

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 177

RIN 3206-A170

#### Administrative Claims Under the Federal Tort Claims Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations for administrative claims filed under the Federal Tort Claims Act. The final regulations will reflect the changes for filing administrative claims with OPM for the loss of or damage to property, personal injury, or death resulting from the negligent or wrongful act or omission of its employees while acting within the scope of their office or employment.

**EFFECTIVE DATE:** August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** James S. Green, Associate General Counsel, or Gloria Clark, Paralegal Specialist, Office of the General Counsel, (202) 606-1700.

**SUPPLEMENTARY INFORMATION:** On June 22, 1999, the Office of Personnel Management (OPM) published proposed regulations (64 FR 33326) on the Federal Tort Claims Act. The Federal Tort Claims Act provides that the United States may be held liable for property damage, personal injury, or death caused by the negligent or wrongful act or omission of its employees, while they are acting within the scope of their office or employment. The Federal Tort Claims Act authorizes the head of each Federal agency, or his or her designee, the authority to consider, compromise, and settle any claim 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 any employee while acting within the scope of their 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.

The Department of Justice (DOJ) administers the Federal Tort Claims Act for the United States Government. The DOJ has authorized each Federal agency to issue regulations and establish procedures for implementing the Federal Tort Claims Act. The Director of OPM has delegated the responsibility for this function to the General Counsel of OPM. However, any award, compromise, or settlement in excess of \$25,000, can be effected only with the prior written approval of the Attorney General.

The final regulations on the Federal Tort Claims Act have been updated and revised in consistency with the DOJ regulations at 28 CFR part 14. In addition, the final regulations will include revisions to reflect the changes for filing administrative claims with OPM and the delegation of authority for this function within OPM by the General Counsel.

During the comment period, OPM did not receive any comments on the proposed regulations.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions), since it only applies to Federal employees and agencies.

#### List of Subjects in 5 CFR Part 177

Claims.

Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is revising Part 177 of title 5 of the Code of Federal Regulations as follows:

#### PART 177—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

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**Authority:** 28 U.S.C. 2672; 28 CFR 14.11.

#### § 177.101 Scope of regulations.

The regulations in this part apply only to claims presented or filed with the Office of Personnel Management (OPM) under the Federal Tort Claims Act, as amended, 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 while acting within the scope of his or her office or employment.

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

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when OPM receives from a claimant, his or her authorized agent or legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred as a result of the incident.

(b) All claims filed under the Federal Tort Claims Act as a result of the alleged negligence or wrongdoing of OPM or its employees will be mailed or delivered to the Office of the General Counsel, United States Office of Personnel Management, 1900 E Street NW, Washington, DC 20415-1300.

(c) A claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to OPM, but was mistakenly addressed to or filed with another Federal agency, is presented to OPM, as required by 28 U.S.C. 2401(b), as of the date the claim is received by OPM. When a claim is mistakenly presented to OPM, OPM will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the

claimant of the transfer, or return the claim to the claimant.

(d) A claimant whose claim arises from an incident involving OPM and one or more other Federal agencies, will identify each agency to which the claim has been submitted at the time the claim is presented to OPM. OPM will contact all other affected Federal agencies in order to designate the single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and will designate an agency to investigate and determine the merits of the claim. The designated agency will notify the claimant that all future correspondence concerning the claim must be directed to that Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted by the designated Federal agency. But, in either event, the designated agency will be responsible for the final determination of the claim.

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

**§ 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, his or her authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her 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 a claim under the applicable State law.

(d) A claim for loss totally compensated by an insurer with the rights to subrogate may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights to subrogate 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 to subrogate, he or she will present with the claim appropriate evidence that he or she has the rights to subrogate.

(e) A claim presented by an agent or legal representative must 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 or her 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 or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

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

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of 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 injuries 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 the 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. On written request, OPM will make available to the claimant a copy of the report of the examining physician employed by the United States, provided the claimant has furnished OPM with the report referred to in the first sentence of this subparagraph. In addition, the claimant must have made or agrees to make available to OPM all other physician's reports previously or thereafter made of the physical or mental condition that is the subject matter of his or her 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 or her employer showing actual time lost from employment, whether he or she 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.

(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 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 or her designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of 28 U.S.C. 2672, and this part. The General Counsel, in his or her discretion, has the authority to further delegate the responsibility for adjudicating, considering, adjusting, compromising, and settling any claim submitted under the provisions of 28 U.S.C. 2672, and this part, that is based on the alleged negligence or wrongful act or omission of an OPM employee, with the exception of claims involving personal injury. All claims involving personal injury will be adjudicated, considered, adjusted, compromised and settled by the Office of the General Counsel.

**§ 177.107 Limitations on authority.**

(a) An award, compromise, or settlement of a claim under 28 U.S.C. 2672, and this part, in excess of \$25,000 can be effected only with the prior written approval of the Attorney General or his or her designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim will 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 or her 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 settled under 28 U.S.C. 2672, and 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, or the advice of the Department of Justice is otherwise to be requested, under § 177.107, the written referral or request will be transmitted to the Department of Justice by the General Counsel of OPM or his or her designee.

**§ 177.109 Final denial of claim.**

Final denial of an administrative claim must be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial. But, it must include a statement that, if the claimant is dissatisfied with the OPM action, he or she may file suit in an appropriate United States 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 a Standard Form 95 (Claim for Damage, Injury or Death); a claims settlement agreement; and a Standard Form 1145 (Voucher for Payment), as appropriate. When a claimant is represented by an attorney, the Voucher for Payment will designate both the claimant and his or her attorney as payees, and the check will be delivered to the attorney, whose address is to appear on the Voucher for Payment.

(b) Acceptance by the claimant, his or her agent, or legal representative, of an award, compromise, or settlement made under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her 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 against any employee of the Federal Government whose act or omission gave rise to the claim, by reason of the same subject matter.

[FR Doc. 00-18344 Filed 7-19-00; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 130**

[Docket No. 98-045-3]

**Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees; Correction**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** We are correcting an error in the rule portion of a final rule concerning user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. The rule replaced hourly rate user fees for those services with flat rate user fees. The final rule was published in the **Federal Register** on June 20, 2000 (65 FR 38179-38182, Docket No. 98-045-2), and is effective on July 20, 2000.

**EFFECTIVE DATE:** July 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-8351.

**SUPPLEMENTARY INFORMATION:** On June 20, 2000, we published in the **Federal Register** a final rule that amended the user fee regulations to replace the hourly rate user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities with flat rate user fees that would cover the cost of all inspections required for annual approval.

In the rule portion of the final rule, the flat rate user fee for the renewal of approval of pet food spraying and drying facilities was listed as \$162.00 for all inspections required during the year. As explained in the **SUPPLEMENTARY INFORMATION** section of the final rule, the correct flat rate user fee for this service is \$162.50. This document corrects that error.

In Docket No. 98-045-2, published on June 20, 2000 (65 FR 38179-38182), make the following correction: On page 38181, in § 130.11, in the table, under the column User Fee, correct "\$162.00" to read "\$162.50".