

**PART 177—ADMINISTRATIVE
CLAIMS UNDER FEDERAL TORT
CLAIMS ACT**

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AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11.

SOURCE: 33 FR 12405, Sept. 4, 1968, unless otherwise noted.

§ 177.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM (referred to in this part as an "employee") while acting within the scope of his office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For the purpose of this part, a claim is deemed to have been presented when OPM receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury", Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to OPM, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to OPM as of the date that the claim is received by OPM. If a claim is mistakenly addressed to or filed with OPM, OPM shall forthwith transfer it to the appropriate Federal agency, if

ascertainable, or return it to the claimant.

(b) Except as provided in paragraph (c)(1) of this section, a claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(c) (1) When a claim is for \$500 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the OPM's regional office which employs the individual whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. In these cases, the address of the appropriate Regional Director is one of the following:

- New England Region, John W. McCormack, Post Office and Courthouse Building, Boston MA 02109 (formerly Boston Region).
 Eastern Region, New Federal Building, 26 Federal Plaza, New York, NY 10007 (formerly New York Region).
 Mid-Atlantic Region, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106 (formerly Philadelphia Region).
 Southeast Region, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, GA 30303 (formerly Atlanta Region).
 Great Lakes Region, John C. Kluczynski, Federal Building, 29th Floor, 230 South Dearborn Street, Chicago, IL 60604 (formerly Chicago Region).
 Southwest Region, 100 Commerce Street, Dallas, TX 75242 (formerly Dallas Region).
 Mid-Continent Region, 1256 Federal Building, 1520 Market Street, St. Louis, MO 63103 (formerly St. Louis Region).
 Rocky Mountain Region, Building 20, Denver Federal Center, Denver, CO 80225 (formerly Denver Region).
 Western Region, 525 Market Street, 23rd Floor, San Francisco, CA 94105 (formerly San Francisco Region).
 Northwest Region, Federal Building, 26th Floor, 915 Second Avenue, Seattle, WA 98174 (formerly Seattle Region).

(2) If the OPM employee's office of employment is the Central Office of OPM or is not known and not reasonably ascertainable, the claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 65025, Nov. 9, 1979]

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented 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 his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

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

(2) Decedent's employment or occupation at time of death, including his

monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent on him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death 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 in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician's reports previously or thereafter made of the physical or mental condition

which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this sec-

tion, a Regional Director is delegated authority, to be exercised in his discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part any claim for \$500 or less which is based on the alleged negligence or wrongful act or omission of an employee of his Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used for OPM, or both, is more than \$500, or all damage to non-Government property being used by individuals not employed by the Government is more than \$500.

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 76747, Dec. 28, 1979]

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of \$25,000 may be effected only with the advance written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his designee:

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

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or

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settled under this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 177.107, the referral or request shall be transmitted to the Department of Justice by the General Counsel of OPM or his designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with OPM action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury", Standard Form 95, (2) a claims settlement agreement, and (3) a "Voucher for Payment", Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and

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against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 179—CLAIMS COLLECTION STANDARDS

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AUTHORITY: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.