

PART 22—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND INDEMNIFICATION OF DEPARTMENT OF THE INTERIOR EMPLOYEES

Subpart A—Administrative Tort Claims

Sec.

- 22.1 Purpose.
- 22.2 Provisions of law and regulations thereunder.
- 22.3 Procedure for filing claims.
- 22.4 Denial of claims.
- 22.5 Payment of claims.

Subpart B—Indemnification of Department of the Interior Employees

22.6 Policy.

AUTHORITY: 28 U.S.C. 2671–2680; 5 U.S.C. 301.

SOURCE: 32 FR 6683, May 2, 1967, unless otherwise noted.

Subpart A—Administrative Tort Claims

§ 22.1 Purpose.

(a) The purpose of this part is to establish procedures for the filing and settlement of claims accruing on and after January 18, 1967, under the Federal Tort Claims Act (in part, 28 U.S.C. 2401(b), 2671–2680, as amended by Pub. L. 89–506, 80 Stat. 306).

(b) [Reserved]

[32 FR 6683, May 2, 1967, as amended at 47 FR 38329, Aug. 31, 1982]

§ 22.2 Provisions of law and regulations thereunder.

(a) Section 2672 of title 28 U.S. Code, as above amended, provides that:

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

(b) Subsection (a) of section 2675 of said title 28 provides that:

An action shall not be instituted upon a claim against the United States for money damages for injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of any agency to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counter-claim.

(c) Section 2678 of said title 28, as amended, provides that no attorney shall charge fees in excess of 25 percent of a judgment or settlement after litigation, or in excess of 20 percent of administrative settlements.

(d) Subsection (b) of section 2679 of said title 28 provides that tort remedies against the United States resulting from the operation of any employee of

§ 22.3

the Government of any motor vehicle while acting within the scope of his employment shall be exclusive of any other civil action or proceeding against the employee or his estate.

(e) Subsection (b) of section 2401 of said title 28 provides:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(f) The Federal Tort Claims Act, as amended, shall apply to claims accruing 6 months or more after date of its enactment (date of enactment, July 18, 1966).

(g) Pursuant to section 2672 of title 28, United States Code, as amended, the Attorney General has issued regulations (herein referred to as "the Regulations"; 28 CFR part 14), prescribing standards and procedures for settlement of tort claims (31 FR 16616). The officers to whom authority is delegated to settle tort claims shall follow and be guided by such Regulations (28 CFR part 14).

§ 22.3 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to §§ 14.2, 14.3 and 14.4 of the regulations (28 CFR part 14).

(b) Claims shall be filed directly with the local field office of the Bureau or Office of the Department out of whose activities the accident or incident occurred.

(c) Upon receipt of a claim, the time and date of receipt shall be recorded. The claim shall be forwarded with the investigative file immediately to the appropriate Associate, Regional, or Field Solicitor for determination.

(5 U.S.C. 301, 5 U.S.C. 552)

[40 FR 53591, Nov. 19, 1975]

§ 22.4 Denial of claims.

Denial of a claim shall be communicated as provided by § 14.9 of the regulations (28 CFR part 14).

43 CFR Subtitle A (10-1-11 Edition)

§ 22.5 Payment of claims.

(a) When an award of \$2,500 or less is made, the voucher signed by the claimant shall be transmitted for payment to the appropriate Bureau or Office of the Department. When an award over \$2,500 is made, transmittal for payment will be made as prescribed by § 14.10 of the regulations (28 CFR part 14).

(b) Prior to payment appropriate releases shall be obtained as provided in said section.

Subpart B—Indemnification of Department of the Interior Employees

§ 22.6 Policy.

(a) The Department of the Interior may indemnify a Department employee, who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against a Department employee personally, for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Department of the Interior as determined by the Secretary or his designee.

(b) The Department of the Interior may settle or compromise a personal damage claim against a Department employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Department of the Interior as determined by the Secretary or his designee.

(c) Absent exceptional circumstances as determined by the Secretary or his designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) A Department employee may request indemnification to satisfy a verdict, judgment, or award entered

against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Solicitor, who shall make a recommended disposition of the request. Where appropriate, the Department shall seek the views of the Department of Justice. The Solicitor shall forward the request, the accompanying documentation, and the Solicitor's recommendation to the Secretary or his designee for decision.

(e) Any payment under this section either to indemnify a Department of the Interior employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of the Interior.

[55 FR 4610, Feb. 9, 1990]

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

Sec.

- 23.1 Purpose.
- 23.2 Scope.
- 23.3 Definitions.
- 23.4 Application for permission to conduct exploration operations.
- 23.5 Technical examination of prospective surface exploration and mining operations.
- 23.6 Basis for denial of a permit, lease, or contract.
- 23.7 Approval of exploration plan.
- 23.8 Approval of mining plan.
- 23.9 Performance bond.
- 23.10 Reports: Inspection.
- 23.11 Notice of noncompliance: Revocation.
- 23.12 Appeals.
- 23.13 Consultation.

AUTHORITY: Sec. 32, 41 Stat. 450, as amended; 30 U.S.C. 189; sec. 5, 44 Stat. 1058; 30 U.S.C. 285; sec. 10, 61 Stat. 915; 30 U.S.C. 359; and sec. 2, 48 Stat. 1270; 43 U.S.C. 315.

SOURCE: 34 FR 852, Jan. 18, 1969, unless otherwise noted.

§ 23.1 Purpose.

It is the policy of this Department to encourage the development of the mineral resources under its jurisdiction where mining is authorized. However, the public interest requires that, with respect to the exploration for, and the surface mining of, such minerals, ade-

quate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

§ 23.2 Scope.

(a) Except as provided in paragraph (b) of this section, the regulations in this part provide for the protection and conservation of nonmineral resources during operations for the discovery, development, surface mining, and onsite processing of minerals under permits, leases, or contracts issued pursuant to: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 251–359); and title 23, United States Code, section 317, relating to appropriation for highway purposes of lands owned by the United States.

(b) The regulations in this part do not cover the exploration for oil and gas or the issuance of leases, or operations thereunder, for oil and gas under the mineral leasing acts, which are covered by regulations in subpart 3107 and part 3120 of this title and 30 CFR part 221; neither do they cover minerals underlying Indian tribal or allotted lands, which are subject to regulations in title 25 CFR, nor minerals subject to the general mining laws (30 U.S.C. 21 through 54); nor minerals under the Materials Act; nor minerals underlying lands, the surface of which is not owned by the U.S. Government; nor minerals or operations subject to the provisions of 43 CFR subpart 3041.

NOTE: See Redesignation Table 2 of 43 CFR part 4000 to End, for appropriate sections of former subpart 3107 and part 3120 referred to in the above paragraph (b).

(c) The regulations in this part shall apply only to permits, leases, or contracts issued subsequent to the date on which the regulations become effective.

[34 FR 852, Jan. 18, 1969, as amended at 37 FR 12801, June 29, 1972; 41 FR 20273, May 17, 1976; 48 FR 27016, June 10, 1983]