

REGULATORY REVIEW—Continued
MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.
698	Model Forms and Disclosures	2020.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2020.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.
437	Disclosure Requirements and Prohibitions Concerning Business Opportunities	2021.

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DEPARTMENT OF LABOR

Office of the Secretary of Labor

29 CFR Part 15

Employment and Training Administration

20 CFR Parts 638 and 670

RIN 1290-AA25

Administrative Claims Under the Federal Tort Claims Act and Related Statutes

AGENCY: Office of the Secretary, Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment revises the Department of Labor's (DOL's) regulations governing administrative claims submitted to DOL pursuant to the Federal Tort Claims Act (FTCA), the Military Personnel and Civilian Employees' Claims Act (MPCECA), and for payment of claims arising out of the operation of the Job Corps. The regulations governing such claims were last revised in 1995. MPCECA has since been amended to allow payment of up to \$100,000 if the claim arose from an emergency or extraordinary circumstance. Further, the implementing authority for the Job Corps was changed to the Workforce Investment Act (WIA) since the last time the regulations were updated. These regulations are being amended to reflect those changes, improve the clarity and ease of use of the regulations, and to harmonize the regulations governing these claims between those regulations in titles 20 and 29 of the CFR, which includes deleting the references to these claims in 20 CFR part 638 as these revisions have rendered those sections

unnecessary. Finally, the regulations in title 20 have also been updated to reflect the recently revised regulations regarding claims of Job Corps students under the Federal Employees' Compensation Act (FECA).

DATES: Written comments must be received on or before June 12, 2012.

ADDRESSES: You may submit comments on the proposed rule, identified by Regulatory Information Number (RIN) 1290-AA25, by ONE of the following methods:

Federal e-Rulemaking Portal: The Internet address to submit comments on the rule is <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

Mail: Submit written comments to Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S-4325, 200 Constitution Avenue NW., Washington, DC 20210. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must include the RIN 1290-AA25 for this rulemaking. Receipt of any comments, whether by mail or Internet, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments on the proposed rule will be available for public inspection during normal business hours at the address listed above for mailed comments.

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (e.g., large print, audiotape or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact DOL at 202-

693-5320 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S-4325, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202-693-5320 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Concurrent, Identical Direct Final Rule

Since this rule is not controversial and primarily concerns agency procedures, we have determined that the subject of this rulemaking is suitable for a direct final rule. No significant adverse comments are anticipated. Accordingly, concurrent with this proposed rule, a separate, identical direct final rule is published in today's issue of the **Federal Register**. The duplicate direct final rule will expedite rulemaking in the event no significant adverse comments are received and we withdraw this notice of proposed rulemaking. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to the accompanying proposed rule are received on or before June 12, 2012, the direct final rule will become effective July 12, 2012 without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing the direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from this proposed rule. For purposes of withdrawing the direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is

inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

The FTCA surrenders the sovereign immunity of the United States for the negligent or wrongful act or omission of a Government employee acting within the scope of his or her employment. The MPCECA authorizes payment of claims of employees of the Government for loss of, or damage to, property incident to Government service. The WIA provides that Job Corps students are Federal employees for purposes of claims under the FTCA and authorizes payment of claims arising out of the operation of the Job Corps that are not cognizable under the FTCA. Parts 638 and 670 of title 20 and part 15 of title 29 of the Code of Federal Regulations currently contain regulations implementing these three claims authorities.

III. Overview of the Regulations

The regulations reflect statutory changes and are otherwise largely unchanged. The majority of changes were made to change the format of 29 CFR part 15 to question and answer format, and to improve the structure and readability of the regulations in both 20 CFR part 670 and 29 CFR part 15. Furthermore, the numbering of sections in 29 CFR part 15 was changed to improve structure and to allow for splitting of current sections for improved clarity and readability.

20 CFR Part 638

Sections 638.526 Through 638.527

As the changes made to 20 CFR part 670 and 29 CFR part 15 have rendered these sections unnecessary, the regulations delete these sections.

20 CFR Part 670

Sections 670.900 Through 670.905

These sections were changed to direct possible claimants to 29 CFR part 15, which provides the actual regulations that govern such claims. This change was made to reduce the possibility of

conflicting regulations and to clarify which regulations provide the decisionmaking authority for such claims.

Sections 670.910 Through 670.930

These sections provide information for Job Corps students regarding their rights under the FECA. These sections were similarly amended to provide cross-references to the regulations governing claims under the FECA, while still providing the statutory information regarding the status of such students under the WIA. Sections no longer necessary as a result were removed.

29 CFR Part 15

As discussed above, 29 CFR part 15 was reorganized and the regulations themselves were modified to change to a question and answer format to promote clarity and readability of these regulations. As part of the reorganization, a new subpart A was added to this part, with the other subparts redesignated accordingly.

Subpart A

Subpart A of part 15 is a new subpart. It includes introductory information, such as describing the contents of the other subparts and definitions that apply to all subparts in this part.

Subpart B

Subpart B is largely subpart A of the old regulations. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity and use of a question and answer format. Changes in these sections are described below.

Section 15.102 is a new section that describes the filing of a claim by an insurance company and compiles the requirements into one section. The language of this section has also been rewritten for clarity.

Section 15.103 is a new section that addresses legal representatives and compiles them into one section. The statutory limitation on representative fees has also been included for ease of use.

Section 15.104 (formerly § 15.4) has been amended to clarify that the \$25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident. Furthermore, this section has been amended to codify the official duty stations current practice of forwarding the FTCA claims to the Regional Offices of the Office of the Solicitor with the documentation they have regarding that claim.

Section 15.106 (formerly § 15.6) has been amended to include a requirement

that all organizational units within the Department appoint an FTCA contact, unless that requirement for a contact is waived. For example, a small entity within the Office of the Secretary for which claims are rarely received would not be required to designate an FTCA contact. This section has also been amended to require the FTCA contact to submit an administrative report to the deciding official within 30 days.

Section 15.108 (formerly § 15.7) has been amended to clarify that the \$25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident.

Section 15.111 (formerly § 15.10) has been amended to clarify that the \$25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident and to update the forms used by the Department of Justice in settling and paying FTCA claims.

Subpart C

As above, subpart C is largely a redesignated version of former subpart B. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity. Changes in these sections are described below.

Section 15.202 (formerly a subsection of § 15.21) has been amended to include a reference to a sample claim for MPCECA claims and to note that the SF-95 form should not be used to file a claim under this subpart. This section has also been amended to allow the deciding official to waive the requirement of submitting two estimates of repair where unnecessary, lessening the burden on claimants in submitting these claims.

Section 15.206 is a new section that covers MPCECA claims made for damage to property at Telework locations and at residences.

Section 15.207 (formerly § 15.22) has been amended to include language allowing claims for loss or damage incident to service to cellular phones, personal data assistants and similar communication and electronic devices.

Section 15.210 has been amended to allow the deciding official to waive the requirement of filing a claim under the employee's insurance policy where such a claim is impracticable or inequitable.

Subpart D

As above, subpart D is largely a redesignated version of former subpart C. This subpart, however, has been reorganized to clearly delineate the types of claims that are covered by this subpart. Changes in these sections are described below.

Section 15.300 is a new section that has been drafted to specifically categorize the types of claims covered by this subpart. This section also clearly indicates that this includes claims involving Job Corps Centers run by other Federal agencies.

Section 15.301 (part of former § 15.42) has been amended to clearly delineate which Department official has responsibility for which type of claim and for what amounts. It more clearly describes and explains the procedures for processing claims of loss or damage to persons or personal property of Job Corps students than the current regulations. In particular, it provides that the Regional Solicitor is responsible for such claims in excess of \$300 and the Job Corps Regional Director is responsible for such claims of \$300 or less.

Section 15.302 is a new section that has been added to distinguish what procedures apply to the different types of claims covered by this subpart.

Section 15.303 (part of former § 15.42) has been amended to change the process as to where claims under this subpart are initially filed. The new procedures require all claims under the WIA must first be filed with the Job Corps Regional Office.

Section 15.304 combines all prior subsections regarding limits on claims under the WIA into one new section.

IV. Administrative Requirements for the Proposed Rulemaking

Executive Orders 12866 and 13563

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

The Department has determined that this proposed rule is not a “significant regulatory action” under Executive Order 12866, section 3(f). Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act of 1980

This proposed rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5

U.S.C. 601–612. The Department has concluded that the proposed rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

This proposed rule is not subject to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501, *et seq.*, since it does not contain any new collection of information requirements.

The National Environmental Policy Act of 1969

The Department certifies that this proposed rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that NEPA requirements do not apply to this rulemaking because this proposed rule includes no provisions impacting the maintenance, preservation, or enhancement of a healthful environment.

Federal Regulations and Policies on Families

The Department has reviewed this proposed rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. This proposed rule was not found to have a potential negative effect on family well-being as it is defined thereunder.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Department certifies that this proposed rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. This proposed rule was not found to have a potential negative effect on the health or safety of children.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132, 64 FR 43225, Aug. 10, 1999, and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein

that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175, 65 FR 67249, Nov. 9, 2000, and has determined that it does not have “tribal implications.” The proposed rule does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department has reviewed this proposed rule in accordance with Executive Order 12630, 53 FR 8859, Mar. 15, 1988, and has determined that it does not contain any “policies that have takings implications” in regard to the “licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.”

Executive Order 13211: Energy Supply, Distribution, or Use

The Department has reviewed this proposed rule and has determined that the provisions of Executive Order 13211, 66 FR 28355, May 18, 2001, are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

The Privacy Act of 1974, 5 U.S.C. 552a, as Amended

Claims filed under these regulations are subject to the current Privacy Act System of Records DOL/SOL–3, Tort Claims Files; DOL/SOL–5, Workforce Investment Act Tort Claims Files; DOL/SOL–6, Military Personnel and Civilian Employees’ Claims; and DOL/GOVT–1, Office of Workers’ Compensation Programs, Federal Employees’ Compensation Act File. 67 FR 16816, Apr 8, 2002.

Clarity of This Regulation

Executive Order 12866, 58 FR 51735, Sept. 30, 1993, and the President’s memorandum of June 1, 1998, require each agency to write all rules in plain language. This proposed rule was

written to improve the clarity of the rule in accordance with that Order.

List of Subjects

20 CFR Part 638

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

20 CFR Part 670

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

29 CFR Part 15

Tort claims, Indemnity payments, Administrative practice and procedure, Government employees.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR parts 638 and 670 and 29 CFR part 15 as follows:

Title 20—Employees' Benefits

PART 638—JOB CORPS PROGRAM UNDER TITLE IV—B OF THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for 20 CFR part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

§§ 638.526 and 838.527 [Removed]

2. Remove §§ 638.526 and 838.527.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

3. The authority citation for 20 CFR part 670 continues to read as follows:

Authority: Subtitle C of Title I, sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 2881 *et seq.* and 9276(c)); 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

4. Revise § 670.900 to read as follows:

§ 670.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA (28 U.S.C. 2671 *et seq.*). Claims for such damage should be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

5. Revise § 670.905 to read as follows:

§ 670.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

6. Revise § 670.910 to read as follows:

§ 670.910 If a student is injured in the performance of duty as a Job Corps Student, what benefits may they receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in 29 U.S.C. 2897.

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, *et seq.* and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms timely filed by the center operator with the DOL's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on DOL's Web site located at www.dol.gov.

7. Revise § 670.915 to read as follows:

§ 670.915 When is a Job Corps student considered to be in the performance of duty?

(a) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the "performance of duty" when:

- (1) They are on center under the supervision and control of Job Corps officials;
- (2) They are engaged in any authorized Job Corps activity;
- (3) They are in authorized travel status; or
- (4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled

center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

- (1) They are Absent Without Leave (AWOL);
- (2) They are at home, whether on pass or on leave;
- (3) They are engaged in an unauthorized offsite activity; or
- (4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another or through intoxication or illegal use of drugs.

§§ 670.920, 670.925, and 670.930 [Removed]

8. Remove §§ 670.920, 670.925, and 670.930.

Title 29—Labor

9. Revise Part 15 to read as follows:

PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED CLAIMS STATUTES

Sec.

Subpart A—Introduction

- 15.1 What is the scope and purpose of this part?
- 15.2 What definitions apply to this part?

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

- 15.100 What claims against the Department are covered by the FTCA?
- 15.101 Who may file an administrative claim under the FTCA against the Department?
- 15.102 May an insurance company file an FTCA administrative claim on behalf of a claimant?
- 15.103 May an agent or legal representative file an FTCA administrative claim on behalf of a claimant?
- 15.104 Where should the FTCA administrative claim be filed?
- 15.105 What information and evidence should be provided to DOL to substantiate an FTCA administrative claim?
- 15.106 How is the administrative claim processed?
- 15.107 What must be provided in the administrative report?
- 15.108 Who is authorized to decide an administrative claim?
- 15.109 What if the claim is denied?
- 15.110 What must a claimant do if the administrative claim is approved?
- 15.111 If the administrative claim is approved, how is the award paid?

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

- 15.200 What is a claim under the MPCECA and who may file such a claim?
- 15.201 Where should the MPCECA claim be filed?
- 15.202 How is a claim filed under the MPCECA?
- 15.203 When should a claim under the MPCECA be filed?
- 15.204 Are there limits on claims under the MPCECA?
- 15.205 What types of claims for property damage are allowed under the MPCECA?
- 15.206 What claims arising at a residence or Telework location may be covered under the MPCECA?
- 15.207 What are examples of claims allowed under the MPCECA?
- 15.208 What are the restrictions on otherwise allowable claims?
- 15.209 What claims are not allowed?
- 15.210 What affect does insurance have on a claim under the MPCECA?
- 15.211 How is a claim under this subpart processed?
- 15.212 How is the amount of the award under this subpart calculated?
- 15.213 Are there limits to representatives' fees for claims under this subpart?
- 15.214 How may a decision under this subpart be reconsidered?

Subpart D—Claims Arising Out of the Operation of the Job Corps

- 15.300 How are claims involving the Job Corps initiated?
- 15.301 What office is responsible for determining liability in claims arising out of the Job Corps?
- 15.302 What procedures apply to these claims?
- 15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?
- 15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721; 29 U.S.C. 2897(b).

Subpart A—Introduction

§ 15.1 What is the scope and purpose of this part?

(a) The regulations in this part provide procedures to be followed for claims asserted against the Department of Labor under the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721, and for claims arising out of the operation of Job Corps Centers under the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

(b) Subpart B of this part provides the procedures followed in processing claims asserted 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 the Department of Labor while acting within the scope of his or her office or employment. This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

(c) Subpart C of this part provides the procedures for processing claims filed by or on behalf of employees of the Department of Labor for loss of or damage to personal property incident to their service with the Department under the Military Personnel and Civilian Employees' Claims Act of 1964.

(d) Subpart D of this part provides the procedures used in processing claims relating to damage to persons or property arising out of the operation of Job Corps, pursuant to the Workforce Investment Act, including damages under the Federal Tort Claims Act, damage to personal property of Job Corps students, and claims which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.

§ 15.2 What definitions apply to this part?

(a) *Department* means the Department of Labor.

(b) *Organizational unit* means the jurisdictional area of each Assistant Secretary and each office head within the Department reporting directly to the Secretary.

(c) *Counsel for Claims and Compensation* means the Department's deciding official in the Office of the Solicitor for certain administrative claims under this part. The address for the Counsel for Claims and Compensation is U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210. Telephone and fax numbers for this official may be found on the Department's Web site at www.dol.gov.

(d) *Regional Solicitor* means the head of the appropriate Regional Office (Regional Solicitor) or Branch Office (Associate Regional Solicitor) of the Office of Solicitor with jurisdiction to handle certain claims under this part.

(e) *FTCA* means the Federal Tort Claims Act, as amended, 28 U.S.C. 1346(b), 28 U.S.C. 2671, *et seq.*

(f) *MPCECA* means the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721.

(g) *WIA* means the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

§ 15.100 What claims against the Department are covered by the FTCA?

(a) The FTCA is a limited waiver of sovereign immunity that allows claims for money damages against the Department for negligent acts or omissions of its employees acting within the course and scope of their employment. Subject to the exception set forth in paragraph (b) of this section, all such claims against the Department should be handled under the procedures in this subpart.

(b) In instances where a third party has agreed to insure the Federal government, such as under a U.S. Government Car Rental Agreement, claimants are required to pursue those claims in accordance with such agreements.

§ 15.101 Who may file an administrative claim under the FTCA against the Department?

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

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

(c) A claim for 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 in accordance with applicable State law.

(d) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or 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 legal representative.

(e) Only claims involving alleged acts or omissions of Department employees (including Job Corps students) should be presented to the Department.

§ 15.102 May an insurance company file an FTCA administrative claim on behalf of a claimant?

(a) A claim for loss wholly compensated by an insurance company may be presented by that company.

(b) A claim for loss partially compensated by an insurance company may be presented by the company or the insured individually, in accordance with their respective interests or jointly.

It should be noted, however, that if the insurance company claims only part of the insured's interests, an acceptance of that claim may bar any additional claim by the insured for damages beyond that claimed by the insurance company as such acceptance would be in full and final settlement of all such claims arising out the incident that gave rise to the claim as described in § 15.110(b).

(c) If the claimant is directly compensated by the Department for medical bills under this subpart, the claimant may be required to reimburse his or her insurance company in accordance with the terms of his or her insurance policy if the company has already paid those bills.

(d) Whenever an insurance company presents a claim on behalf of the insured (such as a claim for an auto loss that includes the deductible), it shall present with its claim appropriate evidence that it has the rights of a subrogee, such as a copy of the signed policy.

§ 15.103 May an agent or legal representative file an FTCA administrative claim on behalf of a claimant?

(a) An agent or legal representative may file a claim on behalf of a claimant.

(b) Representative's fees are limited to not more than 20 percent of the amount paid for a claim settled in an administrative claim, and to not more than 25 percent of a judgment or settlement award after litigation is initiated. 28 U.S.C. 2678.

(c) If a representative is dismissed from representing a claimant before the claim is resolved, the representative may not place a lien on the claimant's recoveries under the claim.

(d) Any purported representative of a minor must provide documentation that he or she is the legal agent of that minor.

§ 15.104 Where should the FTCA administrative claim be filed?

(a) Only claims involving alleged acts or omissions of Department employees should be presented to the Department. For the purposes of this subpart, an FTCA claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed "Claim for Damage, Injury, or Death" on 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 or personal injury or death by reason of the incident.

(b) In any FTCA case where the claim seeks damages for an incident resulting in aggregate claims in excess of \$25,000 or which involves an alleged act or omission of an employee of the

Department whose official duty station is in Washington, DC, the claimant shall mail or deliver the claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of office or employment to the Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210.

(c) In all other cases, the claimant shall submit his or her claim to the official duty station of the employee whose act or omission forms the basis of the complaint, which should be immediately forwarded to the appropriate Regional Office of the Office of the Solicitor with all currently available documentation (such as a Standard Form 91, Motor Vehicle Accident Report).

§ 15.105 What information and evidence should be provided to DOL to substantiate an FTCA administrative claim?

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is 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 impairment, the prognosis, period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request.

(2) Itemized bills for medical, dental and hospital, or any other, 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) 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.

(b) *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, an autopsy report and or other competent evidence that includes cause

or causes of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the 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 name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

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

(5) Decedent's general physical and mental condition before his or her 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 prior to 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 damages claimed.

(c) *Property damages.* 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 with respect to each item of property:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed.

(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.

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

(1) 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.

(2) If the claimant is self-employed, documentary evidence showing the amount of earnings lost such as:

(i) Income tax returns for several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; or

(ii) A statement of the actual or projected cost for the claimant to hire someone else to do the same work he or she was doing at the time of injury.

(3) 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.

§ 15.106 How is the administrative claim processed?

(a) *Investigation.* When an organizational unit learns of an incident that reasonably can be expected to result in an allegation of harm caused to an individual or organization by an alleged negligent act or omission by an employee of that organizational unit or when it learns of an administrative claim or of litigation alleging such harm, it has the responsibility to fully investigate the incident and to take all actions necessary to preserve all relevant documents and other evidence. Each organizational unit should institute appropriate procedures to ensure that notification of such incidents are reported to the office responsible for ensuring that evidence is preserved and investigation undertaken.

(b) *Notification.* Upon receipt of an administrative claim under the Act or of notice of litigation seeking damages for an alleged negligent act or omission of an employee of the Department acting within the scope of his or her employment, the Office of the Solicitor shall notify the organizational unit responsible for the activity which gave rise to the claim or litigation and shall provide a copy of the administrative claim or the claim filed in the litigation.

(c) *FTCA Contact.* Each organizational unit will establish an FTCA contact, unless this requirement is waived by the Counsel for Claims and Compensation. The FTCA contact will coordinate and oversee the preservation of documents related to the circumstances of all claims arising from his or her organizational unit. The FTCA contact will arrange for the preparation and submission of the Administrative Report relating to each claim within 30 days after notification of receipt of an administrative claim, unless the Office of the Solicitor grants additional time.

(d) *Litigation.* During the course of any litigation, organizational units are responsible for providing assistance to the Office of the Solicitor in responding to discovery requests such as interrogatories and requests to produce

documents, for providing assistance in analyzing factual and program issues, for providing witnesses for depositions and trials, and for assistance in producing affidavits and exhibits for use in the litigation.

§ 15.107 What must be provided in the administrative report?

(a) The administrative report shall be in the form of a single memorandum in narrative form with attachments. It should contain all of the following elements, unless permission is obtained from the Office of the Solicitor to dispense with a particular element:

(1) A brief explanation of the organization and operation of the program involved including statutory authority and applicable regulations;

(2) A complete description of the events that gave rise to the claim or litigation, including a specific response to every allegation in the claim or litigation;

(3) Any information available regarding the questions of whether the claimant or plaintiff actually suffered the harm alleged in the claim or litigation and what individual or organization caused any harm which appears to have occurred;

(4) Any information available regarding the damages claimed;

(5) Any policy reasons which the organizational unit wishes to advance for or against settlement of the claim or litigation; and

(6) Details of any claims the Department may have against the claimant or plaintiff, whether or not they appear to be related to the subject matter of the claim or litigation.

(b) A copy of all documents relevant to the issues involved in the claim or litigation should be attached to each copy of the Administrative Report. Original records should not be forwarded to the Office of the Solicitor unless specifically requested. They should be preserved, however, and remain available for litigation if necessary.

(c) Organizational units should ensure that all Administrative Reports are either prepared or reviewed by an official of the organizational unit who was not personally involved in the incident in question prior to filing of the claim or suit.

(d) The Office of the Solicitor may waive the requirement of an Administrative Report. If the Administrative Report is waived, the organizational unit or units involved in the circumstances of the claim or litigation shall provide certification from the supervisor of the employee whose alleged negligent act or omission

gave rise to the claim, certifying that the employee was acting within the scope of his or her employment at the time of the alleged negligent act or omission.

§ 15.108 Who is authorized to decide an administrative claim?

(a) The Counsel for Claims and Compensation shall have the authority to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve an alleged negligent or wrongful act or omission of an employee whose official duty station is the Department's national office in Washington, DC, or which involve aggregate claims in excess of \$25,000, or which involve a new point of law or a question of policy.

(b) Regional Solicitors and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act where the aggregate claimed does not exceed \$25,000 in amount and which do not involve a new point of law or a question of policy.

§ 15.109 What if the claim is denied?

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

§ 15.110 What must a claimant do if the administrative claim is approved?

(a) Payment of a claim approved under this subpart is contingent upon claimant's execution of the appropriate forms, such as the SF-194, SF-196, or SF-197, in accordance with instructions by the Department of Justice and/or the Judgment Fund. When a claimant is represented by an attorney, the voucher for payment shall designate the claimant as payee (as the beneficial interest holder), and the check shall be delivered to the attorney whose address appears on the voucher.

(b) Acceptance by the claimant, or his or her agent or legal representative, of an award, compromise, or settlement 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 officer or employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

§ 15.111 If the administrative claim is approved, how is the award paid?

(a) Any award, compromise, or settlement in the amount of \$2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the Department.

(b) Payment of an award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this subpart shall be made in accordance with 28 CFR 14.10.

(c) An award, compromise or settlement of a claim under 28 U.S.C. 2672 and this subpart in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this subpart, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 15.200 What is a claim under the MPCECA and who may file such a claim?

(a) A claim under the MPCECA for damage or loss is allowable only if the property involved was being used incident to service with the Department.

(b) A claim may be made under this subpart by an employee of the Department or by a spouse or authorized agent, or legal representative on behalf of the employee. If the employee is deceased, the claim may be filed by a survivor in the following order of preference: spouse, children, parent, brother or sister or the authorized agent or legal representative of such person or persons.

(c) An MPCECA claim may not be made by or for the benefit of an insurance company, subrogee, assignee, conditional vendor or other third party.

§ 15.201 Where should the MPCECA claim be filed?

(a) If the claimant's official duty station is at the Department's national office in Washington, DC, or if the claim is for an amount in excess of \$25,000, the claim should be filed with the Counsel for Claims and Compensation, Office of the Solicitor of Labor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) In all other cases, the claimant shall address the claim to the regional

or branch office of the Office of the Solicitor servicing the claimant's official duty station.

§ 15.202 How is a claim filed under the MPCECA?

(a) A claim under this subpart must be presented in writing. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at *www.dol.gov*, is provided as an example for convenience of filing. The SF-95 for FTCA claims is not an appropriate form for a MPCECA claim.

(b) The claimant is responsible for substantiating ownership or possession, the facts surrounding the loss or damage, and the value of the property. Any claim filed must be accompanied by the following:

(1) A written statement, signed by the claimant or his or her authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement may also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(vii) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant, and all information as to insurance contracts, whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle. The Office of the Solicitor may waive the requirement of two estimates of repair.

(3) A copy of the power of attorney or other authorization if someone other than the employee files the claim.

(4) A statement from the employee's immediate supervisor confirming that

possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to service.

§ 15.203 When should a claim under the MPCECA be filed?

A claim under this subpart may be allowed only if it is filed in writing within 2 years after accrual of the claim. For the purpose of this part, a claim accrues at the later of:

(a) The time of the accident or incident causing the loss or damage;

(b) Such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(c) Such time as cause preventing filing no longer exists or as war or armed conflict ends, whichever is earlier, if a claim otherwise accrues during war or an armed conflict or has accrued within 2 years before war or an armed conflict begins, and for cause shown.

§ 15.204 Are there limits on claims under the MPCECA?

(a) The maximum amount that can be paid for any claim under the MPCECA is \$40,000, or, if the claim arises from emergency evacuation or extraordinary circumstances, up to \$100,000, and property may be replaced in kind at the option of the Government. 31 U.S.C. 3721(b)(1).

(b) The Department is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid losses, which may not be recoverable from the Department.

§ 15.205 What types of claims for property damage are allowed under the MPCECA?

(a) Claims for property damage are allowed under the MPCECA only if the property involved was being used incident to service with the Department and:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act or omission of the claimant, his or her agent, the members of his or her family, or his or her private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined by the claimant's supervisor to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims otherwise allowable under this subpart shall not be disallowed solely because the claimant was not the legal owner of the property for which the claim is made.

§ 15.206 What claims arising at a residence or Telework location may be covered under the MPCECA?

(a) Claims arising at a residence, Telework center or other flexiplace location may be covered under the MPCECA.

(b) For the purpose of this subpart, residence means a house, apartment or other location that is a Department employee's principal abode.

(c) Claims for property damage at an alternative work location at which the employee is performing duties pursuant to an approved Telework agreement may be covered by the MPCECA if the property was being used incident to service with the Department, as, for the purposes of this subpart, that location is considered to be an official duty station. Under most circumstances, property damage will only be allowed if it occurs at or in connection with the employee's workstation.

(d) Claims under the MPCECA at a residence not covered by paragraph (c) of this section may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, if the property was being used incident to service with the Department, while such property is located at:

(1) Residences within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(2) Residences outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, working area or other place (except residences) authorized or apparently authorized for the reception or storage of property.

§ 15.207 What are examples of claims allowed under the MPCECA?

The following are examples of the principal types of allowable claims, but these examples are not exclusive; other claims may be allowed, unless hereinafter excluded:

(a) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under

orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(b) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(1) Enemy action or threat thereof, or terrorism, combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(2) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(3) Efforts by the claimant to save human life or Government property.

(c) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(d) *Electronics and cellular phones.* Claims may be allowed for loss of, or damage to, cellular phones, personal data assistants and similar communication and electronic devices subject to the limitations in § 15.209(e).

(e) *Clothing and Accessories.* Claims may be allowed for damage to, or loss of, clothing and accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures subject to the limitations in § 15.209(e).

(f) *Expenses incident to repair.* Claimants may be reimbursed for the payment of any sales tax incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 15.208(c)) are also allowable.

§ 15.208 What are the restrictions on otherwise allowable claims?

(a) *Money or currency.* Claims may be allowed for loss of money or currency (which includes coin collections) only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from residence (as limited by § 15.206). In incidents of theft from a residence, it must be conclusively shown that the residence was locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount, which is determined to have been reasonable for the claimant to have had in his or her possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to an agency of the Government other than the Department.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate

could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between residence and office, or use of vehicles for the convenience of the owner.

However, it does include travel, and parking incident thereto, between a residence and an assigned place of duty specifically authorized or otherwise shown to be permitted by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.210.

§ 15.209 What claims are not allowed?

(a) *Unassigned residences in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States or part of an approved Telework agreement.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as watches, jewelry, furs, clothes, electronics or other articles of extraordinary value. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, if the claimant has taken reasonable protection or security measures.

(f) *Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value (such as a non-negotiable stock certificate or warehouse receipt) is not compensable. Intangible value is not compensable.

(g) *Incidental expenses and consequential damages.* The MPCECA and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 15.207(f), consequential damages or other types of

loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) *Minimum amount.* Loss or damage amounting to less than \$40.

§ 15.210 What affect does insurance have on a claim under the MPCECA?

In the event the property, which is the subject of the claim, was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to the claimant's service and is insured in whole or in part, the claimant should make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government, unless, in the subsequent determination of the deciding official, the filing of such a demand was impracticable or inequitable. For example, if the value of a claim is \$535 and the insurance deductible is \$500, the deciding official may determine that no claim need be made against the insurer.

(c) Unless the deciding official determines that no demand should have

been or need be made, failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submitting his or her claim, the claimant shall certify in the claim that he or she has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on the claim, the claimant shall immediately notify them to address all correspondence in regard to the claim to the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on the claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on the claim accepted by him or her, all rights, title and interest in any claim he or she may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of the claim by the United States, the claimant shall, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him or her from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his or her claim under this subpart is settled, the amount of recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, the claimant's total loss is to be determined without regard to the maximum payment limitations set forth in § 15.204. However, if the resulting amount, after making this deduction exceeds the maximum payment limitations, the claimant shall be allowed only the maximum amount set forth in § 15.204.

§ 15.211 How is a claim under this subpart processed?

(a) The Counsel for Claims and Compensation, the Regional Solicitors, and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arise within their respective jurisdictions, except that any claim for an amount in excess of \$25,000 shall fall within the exclusive jurisdiction of the Counsel for Claims and Compensation.

(b) Any writing received by the Office of the Solicitor within the time limits set forth in § 15.203 will be accepted and considered a claim under the MPCECA if it constitutes a demand for compensation from the Department. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at www.dol.gov, is provided for convenience of filing. The SF-95 form used to file a claim under the FTCA is not an appropriate form for a claim under the MPCECA claim.

(c) A demand is not required to be for a specific sum of money.

(d) The determination upon the claim shall be provided to the claimant in writing by the deciding official.

§ 15.212 How is the amount of the award under this subpart calculated?

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) The amount requested by the claimant for the item as a result of its loss, damage or the cost of its repair;

(2) The actual or estimated cost of its repair; or

(3) The actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since its acquisition, whichever is lower, less any salvage value of the item in question.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use

of publicly available adjustment rates or through use of other reasonable methods at the discretion of the official authorized to issue a determination upon the claim in question.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate.

(e) At the discretion of the official authorized to issue the determination upon the claim in question, a claimant may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Notwithstanding any other provisions of law, settlement of claims under the MPCECA is final and conclusive.

§ 15.213 Are there limits to representatives' fees for claims under this subpart?

Yes. No more than 10 percent of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. 31 U.S.C. 3721(i).

§ 15.214 How may a decision under this subpart be reconsidered?

(a) While there is no appeal from the decision of the deciding official in regard to claims under the MPCECA, the deciding official may always reconsider his or her determination of a claim.

(b) A claimant may request reconsideration from the deciding official by directing a written request for reconsideration to the deciding official within 60 days of the date of the original determination. The claimant must clearly state the factual or legal basis upon which he or she rests the request for a more favorable determination.

(c) The determination upon the reconsideration will be provided to the claimant in writing by the deciding official.

Subpart D—Claims Arising Out of the Operation of the Job Corps

§ 15.300 How are claims involving the Job Corps initiated?

(a) Claims involving the Job Corps, including claims against Job Corps Centers run by other Federal agencies, claims by third parties involving the acts or omissions of students of Job Corps, and claims involving the loss of personal property of students of Job Corps should be submitted to the appropriate Job Corps Regional Office. Claims under the MPCECA for non-

Department Federal employees should be sent to and must be handled by their respective Federal employer, subject to that employer's procedures. FTCA claims over \$25,000 should be sent to and must be handled by the Counsel for Claims and Compensation under subpart B of this part.

(b) The Job Corps Regional Office shall investigate all facts of the claim, including accident and medical reports, interview witnesses, and, where necessary, prepare the appropriate administrative reports.

(c) Following the investigation, the Job Corps Regional Office will determine the appropriate reviewing official and if necessary forward the claim to the appropriate office immediately with all currently available documentation, as described in § 15.301.

§ 15.301 What office is responsible for determining liability in claims arising out of the Job Corps?

(a) The Director of the appropriate Job Corps Regional Office is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers that do not exceed \$300.

(b) The Regional Solicitor is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers for claims exceeding \$300.

(c) The Regional Solicitor is responsible for all FTCA claims involving damage to persons or property arising out of an act or omission of a Job Corps student or Federal employee that do not exceed \$25,000 and do not involve a new point of law or a question of policy.

(d) All remaining claims with aggregate damages of \$25,000 or more are the responsibility of the Counsel for Claims and Compensation.

(e) The Job Corps Regional Office Director, the Regional Solicitors and the Associate Regional Solicitors are authorized to consider, determine and settle claims filed under this subpart that arose within their respective jurisdictions.

§ 15.302 What procedures apply to these claims?

(a) Claims involving the negligent acts or omissions of Job Corps students or Federal employees are claims under the FTCA and are determined under the procedures in subpart B of this part.

FTCA claims must be forwarded to and decided by the responsible Solicitor's Office.

(b) Claims involving loss or damage to persons or the personal property of Job Corps students are covered by the WIA, 29 U.S.C. 2897(b), which provides that the Secretary of Labor may adjust or settle claims for damages to a person or property of up to \$1,500 if those claims are found to be a proper charge against the United States and are not cognizable under the FTCA.

§ 15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?

(a) A WIA claim under this subpart must be in writing and signed by the claimant or by an authorized representative. In order to be a proper claim, a WIA claim must fully describe the property and the circumstances that gave rise to the loss or damage.

(b) All WIA claims under this subpart must be filed with the appropriate Job Corps Regional Office within 2 years of the date upon which the claim accrued. The Job Corps Regional Office may consult with the Regional Solicitor and/or Counsel for Claims and Compensation as necessary.

(c) The determination upon the claim shall be provided to the claimant in writing by the appropriate deciding official.

(d) Reconsideration of a determination under this subpart shall be available upon written request received within 60 days by the appropriate deciding official. The deciding official will provide a written response to the claimant within 60 days of such request. No further review of the matter will be permitted.

§ 15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

(a) Only claims involving damage or loss to personal property that occurred while at the Job Corps Center or while on authorized travel, training or other authorized activities may be considered under the WIA.

(b) The Job Corps will only reimburse up to \$300.00 per item for claims for loss or damage of personal property under the WIA, up to a maximum of \$1,500 per occurrence.

(c) If the property in question is not of a type that the student is authorized to bring to the Job Corps Center, no compensation will be made under this subpart. For example, if the Job Corps Center has explicit written rules imposing limitations on the type of electronic equipment or other personal items such as jewelry that may be

brought to the center, no compensation will be awarded for the loss or damage of such property.

Signed at Washington, DC, this 4th of April 2012.

M. Patricia Smith,

Solicitor of Labor, U.S. Department of Labor.

[FR Doc. 2012-8735 Filed 4-12-12; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA-2010-N-0155]

Veterinary Feed Directive; Draft Text for Proposed Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; draft text for proposed regulation.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft text for a proposed regulation intended to improve the efficiency of FDA's Veterinary Feed Directive (VFD) program. The Agency is making this draft text for a proposal available because of the complex scientific and regulatory issues involved, and because of the potential impact that changes to the VFD regulations may have on stakeholders. The Agency invites the public to submit comments with questions and concerns about the draft text for a proposed regulation.

DATES: Submit either electronic or written comments by July 12, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA-2010-N-0155, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301-827-6870.
- *Mail/Hand delivery/Courier (for paper or CD-ROM submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and

Docket No. FDA-2010-N-0155 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Sharon Benz, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-453-6864, email: Sharon.Benz@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This document is related to two other documents published elsewhere in this issue of the **Federal Register**, wherein FDA is announcing: (1) The availability of a guidance document entitled "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals" (GFI #209) and (2) the availability of a draft guidance document entitled "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209" (draft GFI #213).

In the **Federal Register** of March 29, 2010 (75 FR 15387), FDA published an advance notice of proposed rulemaking (ANPRM) with a 90-day comment period requesting comments on all aspects of the VFD regulations. FDA published a subsequent document in the **Federal Register** of June 28, 2010 (75 FR 36588), extending the ANPRM comment period for an additional 60 days.

While FDA encouraged comments on all aspects of the VFD regulations, the Agency requested input specifically on whether efficiency improvements need to be made to the current VFD regulations. The Agency received considerable comments from stakeholders suggesting that efficiency improvements are needed for the VFD regulations. FDA reviewed comments to the docket and, based on its review of those comments, developed draft text of

regulatory language intended to implement specified changes to the existing regulations in part 558 (21 CFR part 558).

Comments to the docket confirmed that this is a very complex issue that potentially affects many different stakeholder interests. Having carefully considered the comments and other relevant information, the Agency has prepared draft text for revisions to the existing regulatory language in part 558. Because stakeholders' interests are varied, striking the proper regulatory balance between sufficient veterinary oversight for VFD drugs and increased efficiency of the VFD process is a challenging proposition. Given the number and the nature of the comments received, and given the considerable impact proposed revisions potentially could have on stakeholders, FDA believes it is appropriate, before publishing an additional proposed rule, to offer stakeholders an opportunity to review and comment on our draft text of proposed revisions to the codified language in part 558.

For that reason, as provided for in §§ 10.40(f)(4) and 10.80(b)(2) (21 CFR 10.40(f)(4) and 21 CFR 10.80(b)(2)), FDA has decided to publish the draft text of proposed revisions to the codified language that the Agency has developed in response to public comments on this issue. FDA believes that, by making this document available under the provisions of §§ 10.40(f)(4) and 10.80(b)(2) and allowing an additional public comment period prior to publishing an additional proposed rule under the provisions of 21 CFR 10.40(b), the Agency will be able to develop a more informed proposal. When FDA publishes the proposed rule, the Agency will provide a detailed discussion of proposed changes to existing regulations.

The proposed revisions announced in this document were developed in conjunction with other initiatives designed to transition certain new animal drug products containing medically important antimicrobial drugs from an over-the-counter (OTC) status to a status that requires veterinary oversight. Specifically, the draft text of proposed revisions to part 558 reflect principles expressed in FDA's guidance document entitled "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals" (GFI #209). Further, this draft text of proposed revisions is also consistent with the specific recommendations described in FDA's draft guidance document entitled "New Animal Drugs and New Animal Drug Combination Products Administered in or on