving the covered attorney or a person related to the covered attorney as parent, child, sibling, or spouse any gift from a client, including a testamentary gift, except where the client is related to the donee;

(iii) In the case of covered non-USG attorneys, accept compensation for representing a client from one other than the client unless the client consents after consultation, there is no interference with the covered attorney’s independence of professional judgment or with the attorney-client relationship, and information relating to representation of a client is protected as required by § 776.25 of this part;

(iv) Negotiate any settlement on behalf of multiple clients in a single matter unless each client provides fully informed consent;

(v) Prior to the conclusion of representation of the client, make or negotiate an agreement giving a covered attorney literary or media rights for a portrayal or account based in substantial part on information relating to representation of a client;

(vi) Represent a client in a matter directly adverse to a person whom the covered attorney knows is represented by another attorney who is related as parent, child, sibling, or spouse to the covered attorney, except upon consent by the client after consultation regarding the relationship; or

(vii) Acquire a proprietary interest in the cause of action or subject matter of litigation the covered attorney is conducting for a client.

(b) [Reserved]

§ 776.28 Conflict of interest: Former client.

(a) Conflict of interest: Former client. A covered attorney who has represented a client in a matter shall not thereafter:
(1) Represent another person in the same or a substantially related matter
in which the person’s interests are materially adverse to the interests of the
former client, unless the former client consents after consultation;
(2) Use information relating to the representation to the disadvantage of
the former client or to the covered attorney’s own advantage, except as
§776.25 or §776.42 of this part would permit or require with respect to a client
or when the information has become generally known; or
(3) Reveal information relating to the representation except as §776.25 or
§776.42 of this part would permit or require with respect to a client.
(b) [Reserved]

§776.29 Imputed disqualification: General rule.

(a) Imputed disqualification: General rule. Covered USG attorneys working
in the same military law office are not automatically disqualified from rep-
resenting a client because any of them practicing alone would be prohibited
from doing so by §776.26, §776.27, §776.28, or §776.38 of this part. Covered
non-USG attorneys must consult their federal, state, and local bar rules gov-
erning the representation of multiple or adverse clients within the same of-
office before such representation is initiated, as such representation may ex-
pose them to disciplinary action under the rules established by their licensing
authority.

(b)(1) The circumstances of military (or Government) service may require
representation of opposing sides by covered USG attorneys working in the
same law office. Such representation is permissible so long as conflicts of in-
terests are avoided and independent judgment, zealous representation, and
protection of confidences are not compromised. Thus, the principle of im-
puted disqualification is not automatically controlling for covered USG at-
torneys. The knowledge, actions, and conflicts of interests of one covered
USG attorney are not imputed to an-
other simply because they operate
from the same office. For example, the
fact that a number of defense attorneys
operate from one office and normally
share clerical assistance would not pro-
hbit them from representing co-ac-
cused at trial by court-martial. Im-
puted disqualification rules for non-
USG attorneys are established by their
individual licensing authorities and
may well prescribe all attorneys from
one law office from representing a co-
accused, or a party with an adverse in-
terest to an existing client, if any at-
torney in the same office were so pro-
hibited.
(2) Whether a covered USG attorney
is disqualified requires a functional
analysis of the facts in a specific situa-
tion. The analysis should include con-
sideration of whether the following will
be compromised: Preserving attorney-
client confidentiality; maintaining
independence of judgment; and avoid-
ing positions adverse to a client. See,
e.g., U.S. v. Stubbs, 23 M.J. 188 (CMA
1987).
(3) Preserving confidentiality is a
question of access to information. Ac-
cess to information, in turn, is essen-
tially a question of fact in a particular
circumstance, aided by inferences, de-
ductions, or working presumptions
that reasonably may be made about
the way in which covered USG attor-
neys work together. A covered USG at-
torney may have general access to files
of all clients of a military law office
(e.g., legal assistance attorney) and
may regularly participate in discus-
sions of their affairs; it may be inferred
that such a covered USG attorney in
fact is privy to all information about
all the office’s clients. In contrast, an-
other covered USG attorney (e.g., mili-
tary defense counsel) may have access
to the files of only a limited number of
clients and participate in discussion of
the affairs of no other clients; in the
absence of information to the contrary,
it should be inferred that such a cov-
ered USG attorney in fact is privy to
information about the clients actually
served but not to information of other
clients. Additionally, a covered USG
attorney changing duty stations or
changing assignments within a mili-
tary office has a continuing duty to
preserve confidentiality of information
about a client formerly represented.
See §776.25 and §776.28.7 of this part.
(4) Maintaining independent judg-
ment allows a covered USG attorney to
consider, recommend, and carry out
§ 776.30 Successive Government and private employment.

(a) Successive Government and private employment:

(1) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney shall not represent a private client in connection with a matter in which the covered USG attorney participated personally and substantially as a public officer or employee, unless the appropriate Government agency consents after consultation. If a former covered USG attorney knows that another attorney within the firm, partnership, or association is undertaking or continuing representation in such a matter:

(i) The disqualified former covered USG attorney must ensure that he or she is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom; and,

(ii) The disqualified former covered USG attorney must provide written notice promptly to the appropriate Government agency to enable it to ascertain compliance with the provisions of applicable law and regulations.

(2) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney, who has information known to be confidential Government information about a person which was acquired while a covered USG attorney, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The former covered USG attorney may continue association with a firm, partnership, or association representing any such client only if the disqualified covered USG attorney is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom.

(3) Except as the law or regulations may otherwise expressly permit, a covered USG attorney shall not:

(i) Participate in a matter in which the covered USG attorney participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the covered USG attorney’s stead in the matter; or,

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially.

(4) As used in this section, the term “matter” includes:

(i) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(ii) Any other matter covered by the conflict of interest rules of the Department of Defense, DON, or other appropriate Government agency.

(5) As used in this section, the term “confidential Governmental information” means information which has been obtained under Governmental authority and which, at the time this Rule is applied, the Government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(b) [Reserved]

§ 776.31 Former judge or arbitrator.

(a) Former judge or arbitrator:

(1) Except as stated in paragraph (a)(3) of this section, a covered USG attorney shall not represent anyone in connection with a matter in which the
covered USG attorney participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.  

(2) A covered USG attorney shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially as a judge or other adjudicative officer. A covered USG attorney serving as law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the covered USG attorney has notified the judge, other adjudicative officer, or arbitrator, and been disqualified from further involvement in the matter.  

(3) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.  

(b) [Reserved]  

§ 776.32 Department of the Navy as client.  

(a) Department of Navy as client:  

(1) Except when representing an individual client pursuant to paragraph (a)(6) of this section, a covered USG attorney represents the DON (or the Executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the Naval service, such as the commanders of fleets, divisions, ships and other heads of activities. When a covered USG attorney is assigned to such an organizational element and designated to provide legal services to the head of the organization, an attorney-client relationship exists between the covered USG attorney and the DON as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the attorney-client privilege or the rule of confidentiality for the head of the organization’s own benefit but may invoke either for the benefit of the DON. In invoking either the attorney-client privilege or attorney-client confidentiality on behalf of the DON, the head of the organization is subject to being overruled by higher authority.  

(2) If a covered USG attorney knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the DON or a violation of law which reasonably might be imputed to the Department, the covered USG attorney shall proceed as is reasonably necessary in the best interest of the Naval service. In determining how to proceed, the covered USG attorney shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the covered USG attorney’s representation, the responsibility in the Naval service and the apparent motivation of the person involved, the policies of the Naval service concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize prejudice to the interests of the Naval service and the risk of revealing information relating to the representation to persons outside the service. Such measures shall include among others:  

(i) Asking for reconsideration of the matter by the acting official;  

(ii) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the Naval service;  

(iii) Referring the matter to, or seeking guidance from, higher authority in the chain of command including, if warranted by the seriousness of the matter, referral to the supervisory attorney assigned to the staff of the acting official’s next superior in the chain of command; or  

(iv) Advising the acting official that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interests for the covered USG attorney, and the covered USG attorney’s responsibility is to the organization.  

(3) If, despite the covered USG attorney’s efforts per paragraph (a)(2) of this section, the highest authority that can
§ 776.33 Client under a disability.

(a) Client under a disability:

(1) When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the covered attorney shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) A covered attorney may seek the appointment of a guardian or take other protective action with respect to a client only when the covered attorney reasonably believes that the client cannot adequately act in the client’s own interest.

(b) [Reserved]

§ 776.34 Safekeeping property.

(a) Safekeeping property. Covered USG attorneys shall not normally hold or safeguard property of a client or third persons in connection with representational duties. See §776.27 of this part.

(b) [Reserved]

§ 776.35 Declining or terminating representation.

(a) Declining or terminating representation:

(1) Except as stated in paragraph (a)(3) of this section, a covered attorney shall not represent a client or, when representation has commenced, shall seek to withdraw from the representation of a client if:

(i) The representation will result in violation of the Rules contained in this subpart or other law or regulation;

(ii) The covered attorney’s physical or mental condition materially impairs his or her ability to represent the client; or

(iii) The covered attorney is dismissed by the client.

(2) Except as stated in paragraph (a)(3) of this section, a covered attorney may seek to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(i) The client persists in a course of action involving the covered attorney’s services that the covered attorney reasonably believes is criminal or fraudulent;

(ii) The client has used the covered attorney’s services to perpetrate a crime or fraud;

(iii) The client insists upon pursuing an objective that the covered attorney considers repugnant or imprudent;

(iv) In the case of covered non-USG attorneys, the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(v) Other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal or other competent authority, a covered attorney shall continue representation notwithstanding good cause for terminating the representation.
(4) Upon termination of representation, a covered attorney shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel, and surrendering papers and property to which the client is entitled and, where a non-USG attorney provided representation, refunding any advance payment of fee that has not been earned. The covered attorney may retain papers relating to the client to the extent permitted by law.

(b) [Reserved]

§776.37 Advisor.

(a) Advisor. In representing a client, a covered attorney shall exercise independent professional judgment and render candid advice. In rendering advice, a covered attorney should refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client’s situation.

(b) [Reserved]

§776.38 Mediation.

(a) Mediation:

(1) A covered attorney may act as a mediator between individuals if:

(i) The covered attorney consults with each individual concerning the implications of the mediation, including the advantages and risks involved, and the effect on the attorney-client confidentiality, and obtains each individual’s consent to the mediation;

(ii) The covered attorney reasonably believes that the matter can be resolved on terms compatible with each individual’s best interests, that each individual will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the individuals if the contemplated resolution is unsuccessful; and,

(iii) The covered attorney reasonably believes that the mediation can be undertaken impartially and without improper effect on other responsibilities the covered attorney has to any of the individuals.

(2) While acting as a mediator, the covered attorney shall consult with each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(3) A covered attorney shall withdraw as a mediator if any of the conditions stated in paragraph (a)(1) of this section is no longer satisfied. Upon withdrawal, the covered attorney shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(b) [Reserved]
§ 776.39 Evaluation for use by third persons.

(a) Evaluation for use by third persons:

(1) A covered attorney may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(i) The covered attorney reasonably believes that making the evaluation is compatible with other aspects of the covered attorney’s relationship with the client, and,

(ii) The client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by §776.25 of this part.

(b) [Reserved]

§ 776.40 Meritorious claims and contentions.

(a) Meritorious claims and contentions. A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

(b) [Reserved]

§ 776.41 Expediting litigation.

(a) Expediting litigation. A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the attorney’s responsibilities to tribunals.

(b) [Reserved]

§ 776.42 Candor and obligations toward the tribunal.

(a) Candor and obligations toward the tribunal:

(1) A covered attorney shall not knowingly:

(i) Make a false statement of material fact or law to a tribunal;

(ii) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(iii) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(iv) Offer evidence that the covered attorney knows to be false. If a covered attorney has offered material evidence and comes to know of its falsity, the covered attorney shall take reasonable remedial measures; or

(v) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

(2) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by §776.25 of this part.

(3) A covered attorney may refuse to offer evidence that the covered attorney reasonably believes is false.

(4) In an ex parte proceeding, a covered attorney shall inform the tribunal of all material facts known to the covered attorney which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) [Reserved]

§ 776.43 Fairness to opposing party and counsel.

(a) Fairness to opposing party and counsel. A covered attorney shall not:

(1) Unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A covered attorney shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party:
(4) In trial, allude to any matter that the covered attorney does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(5) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(i) The person is a relative, an employee, or other agent of a client; and

(ii) The covered attorney reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(b) [Reserved]

§ 776.44 Impartiality and decorum of the tribunal.

(a) Impartiality and decorum of the tribunal. A covered attorney shall not:

(1) Seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law or regulation;

(2) Communicate ex parte with such a person except as permitted by law or regulation; or

(3) Engage in conduct intended to disrupt a tribunal.

(b) [Reserved]

§ 776.45 Extra-tribunal statements.

(a) Extra-tribunal statements:

(1) A covered attorney shall not make an extrajudicial statement about any person or case pending investigation or adverse administrative or disciplinary proceedings that a reasonable person would expect to be disseminated by means of public communication if the covered attorney knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.

(2) A statement referred to in paragraph (a)(1) of this section ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action, and the statement relates to:

(i) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, victim, or witness, or the identity of a victim or witness, or the expected testimony of a party, suspect, victim, or witness;

(ii) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement;

(iii) The performance or results of any forensic examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(iv) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or other proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action;

(v) Information the covered attorney knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of materially prejudicing an impartial proceeding;

(vi) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty; or

(vii) The credibility, reputation, motives, or character of civilian or military officials of the Department of Defense.

(3) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (a)(2)(vii) of this section, a covered attorney involved in the investigation or litigation of a matter may state without elaboration:

(i) The general nature of the claim, offense, or defense;

(ii) The information contained in a public record;

(iii) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved
§ 776.46 Attorney as witness.
(a) Attorney as witness:
(1) A covered attorney shall not act as advocate at a trial in which the covered attorney is likely to be a necessary witness except when:
(i) The testimony relates to an uncontested issue;
(ii) The testimony relates to the nature and quality of legal services rendered in the case; or
(iii) Disqualification of the covered attorney would work substantial hardship on the client.
(2) A covered attorney may act as advocate in a trial in which another attorney in the covered attorney’s office is likely to be called as a witness, unless precluded from doing so by § 776.26 or § 776.28 of this part.
(b) [Reserved]

§ 776.47 Special responsibilities of a trial counsel.
(a) Special responsibilities of a trial counsel. A trial counsel shall:
(1) Recommend to the convening authority that any charge or specification not warranted by the evidence be withdrawn;
(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
(4) Make timely disclosure to the defense of all evidence or information known to the trial counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the trial counsel, except when the trial counsel is relieved of this responsibility by a protective order or regulation;
(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the trial counsel from making an extrajudicial statement that the trial counsel would be prohibited from making under § 776.45 of this part; and
(6) Except for statements that are necessary to inform the public of the nature and extent of the trial counsel’s actions and that serve a legitimate law enforcement purpose, refrain from

and, except when prohibited by law or regulation, the identity of the persons involved;
(iv) The scheduling or result of any step in litigation;
(v) A request for assistance in obtaining evidence and information necessary thereto;
(vi) A warning of danger concerning the behavior of the person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
(vii) In a criminal case, in addition to paragraphs (a)(3)(i) through (a)(3)(vi) of this section:
(A) The identity, duty station, occupation, and family status of the accused;
(B) If the accused has not been apprehended, information necessary to aid in apprehension of that person;
(C) The fact, time, and place of apprehension; and
(D) The identity of investigating and apprehending officers or agencies and the length of the investigation.

(4) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (a)(2)(vii) of this section, a covered attorney may make a statement that a reasonable covered attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the covered attorney or the attorney’s client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(5) The protection and release of information in matters pertaining to the DON is governed by such statutes as the Freedom of Information Act and the Privacy Act, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released (e.g., the Manual of the Judge Advocate General).
(b) [Reserved]
§ 776.51 Dealing with an unrepresented person.

(a) Dealing with an unrepresented person. When dealing on behalf of a client with a person who is not represented by counsel, a covered attorney shall not state or imply that the covered attorney is disinterested. When the covered attorney knows or reasonably should know that the unrepresented person misunderstands the covered attorney's role in the matter, the covered attorney shall make reasonable efforts to correct the misunderstanding.

(b) [Reserved]
§ 776.52 Respect for rights of third persons.

(a) Respect for rights of third persons. In representing a client, a covered attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) [Reserved]

§ 776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.

(a) Responsibilities of the Judge Advocate General and supervisory attorneys.

(1) The JAG and supervisory attorneys shall make reasonable efforts to ensure that all covered attorneys conform to this part.

(2) A covered attorney having direct supervisory authority over another covered attorney shall make reasonable efforts to ensure that the other attorney conforms to this part.

(3) A supervisory attorney shall be responsible for another subordinate covered attorney's violation of this part if:

(i) The supervisory attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory attorney has direct supervisory authority over the other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained and is competent to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved]

§ 776.54 Responsibilities of a subordinate attorney.

(a) Responsibilities of a subordinate attorney.

(1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See §776.10.

(b) [Reserved]

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) Responsibilities regarding non-attorney assistants. With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved]

§ 776.56 Professional independence of a covered USG attorney.

(a) Professional independence of a covered USG attorney.

(1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual
member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney’s status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b)(1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney’s personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney’s professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate’s training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) Unauthorized practice of law. A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney’s performance of legal duties pursuant to a military department’s authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney’s duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See §776.55 of this part. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) Bar admission and disciplinary matters. A covered attorney, in connection
§ 776.67 Judicial and legal officers.

(a) Judicial and legal officers. A covered attorney shall not make a statement that the covered attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved]

§ 776.68 Reporting professional misconduct.

(a) Reporting professional misconduct:

(1) A covered attorney having knowledge that another covered attorney has committed a violation of this part that raises a substantial question as to that covered attorney’s honesty, trustworthiness, or fitness as a covered attorney in other respects, shall report such violation in accordance with the procedures set forth in subpart C of this part.

(2) A covered attorney having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall report such violation in accordance with the procedures set forth in subpart C of this part.

(3) This Rule does not require disclosure of information otherwise protected by §776.25 of this part.

(b) [Reserved]

§ 776.69 Misconduct.

(a) Misconduct. It is professional misconduct for a covered attorney to:

(1) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the covered attorney’s honesty, trustworthiness, or fitness as an attorney in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b)(1) Judge advocates hold a commission as an officer in the Navy or Marine Corps and assume legal responsibilities going beyond those of other citizens. A judge advocate’s abuse of
such commission can suggest an inability to fulfill the professional role of judge advocate and attorney. This concept has similar application to civilian USG attorneys.

(2) Covered non-USG attorneys, Reservists, and Retirees (acting in their civilian capacity), like their active-duty counterparts, are expected to demonstrate model behavior and exemplary integrity at all times. JAG may consider any and all derogatory or beneficial information about a covered attorney, for purposes of determining the attorney’s qualification, professional competence, or fitness to practice law in DON matters, or to administer discipline under this part. Such consideration shall be made, except in emergency situations necessitating immediate action, according to the procedures established in subpart C of this part.

§ 776.71 Requirement to remain in good standing with licensing authorities.

(a) Requirement to remain in good standing with state licensing authority:

(1) Each officer of the Navy appointed as a member of the Judge Advocate General’s Corps, each officer of the Marine Corps designated a judge advocate, and each civil service and contracted civilian attorney who practices law under the cognizance and supervision of the JAG shall maintain a status considered “in good standing” at all times with the licensing authority admitting the individual to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia.

(2) The JAG, the Director, JA Division, HQMC, or any other supervisory attorney may require any covered USG attorney over whom they exercise authority to establish that the attorney continues to be in good standing with his or her licensing authority. Representatives of the JAG or of the Director, JA Division, HQMC, may also inquire directly of any such covered USG attorney’s licensing authority to establish whether he or she continues to be in good standing and has no disciplinary action pending.

(3) Each covered USG attorney shall immediately report to the JAG if any jurisdiction in which the covered USG attorney is or has been a member in good standing commences disciplinary investigation or action against him or her or if the covered USG attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

(4) Each covered non-USG attorney representing an accused in any court-martial or administrative separation proceeding shall be a member in good standing with, and authorized to practice law by, the bar of a Federal court.
§§ 776.72–776.75 32 CFR Ch. VI (7–1–02 Edition)

or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law and found by the military judge to be qualified to represent the accused.

(b)(1) The licensing authority granting the certification or privilege to practice law within the jurisdiction generally defines the phrase “in good standing.” At a minimum it means that the individual is subject to the jurisdiction’s disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law. So long as these conditions are met, a covered USG attorney may be considered “inactive” as to the practice of law within a particular jurisdiction and still be considered “in good standing” for purposes of this section.

(2) Rule for Courts-Martial 502(d)(3)(A) requires that any civilian defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member “in good standing.” see U.S. v. Waggoner, 22 M.J. 692 (AFCMR 1986), and is then authorized to practice law within that jurisdiction. It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of this Rule may result in professional disciplinary action as provided for in this instruction, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under Secretary of the Navy Instruction 1920.6 (series) based on the officer’s failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG’s cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of this Rule may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) Certification by the United States Court of Appeals for the Armed Forces that a covered attorney is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27 UCMJ certification alone.

§§ 776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG’s policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys practicing under JAG cognizance and supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of subpart B of this part or the Code of Judicial Conduct. The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

§ 776.77 Related investigations and actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to
characterize appropriately the nature of a covered attorney’s conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with this part, that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney’s commander through the disciplinary process provided under the UCMJ and implementing regulations, or through referral to appropriate civil authority.

(c) Poor performance of duty is properly addressed by the covered USG attorney’s reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

(d) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving covered attorneys. When, however, investigations into criminal conduct or poor performance reveal conduct that constitutes a violation of this part, such conduct shall be reported to the Rules Counsel immediately.

(e) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this subpart.

§ 776.79 The complaint.

(a) The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of subpart B of this part or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) Contain a complete, factual statement of the acts or omissions constituting the substance of the complaint, as well as a description of any attempted resolution with the covered attorney concerned. Supporting statements, if any, should be attached to the complaint.

(b) A complaint may be initiated by any person, including the Administrative Law Division of the Office of JAG (JAG (13)), or the Judge Advocate Research and Civil Law Branch, JA Division, HQMC (JAR).

§ 776.80 Initial screening and Rules Counsel.

(a) Complaints shall be forwarded to JAG(13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC, to JAR.

(b) JAG(13) and JAR shall log all complaints received and will ensure that a copy is provided to the covered attorney who is the subject of the complaint.

(c) The covered attorney concerned may elect to provide an initial statement regarding the complaint for the Rules Counsel’s consideration. The covered attorney will promptly inform JAG(13) or JAR if he or she intends to submit any such statement. At this
screening stage, forwarding of the complaint to the Rules Counsel will not be unduly delayed to await the covered attorney’s submission.

(d) The Rules Counsel shall initially review the complaint, and any statement submitted by the covered attorney complained of, to determine whether it complies with the requirements set forth in §776.79 of this part.

(1) Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG(13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or
(ii) Alters ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney’s supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney’s chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney’s last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.
(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

1. In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;
2. In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);
3. In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and
4. To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

§ 776.82 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct or other violations of this part, and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a “substantial threat of irreparable harm” include:

1. When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney’s fitness to practice law, and where substantial evidence exists to support the charge;
2. When engaged in the unauthorized practice of law (e.g., failure to maintain good standing in accordance with §776.71 of this part); or
3. Where unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, JAG may order the covered attorney to show cause why he or she should not face interim suspension, pending completion of a professional responsibility investigation. The covered attorney shall have 10 calendar days in which to respond.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice, JAG may direct an interim suspension of the covered attorney’s certification under Articles 26(b) or 27(b), UCMJ, or R.C.M. 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under this instruction.

(d) Within 10 days of JAG’s decision to impose an interim suspension, the covered attorney may request an opportunity to be heard before an impartial officer designated by JAG. Where so requested, that opportunity will be scheduled within 10 calendar days of the request. The designated officer shall receive any information that the covered attorney chooses to submit on the limited issue of whether to continue the interim suspension. The designated officer shall submit a recommendation to JAG within 5 calendar days of conclusion.

(e) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of JAG’s imposition of interim suspension.

(f) Any professional responsibility investigation involving a covered attorney who has been suspended pursuant to this section shall proceed and be concluded without appreciable delay. However, JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension. Where necessary, continuation of the interim suspension shall be reviewed by JAG every 6 months.
§ 776.83 Preliminary inquiry.

(a) The purpose of the preliminary inquiry is to determine whether, in the opinion of the officer appointed to conduct the preliminary inquiry (PIO), the questioned conduct occurred and, if so, whether it constitutes a violation of this part or the Code of Judicial Conduct. The PIO is to recommend appropriate action in cases of substantiated violations.

(b) Upon receipt of the complaint and charges, the PIO shall promptly investigate the charges, generally following the format and procedures set forth in the Manual of the Judge Advocate General for the conduct of command investigations. Reports of relevant investigations by other authorities including, but not limited to, State bar associations may be used. The PIO should also:

(1) Identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable;

(2) Identify, gather, and preserve all other relevant and material evidence; and

(3) Provide the covered attorney concerned an opportunity to review all evidence, affidavits, and statements collected and a reasonable period of time (normally not exceeding 7 days) to submit a written statement or any other written material that the covered attorney wishes considered.

(c) The PIO may appoint and use such assistants as may be necessary to conduct the preliminary inquiry.

(d) The PIO shall personally review the results of the preliminary inquiry to determine whether, by a preponderance of the evidence, a violation of this part or of the Judicial Code has occurred.

(1) If the PIO determines that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the PIO determines by a preponderance of the evidence that a violation did occur, and that corrective action greater than counseling may be warranted, he or she shall then recommend what further action is deemed appropriate.

(e) The PIO shall forward (via the OEGCMJ in appropriate Marine cases) the results of the preliminary inquiry to the Rules Counsel, providing copies to the covered attorney concerned and all parties to whom the charges were previously sent.

(f) The Rules Counsel shall review all preliminary inquiries. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the PIO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part or Code of Judicial Conduct has occurred and that further action is warranted, the Rules Counsel shall determine whether the violation is of a minor or technical nature and must consider whether corrective counseling is appropriate or whether corrective action greater than counseling is warranted. The Rules Counsel shall notify the covered attorney concerned and all parties to whom the charges were previously sent. The Rules Counsel shall then recommend what further action is deemed appropriate.
Counsel’s own review of the report, that further professional discipline or corrective action may be warranted, the Rules Counsel shall:

(i) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, request, on behalf of JAG, that the subject attorney’s OEGCMJ appoint a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation into the matter;

(ii) In all other cases, appoint, on behalf of JAG, a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation; and

(iii) Notify those supervisory attorneys listed in §776.81(c) and §776.81(d) of this part.

§ 776.84 Ethics investigation.

(a) Whenever an ethics investigation is initiated, the covered attorney concerned will be so notified, in writing, by the Rules Counsel.

(b) The covered attorney concerned will be provided written notice of the following rights in connection with the ethics investigation:

(1) To request a hearing before the investigating officer (IO);

(2) To inspect all evidence gathered;

(3) To present written or oral statements or materials for consideration;

(4) To call witnesses at his or her own expense (local military witnesses should be made available at no cost);

(5) To be assisted by counsel (see paragraph (c) of this section);

(6) To challenge the IO for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and

(7) To waive any or all of these rights.

(c) The covered attorney may be represented by counsel at the hearing. Such counsel may be:

(1) A civilian attorney retained at no expense to the Government; or,

(2) In the case of a covered USG attorney, another USG attorney;

(3) Detailed by the cognizant Naval Legal Service Office (NLSO), Law Center, or Legal Service Support Section (LSSS); or

(ii) Requested by the covered attorney concerned, if such counsel is attached to the cognizant NLSO, Law Center, LSSS, or to a Navy or Marine Corps activity located within 100 miles of the hearing site at the time of the scheduled hearing, and if such counsel is reasonably available, as determined by the requested counsel’s reporting senior in his or her sole discretion. There is no right to detailed counsel if requested counsel is made available.

(d) If a hearing is requested, the IO will conduct the hearing after reasonable notice to the covered attorney concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Rules of evidence do not apply. The covered attorney concerned or his or her counsel may question witnesses that appear. The proceedings shall be recorded but no transcript of the hearing need be made. Evidence gathered during, or subsequent to, the preliminary inquiry and such additional evidence as may be offered by the covered attorney shall be considered.

(e) The IO may appoint and use such assistants as may be necessary to conduct the ethics investigation.

(f) The IO shall prepare a report which summarizes the evidence, to include information presented at any hearing.

(1) If the IO believes that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the IO believes that a violation did occur, and that corrective action greater than counseling is warranted, he or she shall then recommend what further action is deemed appropriate.

(g) The IO shall forward the ethics investigation, including the IO’s recommendations, to the Rules Counsel, as follows:

(1) In cases involving Navy or Marine Corps attorneys serving with NLSC units, via Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving with Marine Corps units, via
§ 776.85 Effect of separate proceeding.

(a) For purposes of this section, the term “separate proceeding” includes, but is not limited to, court-martial, non-judicial punishment, administrative board, or similar civilian or military proceeding.

(b) In cases in which a covered attorney is determined, at a separate proceeding determined by the Rules Counsel to afford procedural protection equal to that provided by a preliminary inquiry under this instruction, to have committed misconduct which forms the basis for ethics charges under this instruction, the Rules Counsel may dispense with the preliminary inquiry and proceed directly with an ethics investigation.

(c) In those cases in which a covered attorney is determined to have committed misconduct at a separate proceeding which the Rules Counsel determines has afforded procedural protection equal to that provided by an ethics investigation under this instruction, the previous determination regarding the underlying misconduct is res judicata with respect to that issue during an ethics investigation. A subsequent ethics investigation based on such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel believes, either consistent with the IO recommendation or through the Rules Counsel’s own review of the investigation, that professional disciplinary action greater than corrective counseling is warranted, the Rules Counsel shall forward the investigation, with recommendations as to appropriate disposition, to JAG.

§ 776.85 Effect of separate proceeding.

(a) For purposes of this section, the term “separate proceeding” includes, but is not limited to, court-martial, non-judicial punishment, administrative board, or similar civilian or military proceeding.

(b) In cases in which a covered attorney is determined, at a separate proceeding determined by the Rules Counsel to afford procedural protection equal to that provided by a preliminary inquiry under this instruction, to have committed misconduct which forms the basis for ethics charges under this instruction, the Rules Counsel may dispense with the preliminary inquiry and proceed directly with an ethics investigation.

(c) In those cases in which a covered attorney is determined to have committed misconduct at a separate proceeding which the Rules Counsel determines has afforded procedural protection equal to that provided by an ethics investigation under this instruction, the previous determination regarding the underlying misconduct is res judicata with respect to that issue during an ethics investigation. A subsequent ethics investigation based on
such misconduct shall afford the covered attorney a hearing into whether the underlying misconduct constitutes a violation of this part, whether the violation affects his or her fitness to practice law, and what sanctions, if any, are appropriate.

(d) The Rules Counsel may dispense with the preliminary inquiry and ethics investigation, and if warranted, recommend to JAG that the covered attorney concerned be disciplined, consistent with this subpart, after providing the covered attorney concerned written notice and an opportunity to be heard in writing, in those cases in which a covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by one year or more of imprisonment) in a civilian or military court which, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the DON or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this instruction.

§ 776.86 Action by JAG.

(a) JAG is not bound by the recommendation rendered by the Rules Counsel, IO, PIO, or any other interested party, but will base any action on the record as a whole. Nothing in this instruction limits JAG authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated this part, either in DON or civilian proceedings.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of subpart B of this part or its application to the facts of a particular case.

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, JAG will take such action as JAG considers appropriate in JAG’s sole discretion. JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Where determining the allegations to be unfounded, or that no further action is warranted, direct the Rules Counsel to make appropriate file entries and to notify the complainant, covered attorney concerned, and all interested parties of such determination.

(3) Where determining the allegations to be supported by clear and convincing evidence, take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney’s authority to provide legal assistance;

(iv) Where finding that the misconduct so adversely affects the covered attorney’s continuing ability to practice law in the naval service or that the misconduct so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ (10 U.S.C. 827(b)), or R.C.M. 502(b)(3), MCM, 1998, should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently;

(v) In the case of a judge, where finding that the misconduct so prejudices the reputation of military trial and appellate judges that certification under Article 26(b), UCMJ (10 U.S.C. 826(b)), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently; and
§ 776.87  
(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously provided copies of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before courts-martial or the U.S. Navy-Marine Corps Court of Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

§ 776.87 Finality.  
Any action taken by JAG is final, subject to any remedies afforded by Navy Regulations or any other regulation to the covered attorney concerned.

§ 776.88 Report to licensing authorities.  
Upon determination by JAG that a violation of the Rules or the Code of Judicial Conduct has occurred, JAG may cause the Rules Counsel to report that fact to the Federal, State, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. The JAG’s decision in no way diminishes a covered attorney’s responsibility to report adverse professional disciplinary action as required by the attorney’s Federal, State, and local bar or other licensing authority.

Subpart D [Reserved]  

PARTS 777–799 [RESERVED]
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
**Table of CFR Titles and Chapters**

*(Revised as of July 1, 2002)*

**Title 1—General Provisions**

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

**Title 2—[Reserved]**

**Title 3—The President**

I Executive Office of the President (Parts 100—199)

**Title 4—Accounts**

I General Accounting Office (Parts 1—99)

**Title 5—Administrative Personnel**

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Part 2100)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Part 3201)
XXIII Department of Energy (Part 3301)
XXIV Federal Energy Regulatory Commission (Part 3401)
XXV Department of the Interior (Part 3501)
XXVI Department of Defense (Part 3601)
Title 5—Administrative Personnel—Continued

XXVIII Department of Justice (Part 3801)
XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
XXXIII Overseas Private Investment Corporation (Part 4301)
XXXV Office of Personnel Management (Part 4501)
XL Interstate Commerce Commission (Part 5001)
XLI Commodity Futures Trading Commission (Part 5101)
XLII Department of Labor (Part 5201)
XLIII National Science Foundation (Part 5301)
XLV Department of Health and Human Services (Part 5501)
XLVI Postal Rate Commission (Part 5601)
XLVII Federal Trade Commission (Part 5701)
XLVIII Nuclear Regulatory Commission (Part 5801)
L Department of Transportation (Part 6001)
LII Export-Import Bank of the United States (Part 6201)
LIII Department of Education (Parts 6300—6399)
LIV Environmental Protection Agency (Part 6401)
LVII General Services Administration (Part 6701)
LVIII Board of Governors of the Federal Reserve System (Part 6801)
LIX National Aeronautics and Space Administration (Part 6901)
LX United States Postal Service (Part 7001)
LXI National Labor Relations Board (Part 7101)
LXII Equal Employment Opportunity Commission (Part 7201)
LXIII Inter-American Foundation (Part 7301)
LXV Department of Housing and Urban Development (Part 7501)
LXVI National Archives and Records Administration (Part 7601)
LXIX Tennessee Valley Authority (Part 7901)
LXI Consumer Product Safety Commission (Part 8101)
LXXII Department of Agriculture (Part 8301)
LXXIV Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI Federal Retirement Thrift Investment Board (Part 8601)
LXXVII Office of Management and Budget (Part 8701)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

538
Title 7—Agriculture—Continued

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)
VII Farm Service Agency, Department of Agriculture (Parts 700—799)
VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)
XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)
## Title 7—Agriculture—Continued

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXVI</td>
<td>National Agricultural Statistics Service, Department of Agriculture</td>
<td>(Parts 3600—3699)</td>
<td></td>
</tr>
<tr>
<td>XXXVII</td>
<td>Economic Research Service, Department of Agriculture</td>
<td>(Parts 3700—3799)</td>
<td></td>
</tr>
<tr>
<td>XXXVIII</td>
<td>World Agricultural Outlook Board, Department of Agriculture</td>
<td>(Parts 3800—3899)</td>
<td></td>
</tr>
<tr>
<td>XLI</td>
<td>[Reserved]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XLII</td>
<td>Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture</td>
<td>(Parts 4200—4299)</td>
<td></td>
</tr>
</tbody>
</table>

## Title 8—Aliens and Nationality

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Immigration and Naturalization Service, Department of Justice</td>
<td>(Parts 1—599)</td>
<td></td>
</tr>
</tbody>
</table>

## Title 9—Animals and Animal Products

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Animal and Plant Health Inspection Service, Department of Agriculture</td>
<td>(Parts 1—199)</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture</td>
<td>(Parts 200—299)</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>Food Safety and Inspection Service, Department of Agriculture</td>
<td>(Parts 300—599)</td>
<td></td>
</tr>
</tbody>
</table>

## Title 10—Energy

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Nuclear Regulatory Commission</td>
<td>(Parts 0—199)</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Department of Energy</td>
<td>(Parts 200—699)</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>Department of Energy</td>
<td>(Parts 700—999)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Department of Energy (General Provisions)</td>
<td>(Parts 1000—1099)</td>
<td></td>
</tr>
<tr>
<td>XVII</td>
<td>Defense Nuclear Facilities Safety Board</td>
<td>(Parts 1700—1799)</td>
<td></td>
</tr>
<tr>
<td>XVIII</td>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>(Part 1800)</td>
<td></td>
</tr>
</tbody>
</table>

## Title 11—Federal Elections

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Federal Election Commission</td>
<td>(Parts 1—9099)</td>
<td></td>
</tr>
</tbody>
</table>

## Title 12—Banks and Banking

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Agency</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Comptroller of the Currency, Department of the Treasury</td>
<td>(Parts 1—199)</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Federal Reserve System</td>
<td>(Parts 200—299)</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>Federal Deposit Insurance Corporation</td>
<td>(Parts 300—399)</td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td>Export-Import Bank of the United States</td>
<td>(Parts 400—499)</td>
<td></td>
</tr>
<tr>
<td>V</td>
<td>Office of Thrift Supervision, Department of the Treasury</td>
<td>(Parts 500—599)</td>
<td></td>
</tr>
<tr>
<td>VI</td>
<td>Farm Credit Administration</td>
<td>(Parts 600—699)</td>
<td></td>
</tr>
</tbody>
</table>
Title 12—Banks and Banking—Continued

VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)
IV Emergency Steel Guarantee Loan Board (Parts 400—499)
V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
V National Aeronautics and Space Administration (Parts 1200—1299)
VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
Title 15—Commerce and Foreign Trade—Continued

Chapter

IX  National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900–999)

XI  Technology Administration, Department of Commerce (Parts 1100–1199)

XIII East-West Foreign Trade Board (Parts 1300–1399)

XIV  Minority Business Development Agency (Parts 1400–1499)

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS

XX  Office of the United States Trade Representative (Parts 2000–2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300–2399)

Title 16—Commercial Practices

I  Federal Trade Commission (Parts 0–999)

II  Consumer Product Safety Commission (Parts 1000–1799)

Title 17—Commodity and Securities Exchanges

I  Commodity Futures Trading Commission (Parts 1–199)

II  Securities and Exchange Commission (Parts 200–399)

IV  Department of the Treasury (Parts 400–499)

Title 18—Conservation of Power and Water Resources

I  Federal Energy Regulatory Commission, Department of Energy (Parts 1–399)

III Delaware River Basin Commission (Parts 400–499)

VI  Water Resources Council (Parts 700–799)

VIII  Susquehanna River Basin Commission (Parts 800–899)

XIII Tennessee Valley Authority (Parts 1300–1399)

Title 19—Customs Duties

I  United States Customs Service, Department of the Treasury (Parts 1–199)

II  United States International Trade Commission (Parts 200–299)

III International Trade Administration, Department of Commerce (Parts 300–399)

Title 20—Employees’ Benefits

I  Office of Workers’ Compensation Programs, Department of Labor (Parts 1–199)

II  Railroad Retirement Board (Parts 200–399)
Title 20—Employees' Benefits—Continued

III Social Security Administration (Parts 400—499)
IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VII Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)
Title 23—Highways—Continued

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)
VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—899)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)
VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)
SUBTITLE B—REGULATIONS RELATING TO LABOR
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
Title 29—Labor—Continued

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV Geological Survey, Department of the Interior (Parts 400—499)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—799)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE
I Monetary Offices, Regulations of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)
Title 32—National Defense

Subtitle A—Department of Defense
I Office of the Secretary of Defense (Parts 1—399)
V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
VII Department of the Air Force (Parts 800—1099)

Subtitle B—Other Regulations Relating to National Defense
XII Defense Logistics Agency (Parts 1200—1299)
XVI Selective Service System (Parts 1600—1699)
XVIII National Counterintelligence Center (Parts 1800—1899)
XIX Central Intelligence Agency (Parts 1900—1999)
XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
XXI National Security Council (Parts 2100—2199)
XXIV Office of Science and Technology Policy (Parts 2400—2499)
XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)
II Corps of Engineers, Department of the Army (Parts 200—399)
IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)
Subtitle B—Regulations of the Offices of the Department of Education
I Office for Civil Rights, Department of Education (Parts 100—199)
II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI Office of Postsecondary Education, Department of Education (Parts 600—699)
VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)
XI National Institute for Literacy (Parts 1100—1199)
Subtitle C—Regulations Relating to Education
XII National Council on Disability (Parts 1200—1299)
Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Part 1501)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)
VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)
Title 40—Protection of Environment—Continued

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)
51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)
60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61 Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 61-1—61-999)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1—101-99)
102 Federal Management Regulation (Parts 102-1—102-299)
105 General Services Administration (Parts 105-1—105-999)
109 Department of Energy Property Management Regulations (Parts 109-1—109-99)
114 Department of the Interior (Parts 114-1—114-99)
115 Environmental Protection Agency (Parts 115-1—115-99)
128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

SUBTITLE E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201-1—201-99) [Reserved]

SUBTITLE F—Federal Travel Regulation System

300 General (Parts 300-1—300-99)
301 Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)
302 Relocation Allowances (Parts 302-1—302-99)
303 Payment of Expenses Connected with the Death of Certain Employees (Part 303-70)
304 Payment from a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)
IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)
V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)
Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)
Subtitle B—Regulations Relating to Public Lands
I Bureau of Reclamation, Department of the Interior (Parts 200—499)
II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)
IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

Subtitle A—Department of Health and Human Services (Parts 1—199)
Subtitle B—Regulations Relating to Public Welfare
II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)
V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI National Science Foundation (Parts 600—699)
VII Commission on Civil Rights (Parts 700—799)
VIII Office of Personnel Management (Parts 800—899)
X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII Corporation for National and Community Service (Parts 1200—1299)
XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI Legal Services Corporation (Parts 1600—1699)
XVII National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI Commission on Fine Arts (Parts 2100—2199)
Chap.  Title 45—Public Welfare—Continued

XXIII  Arctic Research Commission (Part 2301)
XXIV  James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV  Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I  Coast Guard, Department of Transportation (Parts 1—199)
II  Maritime Administration, Department of Transportation (Parts 200—399)
III  Coast Guard (Great Lakes Piloting), Department of Transportation (Parts 400—499)
IV  Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I  Federal Communications Commission (Parts 0—199)
II  Office of Science and Technology Policy and National Security Council (Parts 200—299)
III  National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1  Federal Acquisition Regulation (Parts 1—99)
2  Department of Defense (Parts 200—299)
3  Department of Health and Human Services (Parts 300—399)
4  Department of Agriculture (Parts 400—499)
5  General Services Administration (Parts 500—599)
6  Department of State (Parts 600—699)
7  United States Agency for International Development (Parts 700—799)
8  Department of Veterans Affairs (Parts 800—899)
9  Department of Energy (Parts 900—999)
10  Department of the Treasury (Parts 1000—1099)
12  Department of Transportation (Parts 1200—1299)
13  Department of Commerce (Parts 1300—1399)
14  Department of the Interior (Parts 1400—1499)
15  Environmental Protection Agency (Parts 1500—1599)
16  Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17  Office of Personnel Management (Parts 1700—1799)
18  National Aeronautics and Space Administration (Parts 1800—1899)
19  Broadcasting Board of Governors (Parts 1900—1999)
20  Nuclear Regulatory Commission (Parts 2000—2099)
Title 48—Federal Acquisition Regulations System—Continued

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
29 Department of Labor (Parts 2900—2999)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
35 Panama Canal Commission (Parts 3500—3599)
44 Federal Emergency Management Agency (Parts 4400—4499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
54 Defense Logistics Agency, Department of Defense (Part 5452)
57 African Development Agency, Department of Defense (Part 5452)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)
SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION
I Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Transportation (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
Title 49—Transportation—Continued

XI Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

XII Transportation Security Administration, Department of Transportation (Parts 1500—1599)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
## Alphabetical List of Agencies Appearing in the CFR

### (Revised as of July 1, 2002)

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>26, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development, United States</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, LXXIII</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII: 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>AMTRAK</td>
<td>49, VII</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 51</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of People Who Are Broadcasting Board of Governors</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>44, IV</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 13</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information</td>
<td>15, XXXIII; 47, III</td>
</tr>
<tr>
<td>Administration</td>
<td></td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>5, XLI; 17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXXI; 16, II</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of Columbia</td>
<td>28, VIII</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Department</td>
<td>5, XXVI; 32, Subtitle A; 40, VII</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III, 48, 51</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 2</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>District of Columbia, Court Services and Offender Supervision Agency for the Drug Enforcement Administration</td>
<td>28, VIII</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>5, LIII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXIII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 44</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority</td>
<td>5, XIV; 22, XIV</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 103</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, II</td>
</tr>
<tr>
<td>Federal Reserve System, Board of Governors</td>
<td>5, LVIIM</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasses Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>General Accounting Office</td>
<td>4, I</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVIIM; 41, 105</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Property Management Regulation</td>
<td>41, 103</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>General</td>
<td>41, 300</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td>41, 301</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>5, XLV; 45, Subtitle A</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>5, LXV; 24, Subtitle B</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight, Office of</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, IV</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, IV</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, IV</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>28, VII</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Information Security Oversight Office, National Archives and Records Administration</td>
<td>32, XX</td>
</tr>
<tr>
<td>Inspector General</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>24, XII</td>
</tr>
<tr>
<td>Housing and Urban Development Department</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>5, LXIII; 22, X</td>
</tr>
<tr>
<td>Interior Department</td>
<td>25, VII</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>48, 14</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>41, 114</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>30, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States</td>
<td>22, XI</td>
</tr>
<tr>
<td>and Mexico, United States Section</td>
<td></td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States</td>
<td>22, XII</td>
</tr>
<tr>
<td>International Fishing and Related Activities</td>
<td>50, III</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration, United States</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>5, XXVIII; 28, I, XI; 40, IV</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>26, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 128</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLII</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans’ Employment and Training Service, Office of the</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Assistant Secretary for Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXXVII; 14, VI;</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Morris K. Udall Scholarship and Excellence in National</td>
<td>36, XVI</td>
</tr>
<tr>
<td>Environmental Policy Foundation</td>
<td></td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>5, LIIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>5, LXVI; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Bureau of Standards</td>
<td>15, II</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Crime Prevention and Privacy Compact Council</td>
<td>29, IX</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, X</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>5, XLIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology</td>
<td>47, II</td>
</tr>
<tr>
<td>Technology Policy</td>
<td></td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Commission</td>
<td></td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 20</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>26, VI</td>
</tr>
<tr>
<td>Oklahoma City National Memorial Trust</td>
<td>36, XV</td>
</tr>
<tr>
<td>Operations Office</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Panama Canal Commission</td>
<td>48, 35</td>
</tr>
<tr>
<td>Panama Canal Regulations</td>
<td>35, I</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Peace Corps</td>
<td>22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Pension Benefit Guaranty Corporation</td>
<td>29, XL</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, I, XXXV; 45, VIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 17</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Postal Rate Commission</td>
<td>5, XLVI; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, LX; 39, I</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President’s Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>29, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>29, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Regional Action Planning Commissions</td>
<td>13, V</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 392</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLIII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td>47, II</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>37, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>State Department</td>
<td>22, I; 28, XI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, LXIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>5, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II; III; 49, V</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXXI; 12, XV; 17, IV;</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>49, 10</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>49, 8</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


<table>
<thead>
<tr>
<th>32 CFR</th>
<th>1986</th>
<th>51 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter VI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>701.31—701.32 (Subpart C)</td>
<td>Added</td>
<td>42836</td>
</tr>
<tr>
<td>701.117 (n) added</td>
<td>11019</td>
<td></td>
</tr>
<tr>
<td>706 Authority citation revised</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>706.2 Table One amended</td>
<td>24-25, 5518, 28935, 28937, 28938, 29465, 29467, 30214, 32313, 35634</td>
<td></td>
</tr>
<tr>
<td>Table Two amended</td>
<td></td>
<td>29468, 33745, 41478</td>
</tr>
<tr>
<td>Table Three amended</td>
<td></td>
<td>5518, 35634</td>
</tr>
<tr>
<td>Table Four amended</td>
<td>24-25, 17183, 28938, 28940, 32314</td>
<td></td>
</tr>
<tr>
<td>Table Five amended</td>
<td>24, 3952, 9652, 11304, 11305, 12143, 12144, 12316, 12850, 12851, 13217, 13218, 16175, 16980-16982, 17182, 17183, 27536, 28934-28937, 28939, 28940, 28941, 29465, 29466, 29468, 30493, 30494, 31103-31112, 32314, 32315, 32316, 33746, 36401, 41478</td>
<td></td>
</tr>
<tr>
<td>724.109 (a)(4) revised</td>
<td>44909</td>
<td></td>
</tr>
<tr>
<td>726 Revised</td>
<td>23972</td>
<td></td>
</tr>
<tr>
<td>732 Revised</td>
<td>18779</td>
<td></td>
</tr>
<tr>
<td>735 Added</td>
<td>15321</td>
<td></td>
</tr>
<tr>
<td>737 Removed</td>
<td>22282</td>
<td></td>
</tr>
<tr>
<td>742 Removed</td>
<td>7013</td>
<td></td>
</tr>
<tr>
<td>754 Removed</td>
<td>19830</td>
<td></td>
</tr>
<tr>
<td>762 Authority citation revised</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.4 (b) amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.6 Amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.8 Amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.10 Amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.34 (b) amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.50 (a) amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>762.58 (b) amended</td>
<td>22283</td>
<td></td>
</tr>
<tr>
<td>701.100—701.116 (Subpart F) Revised</td>
<td>11052</td>
<td></td>
</tr>
<tr>
<td>701.116 (j) correctly added</td>
<td>17295</td>
<td></td>
</tr>
<tr>
<td>701.117—701.120 (Subpart G) Revised</td>
<td>11068</td>
<td></td>
</tr>
<tr>
<td>701.117 (o) added</td>
<td>5535</td>
<td></td>
</tr>
<tr>
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#### 1999

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### List of CFR Sections Affected

#### 32 CFR—Continued

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| 725 | Added; interim | 26189 |
| Revised | 48861 |

#### 1990

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<td>56 FR</td>
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| Table Three amended | 153, 1418, 27817 |
| Table Four amended | 153, 1418, 27817, 38687 |
| Table Five amended | 1418, 6392, 14416, 27818, 27819, 29200, 35314, 38687, 48596 |

| 706.3 | Table One amended | 1419 |
| Table One revised | 27818 |

| 720.40—720.47 (Subpart D) | Added | 47876 |
| Authority citation revised | 12173 |
| Table Two amended | 27817, 27819 |
| Table Three amended | 153, 1418, 27817 |
| Table Four amended | 153, 1418, 27817, 38687 |
| Table Five amended | 1418, 6392, 14416, 27818, 27819, 29200, 35314, 38687, 48596 |

| 706.6 | (c) correctly revised | 30960 |

#### 1991

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| Table Five amended | 1418, 6392, 14416, 27818, 27819, 29200, 35314, 38687, 48596 |

| 706.3 | Table One amended | 1419 |
| Table One revised | 27818 |

| 720.40—720.47 (Subpart D) | Added | 47876 |
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| Table Two amended | 27817, 27819 |
| Table Three amended | 153, 1418, 27817 |
| Table Four amended | 153, 1418, 27817, 38687 |
| Table Five amended | 1418, 6392, 14416, 27818, 27819, 29200, 35314, 38687, 48596 |

| 706.6 | (c) correctly revised | 30960 |

#### 1992

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| (i) introductory text revised | 37100 |
| (i)(1) amended | 37100 |

| (b)(4) and (5) removed; (b)(6) and (7) redesignated as (b)(4) and (5); (e)(2) added | 40609 |

| (b)(1) amended | 57962 |

| 706.2 | Table One amended | 4855, 4938, 11266, 59924, 59926, 59927 |
| Table Two amended | 4854, 14356 |
| Table Three amended | 4855, 4938, 5857, 11266, 14357, 23062, 24548, 59925, 59926, 59927 |
| Table Four amended | 5858, 14357, 23062, 24548, 31451, 31452 |
| Table Five amended | 4855, 5857, 14356, 28463, 31452, 35464, 35465, 41698, 46299, 59925 |

| 720.1—720.13 (Subpart A) Revised | 5228 |
| 720.20—720.25 (Subpart B) Revised | 5232 |

| 725 | Revised; interim | 2463 |
| Revised | 4722 |

| 751 | Revised | 5055 |
| 756 | Revised | 4736 |
| 757 | Revised | 5072 |

#### 1993

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32 CFR (7–1–02 Edition)

32 CFR—Continued

Chapter VI—Continued

1995

32 CFR

1994

Table of contents

1996

1997
**List of CFR Sections Affected**

**32 CFR—Continued**

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2001

Chapter VI

701.118 (v) and (w) added | 54928
706.2 Table Three amended | 53523
Table Four amended | 53524
Table Five amended | 53532
Tables Four and Five amended | 53532
... 53525, 53526, 53527, 53530, 53531, 53532
Tables Two and Five amended | 53528
Table Two amended | 53528
Regulation at 66 FR 53528 eff. date corrected | 56383

2002

(Regulations published from January 1, 2002, through July 1, 2002)

Chapter VI

701.118 (p) removed | 30554
706.2 Tables Four and Five amended | 18486—18489, 18491, 18492
Table Five amended | 18490
Table Four amended | 30804, 30805