

(6) With respect to which EPA has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least \$25.00; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations at 26 CFR 301.6402-6 relating to the eligibility of a debt for tax return offset have been satisfied.

§ 13.36 Administrative charges.

In accordance with § 13.11, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 13.37 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after EPA makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. EPA's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 13.38 Review within the Agency.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice;

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by EPA.

(c) *Review of the evidence.* EPA will consider all available evidence related to the debt. Within 30 days, if feasible, EPA will notify the debtor whether EPA has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 13.39 Agency determination.

(a) Following review of the evidence, EPA will issue a written decision.

(b) If EPA either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If EPA cancels its original determination, the debt will not be referred to IRS.

§ 13.40 Stay of offset.

If the debtor timely notifies the EPA that he or she is exercising the right described in § 13.38(a) and timely submits evidence in accordance with § 13.38(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

PART 14—EMPLOYEE PERSONAL PROPERTY CLAIMS

Sec.

14.1 Scope and purpose.

14.2 Definitions.

14.3 Incident to service.

14.4 Reasonable and proper.

§ 14.1

- 14.5 Who may file a claim.
- 14.6 Time limits for filing a claim.
- 14.7 Where to file a claim.
- 14.8 Investigation of claims.
- 14.9 Approval and payment of claims.
- 14.10 Procedures for reconsideration.
- 14.11 Principal types of allowable claims.
- 14.12 Principal types of unallowable claims.
- 14.13 Items fraudulently claimed.
- 14.14 Computation of award.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 3721).

SOURCE: 51 FR 24146, July 2, 1986, unless otherwise noted.

§ 14.1 Scope and purpose.

This part prescribes regulations for the Military Personnel and Civilian Employees' Claims Act of 1964 (the Act), 31 U.S.C. 3721. The Act allows the Administrator of the U.S. Environmental Protection Agency (EPA) to settle and pay claims of EPA employees for damage to or loss of their personal property which was incident to service. A claim under the Act is allowed only where the claim is substantiated and the Administrator determines that possession of the property was reasonable or proper under the circumstances existing at the time and place of the loss and no part of the loss was caused by any negligent or wrongful act or omission of the employee or his/her agent.

§ 14.2 Definitions.

As used in this part:

(a) *EPA Claims Officer* is the Agency official delegated the responsibility by the Administrator to carry out the provisions of the Act.

(b) *Claim* means a demand for payment by an employee or his/her representative for the value or the repair cost of an item of personal property damaged, lost or destroyed as an incident to government service.

(c) *Employee* means a person appointed to a position with EPA.

(d) *Settle* means the act of considering, ascertaining, adjusting, determining or otherwise resolving a claim.

(e) *Accrual date* means the date of the incident causing the loss or damage or the date on which the loss or damage should have been discovered by the employee through the exercise of reasonable care.

40 CFR Ch. I (7-1-11 Edition)

(f) *Depreciation* is the reduction in value of an item caused by the elapse of time between the date of acquisition and the date of loss or damage.

§ 14.3 Incident to service.

In order for a claim to be allowed under this part, the EPA Claims Officer must determine that the item of personal property, at the time of damage or loss, was used by the employee as an incident to government service. An item is incident to service when possession of the item by the employee had substantial relationship to the employee's performance of duty. Whether an item is incident to service is determined by the facts of each claim. The employee has the burden of showing that the item was incident to his/her governmental service.

§ 14.4 Reasonable and proper.

EPA does not insure its employees from every loss or damage to personal property they may sustain. In order for a claim to be allowed, the item must not only have been incident to service, it must also have been reasonable and proper for the employee to possess the item at the time and place of its loss or damage. Generally, the possession of an item is reasonable and proper when the item is of a type and quantity which EPA reasonably expected its employees to possess at the time and place of the loss or damage. Consequently, items which are exceptionally expensive, excessive quantities of otherwise allowable items, personal items which are used in place of items usually provided to employees by EPA or items which are primarily of aesthetic value are not considered reasonable or proper items and are unallowable.

§ 14.5 Who may file a claim.

A claim may be filed by an employee or by his/her authorized agent or legal representative. If a claim is otherwise allowable under this part, a claim can be filed by a surviving spouse, child, parent, brother or sister of a deceased employee.

§ 14.6 Time limits for filing a claim.

A claim under this part is considered by the EPA Claims Officer only if it is

Environmental Protection Agency

§ 14.11

in writing and received within two years after the claim accrues. The EPA Claims Officer may consider a claim not filed within this period when the claim accrued during a period of armed conflict and the requirements of 31 U.S.C. 3721(g) are met.

§ 14.7 Where to file a claim.

An employee or his/her representative may file a claim with his/her Administrative Office or the Safety Office for the facility. The employee should complete and submit to the Administrative Office or the Safety Office a completed EPA Form 3370-1, "Employee Claim for Loss of or Damage to Personal Property." That Office then forwards the form and any other relevant information to the EPA Claims Officer, Office of General Counsel (2311), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§ 14.8 Investigation of claims.

The EPA Claims Officer investigates claims filed under this part. The EPA Claims Officer may request additional documentation from an employee (e.g., repair estimates and receipts), interview witnesses, and conduct any further investigation he believes is warranted by the facts of the claim.

§ 14.9 Approval and payment of claims.

(a) EPA's approval and payment of a claim is limited by the Act to \$25,000. The EPA Claims Officer considers, adjusts, determines, compromises and settles all claims filed under this part. The decision of the EPA Claims Officer is final unless reconsideration under § 14.10 is granted.

(b) The EPA Claims Officer will approve and pay claims filed for a deceased employee by persons specified in § 14.5 in the following order:

- (1) The spouse's claim.
- (2) A child's claim.
- (3) A parent's claim.
- (4) A brother's or sister's claim.

§ 14.10 Procedures for reconsideration.

The EPA Claims Officer, at his discretion, may reconsider a decision when the employee establishes that an error was made in the computation of the award or that evidence or material facts were unavailable to the employee

at the time of the filing of the claim and the failure to provide the information was not the result of the employee's lack of care. An employee seeking reconsideration of a decision must file, within 30 days of the date of the decision, a written request with the EPA Claims Officer for reconsideration. The request for reconsideration must specify, where applicable, the error, the evidence or material facts not previously considered by the EPA Claims Officer and the reason why the employee believes that the evidence or facts previously were not available.

§ 14.11 Principal types of allowable claims.

(a) *General.* A claim under this part is allowed for tangible personal property of a type and quantity that was reasonable and proper for the employee to possess under the circumstances at the time of the loss or damage. In evaluating whether a claim is allowable, the EPA Claims Officer may consider such factors as: The employee's use of the item; whether EPA generally is aware that such items are used by its employees; or whether the loss was caused by a failure of EPA to provide adequate protection against the loss.

(b) *Examples of claims which are allowable.* Claims which are ordinarily allowed include loss or damage which occurred:

- (1) In a place officially designated for storage of property such as a warehouse, office, garage, or other storage place;
- (2) In a marine, rail, aircraft, or other common disaster or natural disaster such as a fire, flood, or hurricane;
- (3) When the personal property was subjected to an extraordinary risk in the employee's performance of duty, such as in connection with an emergency situation, a civil disturbance, common or natural disaster, or during efforts to save government property or human life;
- (4) When the property was used for the benefit of the government at the specific direction of a supervisor;
- (5) When the property was money or other valuables deposited with an authorized government agent for safekeeping; and

§ 14.12

40 CFR Ch. I (7-1-11 Edition)

(6) When the property was a vehicle which was subjected to an extraordinary risk in the employee's performance of duty and the use of the vehicle was at the specific direction of the employee's supervisor.

(c) *Claims for articles of clothing.* Claims for loss or damage to clothing and accessories worn by an employee may be allowed where:

(1) The damage or loss occurred during the employee's performance of official duty in an unusual or extraordinary risk situation;

(2) The loss or damage occurred during the employee's response to an emergency situation, to a natural disaster such as fire, flood, hurricane, or to a man-made disaster such as a chemical spill;

(3) The loss or damage was caused by faulty or defective equipment or furniture maintained by EPA; or

(4) The item was stolen even though the employee took reasonable precautions to protect the item from theft.

(d) *Claims for loss or damage to household items.* (1) Claims for damages to household goods may be allowed where:

(i) The loss or damages occurred while the goods were being shipped pursuant to an EPA authorized change in duty station;

(ii) The employee filed a claim for the damages with the appropriate carrier; and

(iii) The employee substantiates that he/she has suffered a loss in excess of the amount paid by the carrier.

(2) Where a carrier has refused to make an award to an employee because of his/her failure to comply with the carrier's claims procedures, any award by EPA will be reduced by the maximum amount payable for the item by the carrier under its contract of shipment. Where an employee fails to notify the carrier of damages or loss, either at the time of delivery of the household goods or within a reasonable time after discovery, any award by EPA will be reduced by the amount of the carrier's maximum contractual liability for the damage or loss. The employee has the burden of proving his/her entitlement to reimbursement from EPA for amounts in excess of that allowed by the carrier.

§ 14.12 Principal types of unallowable claims.

Claims that ordinarily will not be allowed include:

(a) Loss or damage totaling less than \$25;

(b) Money or currency, except when deposited with an authorized government agency for safekeeping;

(c) Loss or damage to an item of extraordinary value or to an antique where the item was shipped with household goods, unless the employee filed a valid appraisal or authentication with the carrier prior to shipment of the item;

(d) Loss of bankbooks, checks, notes, stock certifications, money orders, or travelers checks;

(e) Property owned by the United States unless the employee is financially responsible for it to another government agency;

(f) Claims for loss or damage to a bicycle or a private motor vehicle, unless allowable under § 14.11(b)(6);

(g) Losses of insurers or subrogees;

(h) Losses recoverable from insurers or carriers;

(i) Losses recovered or recoverable pursuant to contract;

(j) Claims for damage or loss caused, in whole or in part, by the negligent or wrongful acts of the employee or his/her agent;

(k) Property used for personal business or profit;

(l) Theft from the possession of the employee unless the employee took reasonable precautions to protect the item from theft;

(m) Property acquired, possessed or transported in violation of law or regulations;

(n) Unserviceable property; or

(o) Damage or loss to an item during shipment of household goods where the damage or loss was caused by the employee's negligence in packing the item.

§ 14.13 Items fraudulently claimed.

Where the EPA Claims Officer determines that an employee has intentionally misrepresented the cost, condition, cost of repair or a material fact concerning a claim, he/she may, at his discretion, deny the entire amount claimed for the item. Further, where

Environmental Protection Agency

§ 16.3

the EPA Claims Officer determines that the employee intentionally has materially misrepresented the costs, conditions or nature of repairs of the claim, he will refer it to appropriate officials (e.g., Inspector General, the employee's supervisor, etc.) for action.

§ 14.14 Computation of award.

(a) The amount awarded on any item may not exceed its adjusted cost. Adjusted cost is either the purchase price of the item or its value at the time of acquisition, less appropriate depreciation. The amount normally payable for property damaged beyond economical repair is its depreciated value immediately before the loss or damage, less any salvage value. If the cost of repair is less than the depreciated value, it will be considered to be economically repairable and only the cost of repair will be allowable.

(b) Notwithstanding a contract to the contrary, the representative of an employee is limited by 31 U.S.C. 3721(i) to receipt of not more than 10 percent of the amount of an award under this part for services related to the claim. A person violating this paragraph is subject to a fine of not more than \$1,000. 31 U.S.C. 3721(i).

PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

Sec.

- 16.1 Purpose and scope.
- 16.2 Definitions.
- 16.3 Procedures for accessing, correcting, or amending personal records.
- 16.4 Times, places, and requirements for identification of individuals making requests.
- 16.5 Request for correction or amendment of record.
- 16.6 Initial decision on request for access to, or correction or amendment of, records.
- 16.7 The appeal process.
- 16.8 Special procedures: Medical Records.
- 16.9 Fees.
- 16.10 Penalties.
- 16.11 General exemptions.
- 16.12 Specific exemptions.

AUTHORITY: 5 U.S.C. 301, 552a (as revised).

SOURCE: 71 FR 234, Jan. 4, 2006, unless otherwise noted.

§ 16.1 Purpose and scope.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a) (PA or Act) by establishing Environmental Protection Agency (EPA or Agency) policies and procedures that permit individuals to obtain access to and request amendment or correction of information about themselves that is maintained in Agency systems of records. This part also establishes policies and procedures for administrative appeals of requests for access to, or correction or amendment of, records. This part does not expand or restrict any rights granted under the PA.

(b) These procedures apply only to requests by individuals seeking their own records and only to records maintained by EPA. These procedures do not apply to those systems specifically exempt under §§ 16.11 and 16.12 herein or to any government-wide systems maintained by other Federal agencies.

(c) Privacy Act requests made by individuals for records about themselves and which are processed under this Part, will also be treated as FOIA requests and processed as appropriate under 40 CFR Part 2 to ensure full disclosure.

§ 16.2 Definitions.

As used in this part:

(a) The terms *individual*, *maintain*, *record*, and *system of records* have the same meanings as specified in 5 U.S.C. 552a.

(b) *EPA* means the Environmental Protection Agency.

(c) *Working days* means calendar days excluding Saturdays, Sundays, and Federal holidays.

§ 16.3 Procedures for accessing, correcting, or amending personal records.

(a) Any individual who—

(1) Wishes to be informed whether a system of records maintained by EPA contains any record pertaining to him or her,

(2) Seeks access to an EPA record about him or her that is maintained in an EPA PA system of records, including an accounting of any disclosures of that record; or