

Department of Health and Human Services

§ 34.9

- (5) Appraisal or estimate fees.
- (6) Automobiles, except when required to perform official business or parked on a government-owned or operated parking lot or garage incident to employment.
- (7) Loss or damage caused in whole or in part by the negligent or wrongful act of the claimant or his agent or employee.
- (8) Claims under \$30.00.
- (9) Stolen property when it's determined that claimant failed to exercise due care in protecting his or her property.
- (10) Sales Tax. Reimbursements for the payment of sales tax incurred in connection with repairs or replacing an item will not be allowed.

§ 34.6 Reconsideration or appeal.

- (a) Requests for reconsideration or appeal shall be forwarded to the Associate General Counsel, General Law Division, Office of the General Counsel, within sixty days from the date of the Claims Officer's decision along with any new evidence supporting the claim.
- (b) A voucher or a supplemental voucher will be prepared by the Claims Officer if it is determined that the claimant's request for reconsideration should be allowed.

§ 34.7 Payment procedures.

- (a) For all claims that are approved in whole or part, the claims officer shall prepare and mail a payment voucher to the claimant.
- (b) This voucher shall be mailed to the claimant with appropriate instructions.
- (c) Upon receipt of the signed payment voucher, the claims officer shall sign and forward the signed voucher to the office where the claimant is or was employed for processing.
- (d) Upon receipt of the signed payment voucher, the office in which the claimant is or was employed will submit the voucher for transmission to the Treasury Department for issuance of a check in the sum allowed.
- (e) Funds paid for settlement of allowed claims shall be made from appropriations of the office in which the claimant is or was employed.

§ 34.8 Computation of award and settlement.

- (a) The amount awarded on any item of property shall not exceed the adjusted cost of the item based on the cost of replacing it with a similar one of the same quality minus the appropriate depreciation rate. The amount normally payable on property damaged beyond economical repair shall not exceed its depreciated value. If the cost of repairs is less than the depreciated value it shall be considered economically repairable and the costs of repairs shall be the amount payable.
- (b) Depreciation in value of an item shall be determined by considering the type of article involved, its replacement cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim.
- (c) Notwithstanding any other provision of law, settlements of claims under the MPCE Act are final and conclusive. The acceptance of a settlement constitutes a complete release of any claim against the United States and any employee of the government whose act or omission gave rise to the claim by reason of the same claim.

§ 34.9 Claims involving carriers or insurers.

- (a) *Carriers.* (1) If property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner shall file a written claim for reimbursement against the carrier no later than nine months from the date of delivery or should have been made according to the terms of the contract. It shall be filed before or concurrent with submitting a claim against the government under this part.
- (2) The demand shall be made against the responsible carrier if more than one contract was issued, a separate demand shall be made against the last carrier on each such document, unless claimant knows which carrier was in possession of the property when the damage or loss occurred.
- (b) *Insurers.* (1) If property which is damaged, lost, or destroyed incident to the claimant's service is insured in

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whole or in part, the claimant shall inform the Claims Officer whether a claim was made with the insurance carrier.

(2) The claimant shall inform the claims officer if he or she received a reimbursement from the insurance carrier for the item that was damaged or lost. The exact amount of the reimbursement must be reported.

(3) If the claimant receives a reimbursement for the lost or damaged property from an insurance carrier, the maximum amount that can be recovered from the Department is the difference between an appropriate award under this regulation and the amount recovered from the insurance carrier. The claimant is responsible for submitting to the Department documentation that identifies the exact amount of the reimbursement.

PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

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AUTHORITY: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

SOURCE: 32 FR 14101, Oct. 11, 1967, unless otherwise noted.

Subpart A—General

§ 35.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or per-

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sonal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Health and Human Services while acting within the scope of his office or employment.

Subpart B—Procedures

§ 35.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Health and Human Services receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage 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 the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Department Claims Officer or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed, with the office, local, regional, or headquarters, of the constituent organization having jurisdiction over the employee involved in the accident or incident, or with the