AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

litigated claims, the Navy has no further authority to effect settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12174, Apr. 2, 1990; 65 FR 60861, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004]

§ 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. Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OOCL), 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.

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976; 55 FR 12174, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Sec.
755.1 Statutory authority.
755.2 Scope.
755.3 Claims not cognizable.
755.4 Limitation on claims.
755.5 Complaint by the injured party and investigation.
755.6 Action where offenders are members of one command.
755.7 Action where offenders are members of different commands.
755.8 Reconsideration and appeal.
755.9 Effect of court-martial proceedings.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and5148; E.O. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 56 FR 42232, Aug. 27, 1991, unless otherwise noted.

NOTE 1: This part 755 is chapter IV of the Manual of the Judge Advocate General of the Navy.

NOTE 2: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this part 755 as the "UCMJ". The Manual for Courts-Martial, United States, 1984 (E.O. 12473 of August 1, 1984) is referred to in this part 755 as "MCM 1984".

§ 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 standard for determining financial responsibility.

(c) *Only direct damages considered.* Assessment will be made only for direct physical damages to the property. Indirect, remote, or inconsequential damage will not be considered.

§ 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 member's commanding officer who will convene an investigation into the incident. 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 basic pay, as defined in paragraph 126h(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

§755.7 Action where offenders are members of different commands.

(a) *Action by common superior.* The investigative report shall be forwarded to the common superior exercising general court-martial jurisdiction over the commands to which the alleged offenders are assigned. That officer shall ensure the alleged offenders are shown the investigative report and permitted to comment on it, should they desire, before action is taken on the claim. That 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 his command. If the claim is found payable under these regulations, he shall fix the amount to be assessed against the offenders and direct the appropriate commanding officers to take action accordingly.

(b) *Forwarding to SECNAV (JAG).* Where it is not practical or possible to carry out the procedure in §755.7(a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

§755.8 Reconsideration and appeal.

(a) *Reconsideration.* The OEGCM may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCM contemplates acting favorably on the request, he will provide all individuals interested in the claim with notice and an opportunity to respond. The basis for any 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.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476 (3 CFR, 1969 Comp., p. 132); 32 CFR 700.206 and 700.1202.

SOURCE: 57 FR 4736, Feb. 7, 1992, unless otherwise noted.

§ 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of nonappropriated-fund instrumentalities.

§ 756.2 Definitions.

(a) *Nonappropriated-fund instrumentality (NAFI).* An instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) *Nonappropriated-funds.* Funds generated through the use and patronage of NAFI's, not including funds appropriated by Congress.

(c) *Employees of NAFI.* Civilian personnel employed by NAFI's whose salaries are paid from nonappropriated-funds. Also, military personnel working part-time at NAFI's when compensated from nonappropriated-funds.

§ 756.3 Notification.

(a) Some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the 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.