

## Nuclear Regulatory Commission

## § 14.1

owing by the United States to the defendant.

### § 13.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

### § 13.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 13.42 or during the pendency of any action to collect penalties and assessments under § 13.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 13.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating officer may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

### § 13.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 13.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 13.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

## PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

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AUTHORITY: 28 U.S.C. 2672, 2679; Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 28 CFR 14.11.

SOURCE: 47 FR 8983, Mar. 3, 1982, unless otherwise noted.

### Subpart A—General

#### § 14.1 Scope of regulations.

(a) The terms “Nuclear Regulatory Commission” and “NRC” as used in this part mean the agency established by section 201(a) of the Energy Reorganization Act of 1974, but do not include any contractor with the Nuclear Regulatory Commission.

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(b) The regulations in this part supplement the Department of Justice's regulations in 28 CFR parts 14 and 15.

(c) These regulations apply to administrative claims under the Federal Tort Claims Act, as amended, asserted on or after the effective date of this rule, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the NRC while acting within the scope of his or her 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.

(d) These regulations also set forth the procedures when lawsuits are commenced against an employee of the NRC resulting from the operation of a motor vehicle while acting within the scope of his or her employment.

#### § 14.3 Limit on attorney fees; penalty.

(a) An attorney may not charge or receive fees in excess of:

(1) 25 percent of any judgment rendered under 28 U.S.C. 1346(b);

(2) 25 percent of any settlement made under 28 U.S.C. 2677; or

(3) 20 percent of any award, compromise, or settlement made under 28 U.S.C. 2672.

(b) Any attorney who charges or receives any amount in excess of that allowed under this section is subject to a fine of not more than \$2,000 or imprisonment for not more than one year, or both. (28 U.S.C. 2678)

## Subpart B—Filing Procedures and Requirements

### § 14.11 Who may file a claim.

(a) A claim for damage to or loss of property may be presented by the owner of the property interest which is the subject of the claim, 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 based on death may be presented by the executor or adminis-

trator of the decedent's estate, or by any other person legally entitled to assert the claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, to the extent of their respective interests, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, the insurer shall present with the claim appropriate evidence that the insurer has the rights of a subrogee.

(e) If a claim is presented by an agent or legal representative that person shall:

(1) Present the claim in the name of the claimant;

(2) Sign the claim;

(3) Show the title or legal capacity of the person signing the claim; and

(4) Include with the claim evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

### § 14.13 When is a claim presented to NRC.

For purposes of the provisions of 28 U.S.C. 2672, a claim is presented when NRC receives from a claimant, or the claimant's duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident. An executed Standard Form 95 or written notification must be accompanied by a claim for money damages in a sum certain for damage to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.

### § 14.15 Where to present a claim to NRC.

A claimant shall mail or deliver the claim to the office of employment of the NRC employee whose negligent or wrongful act or omission is alleged to have caused the loss or injury. If the office of employment is not known, the claimant shall file the claim with the

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Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

[47 FR 8983, Mar. 3, 1982, as amended at 51 FR 35999, Oct. 8, 1986]

### **§ 14.17 A claim must be presented to the appropriate agency.**

A claimant shall present the claim to the Federal agency whose activities gave rise to the claim. If a claim is erroneously presented to the NRC, the NRC shall transfer it to the appropriate agency, if the proper agency can be identified from the claim, and shall advise the claimant of the transfer. If transfer is not feasible, the NRC shall return the claim to the claimant. The fact of transfer does not, in itself, preclude further transfer, return of the claim to the claimant, or other appropriate disposition of the claim. A claim shall be presented, as required by 28 U.S.C. 2401(b), as of the date it is received by the appropriate agency.

### **§ 14.19 When a claim is filed with more than one agency.**

(a) If the NRC and one or more other Federal agencies is or may be involved in the events giving rise to the claim, and if the claim is filed with the NRC, the NRC shall contact all other affected agencies in order to designate the single agency which will investigate and decide the merits of the claim.

(1) In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice will be consulted and will designate a primary agency to investigate and decide the merits of the claim. If the NRC is designated as the primary agency, it shall notify the claimant that all future correspondence concerning the claim shall be directed to the NRC.

(2) All involved Federal agencies can agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the primary agency. In either event, the primary agency is responsible for the final determination of the claim.

(b) A claimant presenting a claim arising from an incident to more than one agency should identify each agency

to which the claim is submitted at the time each claim is presented. If a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. 2401(b). However, if NRC, as a subsequently involved Federal agency, desires to take further action with a view towards settling the claim, the NRC may treat the matter as a request for reconsideration of the final denial under 10 CFR 14.39, unless suit has been filed in the interim, and advise the claimant of the action.

### **§ 14.21 Filing a claim after an agency final denial.**

If, after a final denial by another agency, the claimant files with the NRC a claim arising out of the same incident on which the claim filed with the other agency was based, the submission of the claim to NRC will not toll the requirement of 28 U.S.C. 2401(b) that suit must be filed within six months of the final denial by the other agency, unless the other agency specifically and explicitly treats the submission to NRC as a request for reconsideration under 10 CFR 14.39 and advises the claimant of the action.

### **§ 14.23 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 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.

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(3) Full names, addresses, birth dates, 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 death.

(4) Degree of support afforded by the decedent to each survivor dependent upon 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 these 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 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 and 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 the NRC or another Federal agency. The claimant may request in writing a copy of the report of the examining physician if the claimant has:

(i) Furnished the report referred to in paragraph (a)(1) of this section on request; and

(ii) Made or agrees to make available to the NRC all other reports of the claimant's physical or mental condition which have been or are made by any physician.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or

itemized receipts of payment for these expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for the 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 damage 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 interest which is the subject of the claim.

(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 these 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.

**§ 14.25 Amending a claim.**

The claimant may amend a claim presented in compliance with 10 CFR 14.13 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). The claimant or his or her duly authorized agent or legal representative shall sign each amendment and submit it in writing. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and

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the claimant's option under 28 U.S.C. 2675(a) does not accrue until six months after the filing of an amendment.

### § 14.27 Time limit.

The claimant shall furnish evidence and information of the types described in 10 CFR 14.23, to the extent reasonably practicable, when the claim is initially presented. If the claimant fails to furnish sufficient evidence and information within six months after the claim was initially presented to enable NRC to adjust, determine, compromise and settle the claim, NRC may consider the claim a nullity.

## Subpart C—Commission Action and Authority

### § 14.31 Investigation.

The NRC may:

(a) Require the claimant to furnish any evidence or information which is relevant to its consideration of the claim;

(b) Examine the claimant; or

(c) Investigate, or request any other Federal agency to investigate, a claim filed under this part.

### § 14.33 Officials authorized to act.

The General Counsel or the General Counsel's designee shall exercise the authority to adjust, determine, compromise and settle a claim under the provisions of 28 U.S.C. 2672.

[51 FR 35999, Oct. 8, 1986]

### § 14.35 Limitation on NRC's authority.

(a) The NRC shall effect an award, compromise, or settlement of a claim hereunder in excess of \$25,000 only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim are treated as a single claim.

(b) The NRC may adjust, determine, compromise, or settle a claim under this part only after consultation with the Department of Justice if, in the opinion of the Office of the General Counsel:

(1) A new precedent or a new point of law is involved;

(2) A question of policy is or may be involved;

(3) The United States is or may be entitled to indemnity or contribution from a third party and the NRC 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) The NRC may adjust, determine, compromise, or settle a claim under this part only after consultation with the Department of Justice if the NRC is informed or is otherwise aware that the United States, or an employee, agent, or cost-plus contractor of the United States, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) When Department of Justice approval or consultation is required under this section or the advice of the Department of Justice is otherwise requested, the NRC shall direct the referral or request to the Assistant Attorney General, Civil Division, Department of Justice, in writing. The NRC shall ensure that the referral or request contains:

(1) A short and concise statement of the facts and the reasons for the referral or request;

(2) Copies of relevant portions of NRC's claim file; and

(3) A statement of the recommendations or views of the NRC.

A referral or request to the Department of Justice may be made at any time after presentment of a claim to the NRC.

[47 FR 8983, Mar. 3, 1982, as amended at 51 FR 35999, Oct. 8, 1986]

### § 14.37 Final denial of claim.

The NRC shall send notice of a final denial of a claim in writing 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. The NRC shall include a statement in the notification of final denial that, if the claimant is dissatisfied with NRC's action, he or she may file suit in an appropriate U.S. District Court not later than 6 months

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after the date of mailing of the notification.

#### § 14.39 Reconsideration of a claim.

Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, or his or her duly authorized agent, or legal representative, may file a written request with the NRC for reconsideration of a final denial of a claim. Upon the timely filing of a request for reconsideration, the NRC shall have 6 months from the date of filing in which to make a final disposition of the claim, and the claimant's option under 28 U.S.C. 2675(a) does not accrue until 6 months after the filing of a request for reconsideration. Final NRC action on a request for reconsideration shall be effected in accordance with the provisions of 10 CFR 14.37.

#### § 14.41 Payment of approved claims.

(a) The NRC shall pay any award, compromise, or settlement in an amount of \$2,500 or less made under the provisions of 28 U.S.C. 2672 out of the appropriations available to it. The NRC shall obtain payment of any award, compromise, or settlement in excess of \$2,500 from the Department of the Treasury by forwarding Standard Form 1145 to the Payment Branch, Claims Group, General Accounting Office. If an award, compromise, or settlement is in excess of \$25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or the Attorney General's designee. When the use of Standard Form 1145 is required, it must be executed by the claimant or it must be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant.

(b) If a claimant is represented by an attorney, the voucher for payment must designate both the claimant and his or her attorney as payees, and the check must be delivered to the attorney whose address appears on the voucher.

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#### § 14.43 Acceptance of payment constitutes release.

Acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made under the provisions of 28 U.S.C. 2672 or 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. Acceptance constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim.

### Subpart D—Employee Drivers

#### § 14.51 Procedures when employee drivers are sued.

(a) Any NRC employee against whom a civil action or proceeding is brought for damage to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his or her office or employment with the NRC, shall promptly deliver all process and pleadings served upon the employee, or an attested true copy, to the Office of the General Counsel. If the action is brought against an employee's estate, this procedure applies to the employee's personal representative.

(b) In addition, upon the employee's receipt of any process or pleadings, or any prior information regarding the commencement of a civil action or proceeding, the employee shall immediately advise the Office of the General Counsel by telephone or telegraph.

[47 FR 8983, Mar. 3, 1982, as amended at 51 FR 35999, Oct. 8, 1986]

#### § 14.53 Scope of employment report.

A report containing all data bearing upon the question whether the employee was acting within the scope of his or her office or employment will be furnished by the General Counsel or designee to the United States Attorney for the district encompassing the place where the civil action or proceeding is brought. A copy of the report also will be furnished to the Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible

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date, or within the time specified by the United States Attorney.

[51 FR 35999, Oct. 8, 1986]

### § 14.55 Removal of State court proceedings.

Upon a certification by the United States Attorney that the defendant employee was acting within the scope of his or her office or employment at the time of the incident out of which the suit arose, any civil action or proceeding commenced in a State court may be removed to the district court of the United States for the district and division encompassing the place where the action or proceeding is pending in accordance with 28 U.S.C. 2679.

### § 14.57 Suit against United States exclusive remedy.

The remedy against the United States provided by 28 U.S.C. 1346(b) and 2672 for damage to or loss of property or personal injury or death, resulting from the operation by an employee of the Government of any motor vehicle while acting within the scope of his or her office or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his or her estate whose act or omission gave rise to the claim.

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AUTHORITY: Atomic Energy Act of 1954, secs. 161, 186 (42 U.S.C. 2201, 2236); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 3701, 3713, 3716, 3719, 3720A; 42 U.S.C. 664; 44 U.S.C. 3504 note; 31 CFR parts 900 through 904; 31 CFR part 285; E.O. 12146, 44 FR 42657, 3 CFR, 1979 Comp., p. 409; E.O. 12988, 61 FR 4729, 3 CFR, 1996 Comp., p. 157.

SOURCE: 47 FR 7616, Feb. 22, 1982, unless otherwise noted.

### Subpart A—Application and Coverage

#### § 15.1 Application.

(a) This part applies to claims for the payment of debts owed to the United States Government in the form of money or property and; unless a different procedure is specified in a statute, regulation, or contract; prescribes procedures by which the NRC—